



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 19 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord stated that the tenants were each served separately with two copies of the landlord's application for dispute resolution hearing package on February 6, 2021, by way of registered mail to the tenants' forwarding address. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's application on February 11, 2021, five days after its registered mailing to the tenants' forwarding address.

During the hearing, I explained the hearing process to the landlord. The landlord had an opportunity to ask questions. The landlord stated that he wanted to proceed with the hearing, and he did not make any adjournment or accommodation requests. On this basis, I proceeded with the hearing.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' security deposit?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on May 1, 2020. The tenants vacated the rental unit on December 31, 2020. A written tenancy agreement was signed by both parties. Monthly rent in the amount of \$2,400.00 was payable on the first day of each month. A security deposit of \$1,200.00 and a pet damage deposit of \$1,200.00 were paid by the tenants. The landlord returned the full pet damage deposit of \$1,200.00 to the tenants. The landlord continues to retain the tenants' full security deposit of \$1,200.00. No move-in condition inspection report was completed for this tenancy. A move-out condition inspection report was completed with the landlord and the tenants' agent sister, on January 16, 2021. The tenants provided a written forwarding address to the landlord on January 16, 2021, by way of a text message and as noted by the landlord in the move-out condition inspection report. The landlord had written permission to keep \$300.00 from the tenants' security deposit for "sharpie damage" to the wall, by way of a letter that the tenants photographed and sent to the landlord. The landlord's application to retain the tenants' security deposit was filed on January 29, 2021.

According to his application, the landlord seeks a monetary order of \$2,274.00 plus the \$100.00 application filing fee.

The landlord testified regarding the following facts. The utilities for October and November are unpaid. There was "sharpie damage" on the walls. There are videos of the damage. The rental unit was not move-in ready when the tenants moved out. The landlord had to hire a truck to move out furniture, food, and recycling. The landlord

incurred costs to return the rental unit to a rentable condition. The landlord did carpet cleaning, hired a cleaning service, and junk removal. The landlord wants the \$100.00 filing fee back.

Analysis

At the outset of the hearing, I notified the landlord that he was required to present his application, including all claims and evidence.

The following Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) are applicable to this proceeding and state, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party’s agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the landlord did not sufficiently present his claims or evidence, as required by Rule 7.4 of the RTB *Rules*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*. During the hearing, the landlord failed to go through his specific monetary claims and the amounts for each claim. This hearing lasted 19 minutes, so the landlord had ample opportunity to present his application, as the tenants did not appear at this hearing. I repeatedly asked the landlord whether he had any other information he wanted to present or add during this hearing, but he declined to do so.

During the hearing, I notified the landlord about the below test and the standard of proof. Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of the landlord.

The landlord did not review any specific claims or monetary amounts, as noted in the monetary order worksheet that he provided for this hearing. He did not even go through this worksheet during the hearing. According to the landlord's monetary order worksheet, he claimed the following amounts, as noted below.

I dismiss the landlord's application of \$627.90 for garbage and furniture removal, \$336.00 for cleaning, \$240.66 for carpet cleaning, \$502.91 for a hydro bill from December 2020 to January 2021, \$513.35 for a hydro bill from October to December 2020, and \$53.18 for a water bill, totalling \$2,274.00, without leave to reapply. The landlord did not indicate what work was done, when the work was done, who it was done by, how many people did the work, what the rate was per hour or per task, or other such information. The landlord did not indicate any of the above amounts during the hearing. The landlord did not go through any bills, invoices, receipts or any documents during this hearing. The landlord provided some documents where he provided his own handwritten calculations of hydro usage, which he did not explain during this hearing. The landlord provided an invoice for cleaning for \$336.00, which indicates "past due," and did not explain this during the hearing or indicate whether it was paid.

The landlord did not complete a move-in condition inspection report with the tenants, to show the condition of the rental unit at the beginning of the tenancy. The landlord only submitted videos, which he did not indicate when they were taken, nor did he go through any of these videos during the hearing, aside from mentioning their existence. The move-out condition inspection report submitted by the landlord does not indicate whether the tenants' agent agreed with damages noted by the landlord on the report.

As the landlord was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the tenants.

The landlord continues to hold the tenant's security deposit of \$1,200.00. Over the period of this tenancy, no interest is payable on the deposit. I find that the tenants provided a written forwarding address to the landlord on January 16, 2021. I find that the landlord applied to retain the security deposit within 15 days of January 16, 2021, as this application was filed on January 29, 2021.

I find that the landlord did not have written permission to keep \$300.00 from the tenants' security deposit, as he stated during the hearing. The landlord did not provide a copy of the letter he referenced, prior to this hearing, although he had ample time to do so, since he filed this application on January 29, 2021, and this hearing occurred on April 12, 2021. The move-out condition inspection report does not indicate that the tenants permitted the landlord to retain \$300.00 from the security deposit.

The landlord's right to retain the tenants' security deposit for damages was extinguished for failure to complete a move-in condition inspection report, as required by section 24 of the *Act*. However, the landlord also applied for other costs, aside from damages, including hydro and water utilities.

In accordance with section 38 of the *Act*, I find that the tenants are entitled to the return of their full security deposit of \$1,200.00 from the landlord. The tenants are provided with a monetary order for same. Although the tenants did not apply for their security deposit return, I am required to consider it on the landlord's application to retain it, as per Residential Tenancy Policy Guideline 17. As the landlord already returned the tenants' pet damage deposit of \$1,200.00, I do not make any orders regarding same.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$1,200.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 12, 2021

Residential Tenancy Branch