



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, MNRL, FFL**

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The tenants testified that they received the landlords' materials and have not served any materials of their own. Based on their testimonies I find the tenants duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to retain the deposit for this tenancy?

Are the landlords entitled to recover the filing fee from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in October 2018 and ended in November 2020. The monthly rent was \$950.00. The landlords assumed the tenancy when they purchased the rental property.

The tenants submit that the security deposit for this tenancy was \$500.00 and that the previous owners of the property failed to perform a move-in condition inspection at the start of the tenancy.

The landlord submit that the security deposit was \$475.00, and have no information on what move-in inspection was performed.

The parties agree that the landlord provided the tenants with two opportunities to perform a move-out inspection in accordance with the Act and regulations and that the tenants declined to participate on each occasion. The landlords gave evidence that they conducted an inspection of the rental unit without the tenants and found several areas where cleaning, repairs and maintenance was required. The landlords submit that the total cost of the work done to restore the rental unit to its pre-tenancy condition is \$1,850.98. the landlord submitted into evidence the condition inspection report as well as photographs of the suite and invoices for the work done in support of their monetary claim.

The landlords also provided undisputed testimony that they had provided the tenants with a discount of \$100.00 from their monthly rent in May 2020 which was to be subsequently repaid.

The parties agree that the tenants provided a forwarding address to the landlords in writing by a letter dated November 26, 2020. The tenants have not provided written authorization that the landlords may retain any portion of the deposit for this tenancy.

Analysis

The parties disagree on the amount of the security deposit paid for this tenancy. While neither party provided documentary evidence to demonstrate the amount paid, I find the landlords' submission that the security deposit was \$475.00, half of the monthly rent to be more believable than the tenants' suggestion that they paid \$500.00.

Section 38 of the *Act* requires a landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In the case at hand the parties agree that the tenants issued a letter on or about November 26, 2020 providing a forwarding address. Pursuant to section 90 of the *Act* I find that the forwarding address is deemed served on the landlords on December 1, 2020, five days after mailing. The landlord filed their present application for authorization to retain the deposit on December 13, 2020, within the 15 days provided under the *Act*.

I accept the testimony of the parties that no move-in condition inspection report was prepared at the start of the tenancy. Pursuant to section 24 of the *Act* a landlord extinguishes their right to claim against a security deposit for damage to the rental unit if a condition inspection report is not prepared at the start of the tenancy. Consequently, I dismiss this portion of the landlords' application.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the submission of the landlord that the rental unit required some cleaning, maintenance and repairs due to its condition at the end of the tenancy. I am satisfied with the evidence including the landlord's testimony, the condition inspection report prepared in the absence of the tenants and the multiple photographs of the rental unit that there was a need for work to be performed. I find the nature of the work conducted as evidenced in the invoices and receipts submitted to be reasonable and

commensurate with the damage in the rental unit. I find the costs incurred by the landlord to be reasonable expenditures to restore the rental unit to its pre-tenancy condition. I therefore issue the landlords a monetary award in the amount of \$1,850.98 as claimed.

I accept the undisputed evidence of the landlords that they provided the tenants with a discount of \$100.00 which was to be repaid during the tenancy. While the parties did not record the loan in documentary form, the tenants did not dispute the existence of such an agreement. I accept that there is an outstanding amount owing pursuant to this agreement of \$100.00 and issue a monetary award in the landlords' favour accordingly.

As the landlords were partially successful in their application I allow them to recover their filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$1,575.98. The tenants must be served with this Order as soon as possible. Should the tenants 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 20, 2021

Residential Tenancy Branch