



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for compensation 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 landlord and the two tenants, female tenant ("tenant") and "male tenant," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 48 minutes.

At the outset of the hearing, I informed both parties that they were not permitted to record the hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. During the hearing, the landlord and the two tenants all affirmed under oath that they would not record this hearing.

I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with the hearing, they wanted me to make a decision, and they did not want to settle this application.

The male tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlord's application.

The male tenant stated that the tenants did not provide any documentary evidence for this hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to correct the tenant's name. Both parties consented to this amendment during the hearing.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit and for compensation 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 documentary evidence and the testimony of both parties, 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.

Both parties agreed to the following facts. This tenancy began on September 28, 2015 and ended on September 9, 2019. Monthly rent in the amount of \$1,400.00 was payable on the first day of each month. A security deposit of \$1,400.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenants provided written permission for the landlords to keep their entire security deposit of \$1,400.00. The tenants did not provide a written forwarding address to the landlord. A move-in condition inspection report was completed for this tenancy by both parties. A move-out condition inspection report was only completed by the landlord, without the tenants. The landlord did not provide the tenants with a final opportunity to schedule a condition inspection on the RTB approved form for the move-out condition inspection report.

The landlord stated that his application to keep the tenants' security deposit was filed on January 22, 2021.

As per his application, the landlord seeks a monetary order of \$13,325.44 plus the \$100.00 application filing fee.

The landlord testified regarding the following facts. The male tenant never put up the drywall or painted the house or put in the carpet, as he agreed to do. The landlord bought the materials for the male tenant to finish the above work. The tenants took materials from the rental unit, including floor mats and 4x4 wood pieces. The tenants caused damages to the garden shed in the yard, as the hinges were broken off the shed door. On September 10, 2019, the landlord went to the rental unit and found it unlocked with the doors wide open, after the tenants vacated on September 9, 2019. The landlord told the tenants that they were responsible for all costs until September 26, 2019, including rent and water bills, since the landlord issued a notice to end tenancy effective on the above date. The tenants told the landlord to keep their security deposit of \$1,400.00 for these costs. The tenants changed the locks to the unit. The landlord had to secure the unit and lock it, since the tenants left it open when they vacated.

The landlord stated the following facts. The floors were a mess, the doors were broken, there was a crusty layer inside the toilet, the bathroom fans were never cleaned, there was filth on the air conditioner screen, and there were holes punched in the walls. The landlord had to replace the toilet and floor in the bathroom, all walls were repainted, and windows were replaced. The landlord spent 164 hours on it and this was the "worst mess" he had ever seen, even as a contractor working in other rental houses before. Everything the landlord is asking for is in his evidence and photographs and the landlord's application "speaks for itself." The tenants agreed to abide by the landlord's list in his letter.

The tenant testified regarding the following facts. The tenants dispute the landlord's entire application. They reseeded the landlord's grass. They agreed to finish the landlord's drywall for free, but it was unfinished when they moved in. The nail holes and light bulbs are reasonable wear and tear. The tenants patched the holes but did not paint over them. The landlord bullied the tenants to sign his letter, as they did not want to lose their house with their family. The tenants did not steal anything from the rental unit. The 4x4 wood pieces were left at the rental unit by the tenants, while some were used for the fence to hold it up. The tenants never cooked in the bathroom. The stuff at the bottom of the toilet is normal, the tenants tried to clean it, but it would not come out. The master bathroom door and shower were falling apart before, and the refrigerator was glued when the tenants moved in. The landlord locked the tenants out of the rental unit, as the tenants tried to clean and reach an agreement with the landlord.

Analysis

During the hearing, I notified the landlord that as the applicant, he was required to present his application and prove his claim on a balance of probabilities.

The following RTB *Rules of Procedure* 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 properly present his evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*.

This hearing lasted 48 minutes, so the landlord had ample opportunity to present his monetary application and respond to the tenants' submissions. The landlord submitted numerous documents but failed to go through any of them, during this hearing.

During the hearing, I informed the landlord about the below test. 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 on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

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 dismiss the landlord's application for \$13,325.44 without leave to reapply.

I find that the landlord cannot prove the condition of the rental unit when the tenants moved out, since the landlord did not conduct a move-out condition inspection or report with the tenants. The landlord did not provide the tenants with a final opportunity to schedule a move-out condition inspection on the approved RTB form, as required by section 17(2)(b) of the *Regulation*.

The landlord's application for a monetary order of \$13,325.44 is dismissed without leave to reapply. The above amount was taken from the landlord's evidence submitted with his application. During the hearing, the landlord failed to review this evidence or to provide a breakdown of his monetary claims, despite the fact that I asked him to provide the amounts for each claim. The landlord failed to go through any of his documentary evidence during this hearing, including any photographs, invoices, receipts, or estimates. He did not even indicate how he came up with the amounts that he did. He referenced providing documents but did not indicate any details or point me to any specific documents, provisions, pages or other information. He said that his application, evidence and photographs "speaks for itself."

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 tenants' security deposit of \$1,400.00. Over the period of this tenancy, no interest is payable on the deposit. I order the landlord to retain the tenants' entire security deposit of \$1,400.00. The tenants provided written permission for the landlord to keep their entire security deposit. The tenants confirmed this information during the hearing.

Conclusion

I order the landlord to retain the tenants' entire security deposit of \$1,400.00.

The remainder of the landlord's application is dismissed without leave to reapply.

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: May 28, 2021

Residential Tenancy Branch