



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

DL gave the following testimony on behalf of the landlords. The tenancy began on January 16, 2016 and ended on February 28, 2021. The monthly rent of \$2200.00 was due on the first of each month. The tenants paid a security deposit of \$1100.00 which the landlords still hold. DL testified that the tenants made 20 significant dents in the new fridge that came with the unit over their tenancy. DL testified that the damage shows a pattern of "willful negligence and carelessness of private property". DL testified that the cost to replace both the freezer and fridge doors including labour, install and taxes is \$941.50. DL testified that he is also seeking the recovery of the \$100.00 filing fee. DL testified that he re-rented the unit for a higher rent than what these tenants were paying.

TA gave testimony on behalf of the tenants. TA testified that he acknowledges that the fridge was new when they moved in. TA testified that the damage is more in line with normal wear and tear. TA testified that the dents were caused by having magnets on the fridge, that when opened, would bump up against an adjacent wall. TA testified that the location of the fridge is unusual. TA testified that the landlord was able to rent the unit for a higher rate to the first person that came to view the unit. TA testified that the cost to replace the doors is exorbitant as claimed. TA testified that the landlords have not suffered any attributable rental loss as a result of the fridge and therefore the application should be dismissed.

Analysis

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or

damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I address the landlords claim and my findings as follows.

The landlords have not incurred any “out of pocket costs” as they have only supplied an estimate of charges to replace the fridge doors. The landlords did not provide sufficient evidence as to why they haven’t replaced the doors. DL first testified that he was waiting to see what the outcome of this hearing would be but followed up that comment by stating he promised the tenant he would fix it no matter what. I find this comment illogical.

If the landlord is going to replace the item “no matter what”, it’s unclear as to why he hasn’t conducted the repair instead of waiting for six months with no guarantee that he would be successful in this application. DL testified that he rented the unit for more than the before. The landlords have failed to provide sufficient evidence that they have suffered any loss and failed to provide sufficient evidence of mitigation. As they have not satisfied the four elements listed above, I must dismiss their application in its entirety without leave to reapply.

Conclusion

The landlord’s application is dismissed in its entirety without leave to reapply. The landlords are to return the \$1100.00 security deposit to the tenants. I grant the tenants a monetary order pursuant to section 67 in the amount of \$1100.00.

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: August 12, 2021

Residential Tenancy Branch