



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on May 19, 2021, by the landlord under the Residential Tenancy Act (the “Act”), for a monetary order for monetary loss or other money owed and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. All parties confirmed under affirmation that they were not recording the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Background and Evidence

The parties agreed that the tenancy began on January 1, 2020. Rent in the amount of \$850.00 was payable on the first of each month. The tenant paid a security deposit of \$425.00. The tenancy ended on September 1, 2020. The tenant’s security deposit was dealt with at a previous hearing. I have noted the file number on the covering page of this decision.

The landlord claims as follows:

a.	Lock replacement	\$2,576.00
b.	Filing fee	\$ 100.00
	Total claimed	\$2,576.00

The landlord testified that the tenant was given two sets of keys at the start of the tenancy. The landlord stated at the end of the tenancy the tenant only returned one set of keys. The landlord stated because of that they had to rekey the main door and provided keys to all of the tenants of 29 units, as they were concerned with the safety of the building.

The tenant testified that their partner had lost their key. The tenant stated that the last page of their tenancy agreement shows that if they loss at a key they would be charge \$50.00, not the cost to rekey the entire premise. The tenant stated that the landlord is retaliating because they recently were awarded double the security deposit.

The landlord argued that the last page is only a reminder or suggestion about the keys. The landlord stated they informed the tenant on October 21, 2021, if the keys were not returned, they would be responsible for the cost of the changing the main lock and the replacement keys for all occupants. The landlord stated that Rule 10 of the tenancy agreement refers to the cost of the locks.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, I do not find the tenant is responsible to replace the main lock and the key for the entire building, it is not unreasonable for a person to lose a key from time to time.

Further, on the last page of the tenancy agreement is a reminder that if a key is lost there will be a \$50.00 charge for a new key. This is also supported by Rule 10 attached to the tenancy agreement that states an appropriate sum will be deducted from the security deposit. Not that the landlord will keep the full security deposit and the tenant will be liable for the balance due to re-key the entire building.

I also find that if the landlord truly felt that the property was at security risk due to this lost key, they would have changed the lock immediately and not waiting until October 21, 2021 to notify the tenant that the key must be returned, or they would be liable for the cost to provide keys to the entire building. The lock was not changed until November 3, 2021, which was just over two months after the tenancy had ended.

I find it more likely than not that the landlord only filed this application in retaliation of the tenant receiving a monetary award for double the security deposit on May 7, 2021, which was sent to the landlord by email from the Residential Tenancy Branch on May 10, 2021 and the landlord's application was filed nine days later.

Based on the above, I dismiss the landlord's claim without leave to reapply. The landlord is not entitled to recover the cost of the filing fee.

Conclusion

The landlord application is dismissed.

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: November 23, 2021

Residential Tenancy Branch