



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL FFL

Introduction

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

- a monetary order 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 for this application 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 parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

Is the landlord 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 on April 15, 2020 and ended on May 1, 2020. Monthly rent was \$2,350.00 payable on the first of each month. A security deposit of \$1,175.00 was collected at the start of the tenancy and is still held by the landlord.

The landlord did not prepare a condition inspection report at the start of the tenancy. The tenants completed a move-in report in the absence of the landlord and took photos of the condition of the suite.

The parties prepared a move-out condition inspection report. A copy of the report prepared on May 1, 2021 was submitted into evidence. The report is signed by both representatives of both parties. The report notes some areas of the rental unit requiring cleaning and work. In the portion of the report providing for deductions the parties wrote:

The unit should be professionally cleaned, that includes kitchen living room bedrooms bathrooms and exterior. Living room needs to be repainted. Carpet needs to be professionally cleaned.

No monetary figure is agreed to by the parties as a reasonable deduction for the work but the report is signed by the tenant LW.

The landlord submits that the total cost of the cleaning and work is \$1,491.00. The landlord submitted receipts and invoices from third-party companies showing the amounts charged for carpet cleaning, painting and cleaning.

The tenants dispute that the amount sought by the landlord is fair and say that the issues noted on the report were damaged prior to the tenancy. The tenants point to the report prepared by them at the start of the tenancy and the corresponding photographs as evidence of the condition of the suite.

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 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.

In the absence of a proper condition inspection report prepared by the parties at the start of the tenancy I find there is insufficient evidence to support the landlord's claim attributing damage to the rental unit to the tenants. The tenants submitted photographs which I find support their position that the rental unit had some deficiencies evident at the outset of the tenancy. The requirement under the *Act* for the landlord to prepare a proper condition inspection report is designed specifically to avoid these situations where there is insufficient evidence of the condition of the rental unit.

I find insufficient evidence that the cost of repairs and cleaning is attributable to the tenants rather than issues that were present at the outset of this tenancy. The landlord has not met their evidentiary onus on a balance of probabilities and consequently I dismiss their application.

Section 24 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 23 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report at the start of the tenancy.

Residential Tenancy Policy Guideline 17 provides that on a landlord's application to retain all or a part of the security deposit the arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

Accordingly, as I find that the landlord has waived their right to retain the security deposit for this tenancy through their failure to prepare a condition inspection report and in accordance with section 38(6) of the *Act*, I find the tenants are entitled to a monetary

award in the amount of \$2,350.00, double the value of the security deposit for this tenancy. No interest is payable over this period.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$2,350.00. 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: November 16, 2021

Residential Tenancy Branch