



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S MNDCL-S 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 deposits for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant 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

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to retain all or part of the deposits for this tenancy?

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

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.

The parties agree on the following facts. This tenancy began on May 16, 2019 and ended on May 15, 2021. Monthly rent was \$1,230.00 payable on the first of each month. A security deposit of \$600.00 and pet damage deposit of \$600.00 were paid at the start of the tenancy and are still held by the landlords.

The parties agree that there was a move-in and move-out condition inspection report prepared for this tenancy though neither party provided a copy of the move-in report. A copy of the move-out inspection dated May 15, 2021 was submitted into evidence. The tenant provided a forwarding address in writing and disputed the condition of the suite noted in the report.

The landlord submits that the rental unit had multiple issues at the end of the tenancy including the flooring needing to be repaired and appliances replaced. The landlord was in the process of selling the rental property and offered the purchasers a discount of \$5,000.00 due to the deficiencies. The landlords now seek a monetary award in that amount.

After the sale of the property completed, the new owners performed some repairs to the rental unit at a cost of \$1,905.77. Receipts for the work done was submitted into evidence.

The tenant testified that there was some damage to the rental unit during the tenancy but disputes the amount of the monetary award sought. The tenant specifically disputes that there was any damage to the appliances or fixtures noted in the move-out inspection report.

Analysis

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

In the matter at hand the tenant provided their forwarding address at the end of the tenancy on May 15, 2021 and the landlords filed their application for dispute resolution on May 19, 2021. Therefore, I find the landlords are within the statutory timeline.

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. The claimant also has a duty to take reasonable steps to mitigate their loss.

Residential Tenancy Policy Guideline 5 states that while it is not necessary that the party making a claim do everything possible to minimize the loss, some reasonable efforts must be taken.

In the present circumstances I accept the testimony of the parties that the rental unit had some damage attributable to the tenancy. The tenant gave testimony that their dog damages a portion of the laminate flooring and there were areas that were damaged due to their furniture.

I find insufficient evidence in support of the other damages that the landlord claims. I find little evidence to show that there are any issues with the appliances, fixtures or walls that are attributable to the tenancy. I note that in the body of the move-out condition inspection report does not indicate deficiencies with the walls of the rental unit, the taps or the appliances but the landlord claims these items as damaged areas for which the tenant is responsible at the end of the report.

I find the landlord's submissions regarding these additional claims to be weak, not supported in the documentary materials and unpersuasive. Based on the evidence I find that there was damage to the floors of the rental unit that are attributable to the tenant.

The landlord claims the amount of \$5,000.00, stating they needed to offer a discount to the purchaser due to the damage in the rental unit. While I accept that the condition of the rental unit put the landlord in a difficult bargaining position, I find that the amount of

the discount to be excessive given the evidence. The documentary materials submitted show that the purchasers had obtained a quote of \$1,048.27 for replacement parts on April 29, 2021. The landlord gave evidence that they have done previous spot repairs to the rental unit. The landlord further gave evidence that they own and rent out other units. I find that the landlord had sufficient experience and knowledge of the market to know or ought to have known the approximate cost of repairs for the type of severity of damage found in the rental unit.

I find that while some of the losses may be attributable to the damage caused by the tenant, most of the loss incurred is due to the landlords' failure to successfully negotiate with the purchaser. I find insufficient evidence that it was necessary to offer a discount of \$5,000.00 to the purchasers. The evidence shows the total cost of repairs by the new property owners is \$1,905.77. The landlords could have offered a discount of that approximate amount or performed the repairs at that price and sold the property at the full asking price. I find that any losses above the amount of \$1,905.77 is attributable not to the tenancy but the failure of the landlord to take reasonable steps to mitigate.

I therefore issue a monetary award in the amount of \$1,905.77, the actual cost of repairs to the rental unit.

As the landlords were not wholly successful in their application, I decline to issue an award to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenant's security and pet damage 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 \$705.77. The tenant must be served with this Order as soon as possible. Should the tenant 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 19, 2021

Residential Tenancy Branch