



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD, MNDCT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on June 10, 2021 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order granting the return of the Tenants' security deposit;
- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Tenants and the Landlords attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised relating to service of the above-mentioned documents, I find that they were sufficiently served pursuant to Section 71 of the *Act*.

The Parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to an order granting the return of their security deposit, pursuant to Section 38 of the *Act*?
2. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?

3. Are the Tenants entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties agreed to the following; the tenancy began on February 1, 2019, however, the Tenants were permitted to move in early on January 24, 2019. Rent in the amount of \$1,000.00 was due to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$500.00 which the Landlords continue to hold. The tenancy ended on May 15, 2021.

The Tenants applied for the return of their security deposit. During the hearing, the Tenants acknowledged that they had consented to the Landlord's retaining their security deposit towards unpaid rent from May 1-15, 2021. As such, the Tenants did not wish to pursue this claim.

The Tenants are however claiming for monetary compensation in the amount of \$14,450.00. The Tenants stated that the Landlords sold, disposed of, and gave away the Tenants' possession at the end of the tenancy. The Tenants provided an itemized list of their possessions and a monetary estimates of what each item costs in support. The Tenants stated that they had their representative attend the rental unit who observed the Landlords taking some items including a barbeque and a smoker, placing them in the garage. The Tenants provided a had written witness statement from their representative in support.

The Landlords stated that the parties agreed that the tenancy would end on May 15, 2021. The Landlords stated that they watched several people attend the rental unit and moved out the Tenants' possession. The Landlords stated that on May 15, 2021 they attempted to contact the Tenants to see if they were done moving out. The Landlords stated that they did not receive a response from the Tenants.

The Landlords stated that they waited until May 18, 2021 to enter the rental unit, at which point they found several bags of garbage, items left in the fridge, and damage caused by the Tenants throughout the rental unit. The Landlords stated that the rest of the rental unit was empty. The Landlords denied that the Tenants left any valuables behind. The Landlords denied having sold, disposed of, or gave away any of the Tenants' possession.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

In relation to the monetary compensation sought by the Tenant, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlords. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

I accept that the parties agreed during the hearing that the Tenants had consented to the Landlords retaining their security deposit to be applied to the rent. As such, I find that the Landlords' are entitled to retaining the Tenants' \$500.00 security deposit.

The Tenants are also claiming \$14,450.00 in relation to personal possessions that were sold, disposed of, and given away by the Landlords. I find that the Tenants provided insufficient evidence to demonstrate that they had been in possession of the items that they outlined in the list of claims. I find that the Tenants provided insufficient evidence to demonstrate that the Landlords took the Tenants' possessions. I find that the Tenants have provided insufficient evidence to support the estimates that they have provided for each item or that they suffered a loss in these amounts. Lastly, I find that the Tenants

failed to mitigate their loss by moving out and not taking all their personal possessions with them on May 15, 2021 when they were meant to vacate the rental unit.

In light of the above, I dismiss the Tenants' Application without leave to reapply. As the Tenants were not successful with their Application, I find that they are not entitled to the return of the filing fee.

Conclusion

The Tenants' 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: December 09, 2021

Residential Tenancy Branch