



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on September 13, 2021 seeking compensation for damage to the rental unit, and other money owed. They also applied for reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 26, 2022.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary Matter – Notice of Dispute Resolution and evidence

At the outset of the hearing, the Landlord provided that they advised the Tenant of this hearing by leaving a copy of the Notice of Dispute Resolution in their mailbox at their place of residence. The Tenant confirmed this and noted they received a reminder email from the Residential Tenancy Branch informing them of the date and time of this hearing.

The Tenant also confirmed that they received the Landlord’s prepared documentary evidence for this hearing.

I find the Landlord advised the Tenant of this hearing by serving the Notice to them directly. This included their prepared evidence as confirmed by the Tenant. On this basis, the hearing proceeded.

Preliminary Matter – Tenant request for adjournment

The Tenant requested an adjournment so they could submit their prepared documentary evidence they intended to rely on for this hearing. This was to show the true state of the rental unit, and repairs they paid for on their own that they feel are owing from the Landlord to them.

I denied the Tenant's request for an adjournment, noting the Landlord made their Application in September and advised the Tenant of that in short order as the *Act* requires. I find it prejudicial to the Landlord if an adjournment were allowed and proceeded on the evidence before me. I reminded the Tenant that their testimony in the hearing was evidence, and they had the full opportunity to address the issues as they arose in the hearing.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and/or other money owed, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement and both parties in the hearing confirmed the basic details therein. The tenancy started on April 1, 2019, and the initial fixed term was extended after the initial set period, on a month-to-month basis. The rent amount was \$3,400. The Tenant paid a security deposit of \$1,700.

Neither party could confirm the end-of-tenancy date. The Landlord on their Application indicated August 31, 2021 as the final date; however, the Tenant recalled differently, thinking they were out from the rental unit in July 2021. The Tenant could not provide an exact date for when the tenancy ended.

On their Application, the Landlord provided the amount of \$500 for utilities amounts left owing by the Tenant at the end of the tenancy. In the hearing, the confirmed the amount was less than \$500, and they had returned the portion of \$84.03 to the Tenant via cheque. The Tenant confirmed they received this cheque from the Landlord; however, they did not process that payment because this hearing was pending.

The Landlord also described an additional \$100 added to their claim for heavy furniture moving, one responsibility that the Tenant did not complete at the end of the tenancy.

The Landlord set out the remainder of their claim, describing details as listed on their Application:

#	Items	\$ claim
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1	kitchen door glass	300
2	kitchen countertop	100
3	carpet and house cleaning	220
4	garden clean-up	400
Total		1,020

In the hearing the Landlord described that they actually paid \$650 for garden clean-up.

In response to the Landlord's Application, the Tenant provided that they left the unit in better shape than when they moved in. They made a number of repairs on their own to the rental unit, those which the Landlord would not properly attend to. They described the Landlord's claim, in sum, as "the Landlord trying to make things up in order to not pay the damage deposit."

Analysis

The *Act* s. 37(2) requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide enough evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

As set out above, the Landlord presented two separate categories: utilities amounts owing; and money because of damage or lack of cleaning to the rental unit at the end of this tenancy. To determine the Landlord's eligibility for compensation, I carefully examine the evidence they presented for each item, to establish whether they have met the burden of proof.

In regard to the amount claimed for utilities, the Landlord provided no evidence of the actual amounts. They have not established the actual value of the utilities; therefore, I dismiss this piece of the Landlord's claim.

Similarly, the Landlord did not establish with evidence the expenses to them for damage in the rental unit. There were no receipts for work completed, and no records of invoices or estimates for approximate costs for damage. On this category, I make no award for damages because of the lack of evidence of the value.

In summary, the Landlord provided insufficient evidence for their claim. Because the Landlord was unsuccessful, I find they are not eligible for reimbursement of the Application filing fee.

Conclusion

I dismiss the Landlord's Application in its entirety without leave to reapply, due to the lack of evidence for their claim for compensation.

Pursuant to s. 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$1,700 for the return of the security deposit. I provide this Monetary Order in the above terms and the Tenant must serve the Monetary Order to the Landlord as soon as possible. Should the Landlord fail to comply with the Monetary Order, the Tenant may file it in the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: April 26, 2022

Residential Tenancy Branch