



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

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

- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:41 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's property manager (the "property manager") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the property manager and I were the only ones who had called into this teleconference.

The property manager was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The property manager testified that he was not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The property manager confirmed the landlord's email addresses for service of this decision and order.

The property manager testified that at the end of this tenancy, the tenants provided the landlord with a fake forwarding address and that mail to the fake forwarding address was returned to sender. The property manager testified that the landlord then hired a skip tracer to locate the tenants.

The property manager called witness T.B. Witness T.B. testified that she is a skip tracer, and her company was hired to locate the tenant's address for service. Witness T.B. testified that her company was successful in locating the tenants and provided their address to the landlord.

The landlord testified that the tenants were each served with a copy of this application for dispute resolution and the landlord's evidence via registered mail on October 14, 2021 at the address provided by the skip tracer. Canada Post receipts stating same were entered into evidence.

Tenant M.K. uploaded evidence to the Residential Tenancy Branch on May 10, 2022

I accept the undisputed testimony of witness T.B. that the skip tracing company she works for was able to locate the tenants and provided that address to the landlord. I find that the tenants were deemed served with the landlord's application for dispute resolution and evidence on October 19, 2021, five days after their mailing, in accordance with sections 89 and 90 of the *Act*. This finding is supported by the fact that Tenant M.K. submitted evidence for this hearing.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the property manager not all details of the property manager's submissions and arguments are reproduced here. The relevant and important aspects of the property manager's claims and my findings are set out below.

The property manager provided the following undisputed testimony:

- This tenancy began on October 1, 2019 and ended on September 6, 2021.
- A security deposit of \$1,337.50 was paid by the tenants to the landlord.

The property manager testified that the tenant provided notice to end the tenancy effective August 31, 2021. The property manager entered into evidence an email from tenant M.K. dated July 27, 2021 stating same.

The property manager testified that on August 11, 2021 the tenant attempted to withdraw his notice to end tenancy and sought permission to remain at the subject rental property.

The property manager testified that this permission was denied and the property manager informed the tenant on August 12, 2021 that the tenancy would not be extended and that the tenant had to move out by August 31, 2021. The August 12, 2021 email stating same was entered into evidence.

The property manager entered into evidence emails dated August 12-13, 2021 between the property manager and tenant M.K. in which the parties agree to meet at 4:00 p.m. on August 31, 2021 to complete the move out condition inspection report.

The property manager testified that because the tenant was supposed to be out of the subject rental property on August 31, 2021, he granted permission to the new tenants to move into the subject rental property on August 31, 2021, after the tenant vacated. The property manager testified that the tenant overheld the subject rental property and refused to move out on August 31, 2021 and did not move out until September 6, 2021.

The property manager testified that the landlord had to put the new tenants up in a hotel from August 31, 2021 to September 6, 2021 because the tenant overheld the subject rental property. The property manager entered into evidence receipts for two hotel rooms totaling \$3,134.96 from August 31, 2021 to September 6, 2021.

The property manager testified that the two tenants who are moving into the subject rental property, which is a two bedroom unit, required separate hotel rooms as they are not a couple.

The property manager testified that the landlord is seeking to recover the hotel costs from the overholding tenants, in the amount of \$3,134.96

The property manager testified that the landlord is also seeking to recover the uber costs incurred by the new tenants due to the tenants' overholding. The property manager entered into evidence six uber receipts totalling \$129.78. The property manager was not able to determine what each receipt was for or why it was incurred. The property manager testified that some of the costs were ubers to and from the subject rental property to the hotel the tenants were staying in.

The property manager testified that the landlord is seeking \$350.00 for damage to a bedroom wall. No receipts or estimates for same were entered into evidence. The property manager testified that tenant M.K. verbally agreed to the \$350.00 charge.

The property manager testified that the carpets were left dirty and were not shampooed and the tenants did not properly clean the subject rental property. The property manager entered into evidence a photograph of the carpet before the tenants moved in and after the tenants moved out. The photos show no stains in the before photograph and stains in the after photograph. The property manager testified that the landlord is seeking \$241.50 for cleaning and carpet cleaning. A receipt for same was entered into evidence.

The property manager testified that the tenants broke a dining room chair and is seeking \$221.00 for this cost. The property manager testified that tenant M.K. verbally agreed to pay for the damage. No receipts or estimate were entered into evidence.

The property manager testified that the tenants left the sofa bed dirty. The property manager entered into evidence a photograph of the sofa bed before the tenants moved in and after the tenants moved out. The before photograph shows that the sofa is clean and the after photograph shows that the sofa is dirty. The property manager entered into evidence a receipt for the sofa covering to be cleaned, totalling \$38.50.

The property manager testified that the tenants abandoned a bunk bed at the subject rental property and that it cost \$198.45 to have it hauled to the dump. A receipt for same was entered into evidence. The property manager testified that the manager is seeking that amount from the tenants.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

The property manager did not provide estimates or receipts for the following claims:

- wall damage- \$350.00, and
- dining room chair damage- \$221.00.

As noted above, to be successful in a monetary claim, the applicant must prove the amount of or value of the alleged loss. As no receipts or estimate for the landlord's claim for damage to the wall and chair were provided, I dismiss these claims without leave to reapply for failure to prove the value of the alleged loss.

Residential Tenancy Branch Policy Guideline #3 states:

In certain circumstances, a tenant may be liable to compensate a landlord for other losses associated with their overholding of the unit or site, such as for loss of rent that the landlord would have collected from a new tenant if the overholding tenant had left by the end of the tenancy or for compensation a landlord is required to pay to new tenants who were prevented from taking occupancy as agreed due to the overholding tenant's occupancy of the unit or site.

Based on the property manager's undisputed testimony and the July 27, 2021 email from tenant M.K., I find that tenant M.K. gave notice to end the tenancy effective August 31, 2021. I find that while tenant M.K. later required an extension of the tenancy, the landlords were under no obligation to provide it and the tenants were required to move out on August 31, 2021, pursuant to section 45 of the *Act*.

I accept the property manager's undisputed testimony that the tenants overheld the subject rental property until September 6, 2021. I find that this overholding cost the landlord \$3,134.96 in hotel fees which were required to house the new tenants who were originally set to move in on August 31, 2021. I find that the tenants are responsible for the hotels costs incurred by the landlords as a result of their overholding of the subject rental property. I award the landlord \$3,134.96. I find that no mitigation issues are present.

The property manager was unable to satisfactorily explain the uber charges or why each one was necessary. I find that the property manager has not proved, on a balance of probabilities, how each uber fee was a direct result of the tenants' overholding and so the landlord is not entitled to collect the uber costs from the tenants. I also note that the hotel the tenants were put up at is in a different city than the subject rental property and a closer hotel or a hotel in which uber costs could have been reduced could likely have

been found. I find that the landlord failed to mitigate the transportation costs allegedly incurred. For this additional reason, the uber claim is dismissed without leave to reapply.

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Residential Tenancy Policy Guideline #1 (PG #1) states that at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

Based on the property manager's undisputed testimony and the before and after photographs entered into evidence, I find that the tenants did not leave the subject rental property or the sofa reasonably clean at the end of the tenancy and did not shampoo the carpets at the end of the tenancy, contrary to section 37(2)(a) of the *Act* and PG #1.

I find that the tenants' above breach resulted in financial loss that the landlord has proved with the submissions of the receipts for cleaning, carpet cleaning and sofa cleaning. I find that no mitigation issues are present. Pursuant to section 67 of the *Act*, I award the landlord \$241.50 for cleaning and carpet cleaning and \$38.50 for the sofa cleaning.

I find that pursuant to section 37(1) and 37(2)(a) of the *Act*, when the tenants vacated the subject rental, they were required to leave the subject rental property vacant and reasonably clean. I accept the property manager's undisputed testimony that the tenants abandoned a bunkbed at the subject rental property. I find that the failure of the tenants to remove the bunkbed breached section 37 of the *Act* and resulted in a proven loss to the landlord in the amount of \$198.45, as evidenced by the junk removal receipt. I find that the landlord is entitled to be reimbursed for this amount.

Based on the property manager's undisputed testimony and the testimony of witness T.B., I find that the forwarding address originally provided by the tenants was incorrect and that for the purposes of section 38 of the *Act*, the tenants have not provided the landlords with a legitimate forwarding address.

Section 38(1) of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(a) and 38(1)(b) of the *Act*.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenants' entire security deposit in the amount of \$1,337.50.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

| Item | Amount |
|--------------------------|-------------------|
| Hotel | \$3,134.96 |
| Cleaning/carpet cleaning | \$241.50 |
| Sofa cleaning | \$38.50 |
| Junk removal | \$198.45 |
| Filing Fee | \$100.00 |
| Less security deposit | -\$1,337.50 |
| TOTAL | \$2,375.91 |

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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: May 25, 2022

Residential Tenancy Branch