



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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, 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 and an agent for the landlord (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are 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."

Both parties confirmed their email addresses for service of this decision and order.

Both parties agree that the landlord served the tenants with the landlord's application for dispute resolution via registered mail. I find that the landlord's application for dispute resolution was served on the tenants in accordance with section 89 of the *Act*.

Both parties confirmed that they were served with the other party's evidence. I find that the parties were both sufficiently served, for the purpose of this *Act*, pursuant to section 71 of the *Act*, because service was accepted by both parties.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
3. 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 both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and agent's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2018 and ended on September 30, 2021. Monthly rent in the amount of \$2,300.00 was payable on the first day of each month. A security deposit of \$1,150.00 was paid by the tenants to the landlord. The landlord has not returned any portion of the security deposit to the tenants. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that a move in condition inspection and report was completed by the parties on August 30, 2018. Both parties agree that a move out condition inspection and report was completed by the parties on September 30, 2021. A copy of the move in/out condition inspection report was entered into evidence.

Both parties agree that the tenants provided an agent of the landlord with their forwarding address in writing on September 30, 2021. The landlord filed this application for dispute resolution on October 2, 2021.

The agent testified that the tenant's caused the following damage to the subject rental property, and is seeking the following compensation for that damage:

Item	Amount
Repair stair carpet	\$420.00
Repair laminate floor	\$472.50
Shampoo carpet	\$183.75
Clean house	\$157.50
Install 11 burnt out lightbulbs	\$126.00
Total	\$1,359.75

The agent entered into evidence estimates for each of the above alleged damages. The agent testified that she does not know if the above costs were incurred by the landlord because after the tenants moved out, the landlord put the subject rental property up for sale. The agent testified that she does not know if the subject rental property sold. No receipts for damages actually incurred were entered into evidence.

The tenants testified that the subject rental property sold shortly after their tenancy ended.

The agent testified that she thought the subject rental property was approximately 7 years old at the start of this tenancy but did not know for certain. The tenants testified that the subject rental property was built in 2010 and was 8 years old at the start of the tenancy. The agent testified that that might be correct.

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:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

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.

I accept the tenants' undisputed testimony that the subject rental property was sold shortly after they moved out.

The agent did not provide any receipts for the alleged loss suffered by the landlord, only estimates, and did not know if any expense was actually incurred by the landlord. I find that the agent has not proved that any of the claimed costs were actually incurred by the landlord because no receipts were entered into evidence. I find that the agent has not proved that the landlord suffered a decreased selling price due to the condition of the subject rental property, because no evidence or testimony was led on this point.

The purpose of damages is to put the person who suffered the loss in the same position as if the loss had not occurred. I find that the agent has not proved that the landlord suffered a loss; therefore, the landlord is not entitled to compensation. The landlord's application for dispute resolution is therefore dismissed without leave to reapply.

As the landlord's application to retain the tenants' security deposit was dismissed, and pursuant to section 38 of the *Act*, I Order the landlord to return the tenants' security deposit in the amount of \$1,150.00 to the tenants.

Conclusion

The landlord's application for dispute resolution is dismissed without leave to reapply.

I issue a Monetary Order to the tenants in the amount of \$1,150.00.

The tenants are provided with this Order in the above terms and 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: May 04, 2022

Residential Tenancy Branch