



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPC, MNDL-S, FFL**

Introduction

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

- an Order of Possession pursuant to section 55;
- a monetary order for damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

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* and in any event have been sufficiently served in accordance with section 71(2)(c) of the *Act*.

At the outset of the hearing the parties agreed that this tenancy has ended in accordance with a decision under the file numbers on the first page of this decision and the landlord withdrew the portion of their claim seeking an Order of Possession.

During the hearing the landlord has submitted a handful of photographs into documentary evidence and requested to attend personally at the Branch to show additional photographs stored on their phone. I find no reason why additional photographs could not have been uploaded to the Dispute Management System just as the earlier photographs were and declined to adjourn the hearing to reconvene as an in-person hearing or to allow the landlord to personally present additional evidence.

Issue(s) to be Decided

Is the landlord entitled to any of the relief sought?

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 claims and my findings around each are set out below.

The parties agree on the following facts. This tenancy began on December 1, 2020. Monthly rent was \$5,800.00 payable on the first of each month. A security deposit of \$2,900.00 and pet damage deposit of \$1,000.00 were paid at the start of the tenancy and are still held by the landlord. No condition inspection report was prepared at anytime during this tenancy.

The parties entered into a settlement agreement in their previous hearing under the file numbers on the first page of this decision wherein the parties agreed that the tenancy would conditionally end on June 15, 2022 with an Order of Possession dated April 2, 2022 issued if the tenants failed to meet the agreed upon conditions. The parties agree that the tenants have vacated the rental unit and the tenancy has ended prior to the present hearing.

The landlord submits that there has been considerable damage to the rental unit caused by the tenants, specifically to the driveway as well as other areas of the rental suite. The landlord submitted a number of photographs taken after the tenants have vacated in support of their application for a monetary award. The landlord seeks an award of \$6,800.00 which is a quote from a landscaping company for the cost of repairing the driveway.

The parties agree that the tenants have not provided a forwarding address to the landlord as at the date of the hearing. The tenants dispute the landlord's claim for damages in its entirety.

Analysis

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.

In the absence of a proper condition inspection report prepared by the parties at the start of the tenancy I find little evidence to support the landlord's claim for a monetary award. I find the large number of photographs submitted to be insufficient to establish that they demonstrate damages attributable to the tenants or this tenancy. Simply showing areas of the rental unit which the landlord characterizes as unkept or damaged is insufficient to find that there has been any loss caused by a breach on the part of the tenants.

Furthermore, I find the estimate provided by the third-party company for landscaping is simply an estimate of possible costs and is not a loss that has been borne by the landlord. In any event, I find little evidence that the cost arises due to the conduct or negligence of the tenants.

Consequently, I dismiss this portion of the landlord's application without leave to reapply.

Section 38 of the *Act* requires the landlord to either return the tenant's security and pet damage 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 provision of a forwarding address in writing.

The parties agree that the tenants have not provided a forwarding address in writing. Accordingly, I find that pursuant to section 38 of the *Act*, the landlords' obligation to return the deposits or file an application for authorization to retain all or a portion of the deposit has not commenced as the tenants have not provided a proper forwarding address in a manner consistent with the *Act*.

I therefore find that the portion of the landlord's application seeking authorization to retain the deposits is premature and I dismiss this portion of the application with leave to reapply.

Conclusion

The portion of the application seeking authorization to retain the deposits is dismissed with leave to reapply.

The balance of the 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: June 28, 2022

Residential Tenancy Branch