



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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A matter regarding REDBRICK PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

CNC MNDL-S MNRL-S FFL

Dispute Codes

Introduction

On June 14, 2022, the tenants filed an application to dispute a notice to end tenancy under section 47 of the *Residential Tenancy Act* (the "Act"). Since they filed their application a mutual agreement to end the tenancy was executed with the landlord and the tenancy ended on August 15, 2022. As such, the tenants' application is now moot and the application is dismissed without leave to reapply.

By way of cross-application the landlord seeks compensation for unpaid rent, for the cost of repairs for damage caused by the tenants, for cleaning, and, for the cost of the application filing fee under sections 26, 67 and 72, respectively, of the Act.

A dispute resolution hearing was held on November 1, 2022 at 11:00. Only a representative for the landlord attended the hearing, which ended at 11:09 AM. Neither tenant attended the hearing. The landlord's representative (hereafter "landlord") testified under oath that they served their Notice of Dispute Resolution Proceeding and their evidence by way of email upon the tenants; this was an accepted means of service pursuant to a mutually-signed signed addendum to the written tenancy agreement.

Issue

Is the landlord entitled to compensation?

Background and Evidence

The tenancy began on July 17, 2021 and ended on August 15, 2022. Monthly rent was \$3,850.00, due on the first day of the month, and the tenants paid a \$1,925.00 security deposit which the landlord holds in trust pending the outcome of this application.

The landlord seeks \$7,452.95 in compensation comprising \$385.88 for cleaning, \$1,523.42 for flooring in two bedrooms, \$1,535.76 for labour to repaint, \$157.89 for paint costs, and \$3,850.00 for rent for August 2022.

Submitted into evidence were several photographs of the rental unit showing the unclean and damaged condition, and which were supported by a fully and properly completed condition inspection report. Invoices for all costs were in evidence. The landlord testified that the damage to the rental unit (including Crayon® drawings across the walls) were beyond what may be considered reasonable wear and tear. Finally, the landlord testified that while the tenants ended up moving out of the rental unit in August 2022 they failed to pay the rent for that month.

Analysis

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.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement unless the tenant has a right under the Act to deduct all or a portion of the rent. In this case, the tenants failed to pay rent on August 1, 2022. There is no evidence before me to find that the tenants had a right not to pay the rent.

Taking into consideration all of the sworn and undisputed oral and documentary evidence before me, it is my finding that the landlord has proven on a balance of probabilities that they are entitled to compensation in the amount of \$3,850.00.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

Section 37(2)(a) of the Act requires that a tenant “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear” when they vacate.

Taking into consideration all of the sworn, undisputed oral and documentary evidence before me, it is my finding that the landlord has proven on a balance of probabilities that the unclean and damaged condition of the rental unit—established by the photographs, the condition inspection report, and the *viva voce* evidence of the landlord—is such that the landlord suffered a monetary loss in the amount of \$3,602.95 due to the negligence of the tenants and their breach of section 37(2)(a) of the Act.

Section 72 of the Act permits an arbitrator to order payment of a fee by one party to a dispute resolution proceeding to another party. In this dispute, as the landlord was successful the tenants are ordered pay the landlord \$100.00. The landlord is thus awarded a total of \$7,552.95.

Section 38(4)(b) of the Act permits an arbitrator to authorize a landlord to retain a tenant's security deposit after the end of a tenancy. As such, the landlord is hereby ordered to retain the tenants' security deposit of \$1,925.00 in partial satisfaction of the amount awarded.

The balance of the award (\$5,627.95) is granted by way of a monetary order. A copy of this monetary order is issued in conjunction with this decision, to the landlord.

Conclusion

For the reasons set out above the landlord's application is hereby GRANTED.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: November 1, 2022

Residential Tenancy Branch