



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes MNDL-S, FFL MNDCT, MNSD, FFT

Introduction

The landlord and the tenants in this dispute both seek compensation under section 67 of the *Residential Tenancy Act* (the “Act”). Both parties seek recovery of their application filing fees pursuant to section 72 of the Act.

Preliminary Issue: Service of Notice of Dispute Resolution Proceeding and Evidence

The landlord testified that she served her documentary evidence upon the tenants and the tenant acknowledged receipt of this evidence. The tenant testified that the tenants served their *Notice of Dispute Resolution Proceeding* and documentary evidence upon the landlord by registered mail, but the landlord disputed that she ever received these documents. The tenant did not have any documentary evidence (such as a copy of the tracking number, Canada Post receipt, or, most importantly, a signature confirmation) to support his claim that the evidence was successfully served upon the landlord.

Rule 3.16 of the *Rules of Procedure* require that a party must be prepared to demonstrate to the satisfaction of the arbitrator that the opposing party was served with all their evidence and the *Notice of Dispute Resolution Proceeding* as required by the Act and the *Rules of Procedure*.

Based on the landlord's testimony that she did not receive any documents from the tenants and the tenants' failure to provide evidence of service, it is my determination that the landlord was not properly served with the *Notice of Dispute Resolution Proceeding* or the tenants' accompanying evidence regarding their compensation claim. As a result, without adequate and persuasive proof of service, the tenants' application must be dismissed with leave to reapply.

Issue

Is the landlord entitled to compensation?

Background and Evidence

In reaching this decision, while I have considered all of the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

The tenancy began in June 2020 and ended on either November 29 or November 30, 2021 (depending on which party one asks). Monthly rent was \$2,500 and there was a \$1,250 security deposit and a \$500 pet damage deposit. There is a copy of the written tenancy agreement in evidence.

It is noted that another arbitrator, in a previous dispute, ordered the landlord to retain \$1,470.00 of the deposits for a claim made by the landlord for unpaid rent. The remainder \$280.00 of the deposits is being held in trust by the landlord pending the outcome of the landlord's application.

The landlord seeks a total of \$1,917.88 in compensation. The compensation is for cleaning the rental unit, repairing the rental unit, and costs related thereto. The breakdown of the costs is outlined in the landlord's *Monetary Order Worksheet* and documentary evidence, which includes invoices and receipts and an estimate. The costs are for labour and for supplies and include an estimate to repair the carpet; the estimate of costs was in fact paid by the landlord to the purchasers of the property.

The landlord testified under oath, and argued that, the condition of the rental unit was "in very good shape" at the start of the tenancy. The landlord was fairly certain that a condition inspection report was completed when the tenants moved into the rental unit, though a copy of that report was not in evidence.

A completed condition inspection report for the end of the tenancy was in evidence, and it indicated and listed the various damage to the rental unit. Part of the landlord's claim for compensation included labour costs. Labour spent partly, the landlord explained, on cleaning up dog feces on the exterior deck. The landlord submitted several colour photographs and video of the property into evidence.

Two opportunities for tenants to participate in the end of tenancy move out inspection were presented, but the tenants did not participate in this. The tenant testified that there were safety concerns: the landlord's ex-husband (one of the landlords at the time of the tenancy) was a violent and unpredictable individual.

Further, the tenant testified under oath that there was a “very short notice” and time in which to properly clean and take care of the rental unit at the end of the tenancy. Various and numerous people were coming in and out of the property while they were in the process of moving out. The tenant also noted that the house was being sold in an “as is” condition and thus was not in need of the repairs and cleaning being claimed.

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 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. A party claiming compensation must do whatever is reasonable to minimize their loss.

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.

To determine if a party is entitled to compensation, the following four-part test must be met: (1) Did the respondent breach the Act, the tenancy agreement, or the regulations? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant take reasonable steps to minimize their loss?

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. The landlord’s sworn testimony, supported by documentary (including photograph and video) evidence, persuades me to find that the tenants breached section 37(2)(a) of the Act.

While the tenants may have been under some sort of time crunch, made additionally difficult by people purportedly coming and going into the property, these factors do not explain or excuse the tenants from cleaning the stove and oven, from clearing dog feces from the deck, and so forth. In short, I am not persuaded that there existed factors sufficient to prevent the tenants from meeting their obligations under the Act. Last, regardless of whether a property is sold with or without conditions has no effect on a party’s obligations under section 37(2)(a) of the Act.

But for the tenants' breach of the Act the landlord would not have suffered the losses claimed, and I am prepared to award the landlord the amounts claimed. The amounts are reasonable, and I find that the landlord did what was reasonable to minimize her losses, including doing much of the cleaning by herself.

Therefore, in taking into careful consideration all of the evidence before me, it is my finding that the landlord has proven her claim on a balance of probabilities. She is therefore awarded, pursuant to sections 67 and 72 of the Act, a total of \$1,917.88. This includes the claim for the cost of the application filing fee.

Pursuant to section 38(4)(b) of the Act the landlord is authorized to retain (that is, transfer from trust into her personal account) the \$280.00 balance of the security and pet damage deposits in partial satisfaction of the award.

The tenants are ordered, pursuant to section 67 of the Act, to pay to the landlord \$1,637.88. A monetary order is issued with this Decision to the landlord, and the landlord must serve a copy of the monetary order upon the tenants.

Conclusion

The landlord's application is granted.

The tenants' application is dismissed with 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 Act.

Dated: February 3, 2023

Residential Tenancy Branch