



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, FFT, MNDL, FFL

Introduction

This hearing dealt with cross applications pursuant to the *Residential Tenancy Act* (“Act”)

The tenants applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

The landlords applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and arguments. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Is either party entitled to a monetary order as compensation?

Is either party entitled to the recovery of the filing fee?

Background and Evidence

The tenants gave the following testimony. The tenants testified that their tenancy began on June 15, 2021 and ended on June 14, 2022. The monthly rent was \$3450.00. The tenants seek a monetary order of \$3927.00 for loss of quiet enjoyment and increased utility costs. ES testified that the neighbor was doing an extensive renovation on their home that impacted the tenants quiet enjoyment for six months. ES testified that the utility costs of this home are 30-50% more than his present home. ES submits that the landlords should have disclosed that the neighbor was doing a large renovation on their home. ES further submits that the landlord should have disclosed that this property had poor insulation and no double glazed windows and therefore heating costs would be much higher than other houses. ES testified that the amount sought is for the non-disclosure for these two items.

ES testified that he and DG conducted the move out inspection together and agreed that the tenant would pay \$200.00 for some small deficiencies in the unit. ES testified that two weeks after they had moved out the landlord contacted them asking for more money. ES testified that the more conversations the parties had, the more the landlords kept asking for. ES testified that he felt that the landlords were taking advantage of him and trying to refurbish the home at his expense. ES disputes the damages or cleaning costs alleged by the landlord. The tenants seek a monetary order of \$3927.00 plus the \$100.00 filing fee.

VG testified that the tenants did not advise her of their issues with noise from the construction or the increased utility costs until she was served notice of this hearing. VG testified that the parties had a good relationship and thought the tenancy had gone well. VG testified that the move in inspection was done two weeks after the tenants moved in as they had taken a long flight to get there and were exhausted. VG testified that her husband and ES did the move out inspection together. VG testified that ES appeared to be pro active in the inspection pointing out very minor trivial damage. VG testified that two weeks after the tenants moved out, she and her husband noticed damage to two sofa cushions, two chairs, a Persian rug, and more suite and carpet cleaning required than previously thought. The landlord seeks \$3181.00 plus the \$100.00 filing fee.

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 provide **sufficient proof for ALL FOUR of the following factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party, the applicant must also show that they followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the tenants claim as follows.

The tenants seek \$3927.00 for loss of quiet enjoyment and for increased utility costs. The tenants have failed to provide sufficient evidence as noted above, specifically all four grounds. They failed to provide sufficient evidence of loss, sufficient evidence of the actual amount of loss, sufficient evidence of mitigation and sufficient evidence that the landlord was negligent or reckless, accordingly; I dismiss their application in its entirety without leave to reapply.

I address the landlord's application as follows.

The landlord is seeking \$3181.00 for damages and cleaning. Both parties gave testimony and agreed that a move out inspection was done at the end of tenancy and that the parties agreed that the tenants would pay \$200.00 for some deficiencies, which they did pay. In the landlords own testimony, she stated that her husband and ES conducted the inspection, came to an agreement, "done". The landlord testified that they noticed some other more significant issues two weeks later.

The doctrine of estoppel applies under these circumstances. The parties conducted the inspection, discussed the issues and came to an agreement and entered that agreement in good faith. Two weeks had passed before the landlord decided that they were not happy with the inspection. The deficiencies the landlord now seeks were not mentioned at the move out inspection. The landlord cannot then decide to have a second chance at what should have been done in the first place; accordingly, I dismiss the landlords application without leave to reapply.

Neither party is entitled to the recovery of the filing fee as neither party has been successful in their application.

Conclusion

The tenants application is dismissed in its entirety without leave to reapply.

The landlord's application is dismissed in its entirety 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: May 23, 2023

Residential Tenancy Branch