



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- an order authorizing the landlord the recovery of the filing fee for this 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, to call witnesses and to cross-examine one another. The tenants acknowledged receipt of evidence submitted by the landlord, the tenants did not submit any documentation for this hearing. 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 to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?
Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

JL gave the following testimony. The tenancy began on October 1, 2019 and ended on May 31, 2022. The tenants were obligated to pay \$1874.50 per month in rent.

The landlord is seeking \$3000.00 for the following as noted on his application:

“Tenant damaged the following: 2x new front load washer 2 custom kitchen cabinets Master suite blind Bedroom ceiling, sprinklers, lawn damage, non compliance with garbage removal upon tenancy end. Overhold on move out date. and front door.”

The landlord seeks \$2100.00 for the following as noted on his application:

“In addition to the withheld \$900 damage deposit I am asking for an additional \$2100 to cover the costs of replacement Hunter Douglas Masterbedroom blinds, kitchen cabinets, laundry cabinet, ceiling damage repair, lawn sprinkler repair. I am in process of getting estimates and replacements for the damages items. I will upload receipts for 2 replacement washers.”

The landlord testified that condition inspection reports were not conducted at move in or move out. The landlord testified that the home was built in 2005. The landlord testified that the unit was left dirty with some damage and that the tenants overheld the unit for a day.

The tenants gave the following testimony. MM testified that much of the damage alleged was old or just wear and tear. MM testified that the landlord changed the washing machine in the shared laundry area twice but both machines failed. MM testified that he replaced a machine and left it in the unit at the end of the tenancy. TV testified that she spent a significant amount of time cleaning the unit and that without condition inspection reports and a two-week gap between the end of tenancy and when the unit was cleaned, she should not be held responsible for the costs as claimed.

Analysis

The landlord received a detailed application package from the RTB, including the NODRP documents, with information about the hearing process, notice to provide evidence to support their application, and links to the RTB website. It is up to the landlord to be aware of the *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlord to provide sufficient evidence of its claims since it chose to file this application on its own accord.

The following RTB *Rules* state, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the landlord did not properly present their application and evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

The landlord made references to documents and receipts that he had in his possession, but failed to submit for this hearing. In addition, the landlord verbally added claims at the hearing that were not properly applied for or made amendments for. The landlord provided a general estimate of everything that he was seeking for a total of \$5100.00 plus the \$100.00 filing fee for a claim of \$5200.00. The amount claimed was an estimate and not a specific amount as required and noted below.

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 evidence of the following four 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 landlords claim in two parts, damages, and cleaning and overholding, my findings as follows.

Damages

It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation, I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord himself acknowledged that the lack of reports caused much of these issues that resulted in this hearing.

The landlord provided photos from after the tenancy, but not before. I find the inspection report of the previous tenant to be irrelevant and not helpful. The previous tenant acted as agent for the landlord and the landlord referred to him as an acquaintance which raises questions of the integrity of the report. Furthermore, the landlord only submitted estimates for the painting and blinds but no actual proof of payment.

The only receipt the landlord submitted was for a new washer that was purchased in July 2022. That washer was to replace a washing machine the tenant had purchased to replace two failed washing machines that the landlord provided for all tenants in the house for the shared laundry. The landlord has not provided sufficient evidence that the washing machine replacement was as a result of the tenants' actions. The landlord has not provided sufficient evidence to support this portion of his claim and I therefore dismiss all of the claims in relation to damages.

Cleaning and overholding

Although the landlord had the cleaner call in to state she had spent seven hours cleaning the unit, she was not at the unit on the day of move out. NE did not clean the unit until June 13, 2022. She had no firsthand knowledge of what the unit looked like at the day of move out. PG testified that the tenants overheld the unit until June 1, 2022. The landlord ended the tenancy for their own personal use. The landlord did not provide sufficient proof of loss or an exact amount for what he was seeking, accordingly, I dismiss both the cleaning and overholding claim.

The landlord has not been successful in their application.

Conclusion

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: June 15, 2023

Residential Tenancy Branch