



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, FFL

Introduction

The Landlords (hereinafter the “Landlord”) filed an Application for Dispute Resolution on September 14, 2022 seeking compensation for damage to the rental unit and other money owed. Additionally, they seek reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 6, 2023. Both parties attended the teleconference hearing.

Preliminary Matter – Landlord’s Notice of Dispute Resolution Proceeding and evidence

The Tenants (hereinafter, the “Tenant”) confirmed they received the Notice of Dispute Resolution Proceeding and other hearing information documents from the Landlord via email. This was after the Landlord asked their permission to send hearing documentation to them in this fashion.

The Landlord stated they did not provide evidence separately to the Tenant. They provided that evidence to the Residential Tenancy Branch via upload with their online Application. The Tenant confirmed they did not receive evidence from the Landlord.

The Residential Tenancy Branch sent instructions to the Landlord for this hearing, on September 26, 2022. That message contains the following instructions:

You must serve **separate** Notice of Dispute Resolution Proceeding packages to **[the Tenants]** within three calendar days of this email, or no later than **Sep 29, 2022**.

The Notice of Dispute Resolution Proceeding package must include:

1. Notice of Dispute Resolution Proceeding

2. All evidence submitted with this application
3. Respondent Instructions for Dispute Resolution
4. The Dispute Resolution Process RTB-114 fact sheet

Email Service

You may serve the Notice Package by email only when the other party has provided in writing an email address and agreement to accept documents related to your tenancy by email. . . .

1. Prepare an Email to be sent to each respondent
2. Attach a copy of the Notice of Dispute Resolution package to each email and send the email on or before **Sep 29, 2022**
3. Provide proof that you have an agreement with the other party to serve documents by email

The “Notice Package” referred to above contains 4 pieces, including the evidence the Landlord provided with their Application.

The Landlord did not provide evidence to the Tenant for this hearing. This is required by Rule 3.1 of the *Residential Tenancy Branch Rules of Procedure*. I omit this evidence from consideration, by application of Rule 3.17. It would be fundamentally unfair for me to use this evidence in preparation of a decision when the Tenant did not have the chance to review it in advance.

Preliminary Matter – Tenant’s evidence

The Tenant prepared a 10-page submission and attached one piece of communication, totalling 11 pages. They provided this to the Landlord via registered mail sent on May 23, and delivered to the Landlord May 24.

The Landlord confirmed they received this piece from the Tenant. I find the Tenant served their evidence in line with Rule 3.15 – that is “not less than seven days before the hearing.” Where relevant, I give this submission and one-page of evidence full consideration where necessary to do so in the decision.

Issues to be Decided

- Is the Landlord entitled to compensation for damage or other money owed from this tenancy, pursuant to s. 67 of the *Act*?

- Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

Both parties spoke to the basic terms of the tenancy agreement that was in place. The Tenant signed a new tenancy agreement on November 1, 2020. This set the rent amount at \$1,600. The Tenant paid a security deposit of \$800 and a pet damage deposit of \$400.

The Tenant presented that there was no walk-through inspection at the start of the tenancy, and no Condition Inspection Report to document the state of the rental unit, as observed by both parties at that time.

The Landlord stated there was a Condition Inspection Report initially with one of the Tenants; however, they did not do this process with documentation when the second Tenant moved in approximately 2 months later. The Landlord asked the Tenant whether they wanted to do another walkthrough inspection when the second Tenant moved in; however, the Tenant declined this. The Landlord then asked for the Tenant's notice to them should they note any deficiencies or damage going forward. The Tenant did not recall this specific communication, as recalled by the Landlord in the hearing.

The tenancy ended on August 31, 2022. This was after the Landlord served a Two-Month Notice to End Tenancy For Landlord's Use of Property, giving the end-of-tenancy date as September 30, 2022. The Tenant moved out one month early after giving notice to the Landlord they would do so, and received the final month's rent refunded to them as the *Act* requires.

The Tenant in the hearing stated there was no final walk-through inspection meeting, and no documentation of that. The Landlord stated they walked through the unit with the Tenant; however, there was no formal meeting.

On their Application, the Landlord provided the amount of \$5,591 as compensation for damage in the rental unit. They stated on the Application:

Carpet in Bedroom 2 has been frayed and has a strong dog odor. Unit was not cleaned properly. Master bedroom has stains on the carpet. Walls have been chipped, scuffed and scratched along with holes made

In the Landlord's evidence to the Residential Tenancy Branch, they included a monetary order worksheet to provide details on this claimed amount. Their documents also included invoices from firms that handled cleaning and painting and carpet replacement. I noted to the Landlord in the hearing that the worksheet was not readable, being a PDF document that was not loaded correctly.

Analysis

In any claim for compensation or loss, the Applicant has the burden to provide enough evidence to establish the following four points:

- That a damage or loss exists;
- That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- The value of the damage or loss; **and**
- Steps taken, if any, to mitigate the damage or loss.

Above, I excluded the Landlord's evidence from consideration because they did not provide that to the Tenant. This is counter to a basic rule of procedural fairness: the right to know the case against you, *i.e.*, a party needs to know the evidence the other party is relying on so they can make informed arguments about that evidence.

Therefore, I find there is no evidence to show the value of the damage in the rental unit. There is no evidence to justify or explain the Landlord's claim for compensation. There was no breakdown of the claim; therefore, I dismiss the Landlord's Application for lack of full particulars as per s. 59(2) of the *Act*.

I find, as per the Tenant's description and the Landlord's confirmation, that there was no copy of a complete condition inspection report completed at the end of the tenancy. The right of the Landlord to claim against the deposits is extinguished because there was no record of a formal inspection, as per s. 36(2) of the *Act*.

Based on this, I order the full return of the deposits to the Tenant, forthwith. I grant the Tenant a monetary order for the full amount of the deposits: this is \$1,200.

As the Landlord was not successful in their Application, I find they are not entitled to recover the \$100 Application filing fee.

Conclusion

I dismiss the Landlord's Application in its entirety, without leave to reapply.

Pursuant to s. 38 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$1,200 for the return of the security deposit and the pet damage deposit. I provide this Monetary Order in the above terms and the Tenant must serve the Monetary Order to the Landlord as soon as possible. Should the Landlord fail to comply with the Monetary Order, the Tenant may file it in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

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

Dated: June 6, 2023

Residential Tenancy Branch