



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes (L) MNDL, FFL
 (T) MNDCT, FFT

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- compensation under section 67 of the Act for a monetary order for damage or loss under the Act, regulation or tenancy agreement; and,
- authorization to recover the filing fee for this application from the Tenants under section 72 of the Act.

This hearing also concerned the Tenants' cross-application for dispute resolution for compensation under section 67 and authorization to recover the filing fee under section 72 of the Act.

Issues to be Decided

Are either the Landlord and/or the Tenants entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Are either the Landlord or the Tenants entitled to recover the filing fee for this application from the other party?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on November 15, 2020 for an annual term to November 15, 2021, with a monthly rent of \$2,100.00, due on 30th day of the month. An addendum, signed only by Tenant A.H., provided that rent would

increase in accordance with RTB regulations. Thereafter, the parties entered into a tenancy agreement for the period November 15, 2021 to November 15, 2022, with a monthly rent of \$2,500.00 due on the last day of the month. The parties also entered into a tenancy agreement for the period March 1, 2022 to March 1, 2023 providing for a monthly rent of \$2,500.00 with a notation that rent would increase to \$2,600.00 as of November 15, 2022. The agreements further provided that the Landlord was to provide, in relevant part, heat to the rental unit. Copies of each tenancy agreement were provided in evidence. The security deposit of \$1,000.00 was returned by the Landlord to the Tenants at the time they vacated the unit on February 28, 2023.

Testimony established that at the time the Tenants moved into the rental unit, a move-in condition inspection was not conducted and a report was not completed. A move-out inspection was done by the parties and the condition inspection report was mutually agreed to and signed by the parties. The parties did not agree on an amount for the Tenants' alleged damage to the rental unit. A video of the parties discussing the signing of the condition inspection report was provided in evidence.

The Landlord applied for compensation for damage to the unit in the amount of \$7,633.74. The Landlord's monetary worksheet includes the cost for replacement of a refrigerator, cleaning the unit (including carpet cleaning), broken windows, a broken light fixture, repair of a broken shelf in a closet, replacement of a shower head, replacement of a window blind, and repair to a bathroom wall.

With regard to the refrigerator, the damage consists of a few dents in the door and a broken tray/bin on the inside of the door. The Landlord stated that the refrigerator door could not be repaired and the bin for the door could not be replaced and thus the refrigerator needed to be replaced. There was no evidence that the refrigerator did not otherwise operate effectively. The Tenants admitted that they had caused the dents but denied they broke the bin in the door and disputed the necessity of the refrigerator requiring replacement. The broken glass in the bedroom was noted on the move-out condition inspection report. However, as the Tenants noted, without a move-in inspection there was no "baseline." The Tenants did admit to placing a film on the windows to reduce the heat from the sun, but stated they removed the film when they vacated the unit. Tenant A.H. further stated that the windows were beyond their useful life in any event.

Additionally, the Tenants disputed the Landlord's evidence regarding the cleaning of the unit and the carpet cleaning. While the Tenants did not admit to cleaning the carpet prior to their departure, they insisted that they had hired a reputable cleaner to clean the rental unit. The Tenants submitted evidence of payment for the cleaning service, which the Landlord's agent, R.M. contested was not a legitimate invoice.

The Tenants did not recall or have any information regarding the broken light fixture. Additionally, the Tenants took no position on the bathroom wall damage caused by the adhesion of mirrors to the surface or the replacement of a keyless entry pad.

With respect to the Tenants' application for damages concerning a rent increase in violation of the Act and regulations, the Tenants provided documentation concerning their rent payments. Tenant A.H. noted that the increase from \$2,100.00 to \$2,500.00 per month was contrary to the Act and regulations. The Tenants requested a monetary order to recoup overpaid rent for 14 months at \$400.00 per month.

The Landlord's assistant R.M. noted that the parties' initial tenancy agreement was to expire on November 15, 2021, as both parties had understood at that time, evidenced by the initials on the agreement, and the Landlord would re-take possession of the unit. No specific reason was noted on the tenancy agreement as to why the Landlord was to re-take possession. The Landlord characterized the initial tenancy agreement as a "temporary one-year lease." The Landlord testified that the second tenancy agreement was negotiated between the parties when the Tenants contacted the Landlord on or about August 25-26, 2021 to request a second year of tenancy. The Landlord contends that the parties agreed to the \$2,500.00 monthly rent and that a new tenancy period commenced and the Tenants were bound to that monthly rate.

The Tenants also requested reimbursement for heat loss during the term of the tenancy. Tenant A.H. explained that there were two furnaces that heated the home and the Landlord's unit had the controls for each furnace (the Landlord lived on the lower level). Tenant A.H. stated that the Landlord would go on trips or was otherwise absent for several days during the winter months and the furnace would not function from time to time, leaving them with no heat. The Tenants provided text message screenshots to the Landlord complaining of the loss of heat. The Tenants determined the daily rate by comparing homes of differing square footage and the gas bill for those units, arriving at an average square footage cost. The Tenants calculated their loss at \$180.00, based upon an estimated 18 days total that they had no heat in the unit. The Tenants also requested reimbursement of a "sleep sack" they purchased for \$82.00 for their child to keep the child warm during this time. The total compensation for loss of heat the Tenants requested was \$262.00.

The Landlord disputed that the Tenants had no heat source. The Landlord stated that from time to time one of the two furnaces may not work, but there had never been an occasion when both furnaces did not work. Additionally, the Landlord noted that the Tenant's unit had a fireplace which they could use as a heat source.

Analysis

Are either the Landlord and/or the Tenants entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The party claiming the damage or loss bears the burden of providing sufficient evidence to establish, on a balance of probabilities, the claimed damage or loss.

Landlord's Claim for Monetary Damages

Under section 23(4) it is the landlord's responsibility to prepare the condition inspection report at the time the Tenants' moved in to document the condition of the rental unit, appliances, light fixtures, and any pre-existing damage or other faulty or flawed condition. While the inspection report is critical for purposes of a landlord making a claim against a tenant's security deposit, its completion is also helpful to a determination of a landlord's subsequent claim against a tenant for damages.

The Landlord has established that the refrigerator was damaged by the Tenants at least to the extent that the Tenants admitted to the dents in the refrigerator door. The Tenants disavowed knowledge of the bin in the door breaking or other damage to the refrigerator. I find the Tenants' position is not credible and the damage is not attributable to normal wear and tear. However, I find that the Landlord is not entitled to the replacement cost of the refrigerator. The loss of a door bin(s) and/or dents in the refrigerator do not render it useless by a subsequent tenant. Further, I find that the Tenants did provide evidence that a bin could be replaced. Based upon the evidence, I find the Landlord is entitled to \$400.00 as reasonable compensation for damage to the refrigerator caused by the Tenants.

The tenancy lasted for approximately two and one-half years. I find that the Landlord is entitled to the cost of carpet cleaning and has provided sufficient evidence to establish this compensation in the amount of \$262.50. The Landlord also provided evidence sufficient to establish that the Tenants had installed an inferior shower head from that which they had at the commencement of the tenancy, and I find the Landlord is entitled to the replacement cost of \$83.41.

Similarly, the Tenants offered no evidence as to the damage of the lighting fixture in the hallway, stating only that they had "no comment." Given that light fixtures do not break without some force acting upon it, and that the Tenants did not request its repair or note

that it was in disrepair at the time they moved in, I find that the lighting fixture was, on a balance of probabilities, damaged by the Tenants during their tenancy. I further find that, based upon the Landlord's evidence, the repair of the lighting fixture is \$341.02.

Likewise, the bedroom closet shelving was broken, a circumstance that is beyond normal wear and tear, and would not in all probability occur without the action of a force upon it. I find that the Landlord has met his burden of proof that, on a balance of probabilities, the Tenants broke the closet shelving. The Landlord has provided evidence that this damage amounts to \$147.00. I also find the Landlord provided evidence sufficient to support his claim for the repair/replacement of the front door keyless entry in the amount of \$161.28 caused by the Tenants' guest; the repair to the bathroom wall caused by the Tenants' installation of mirrors in the amount of \$157.50; and, repair to a broken window blind in the amount of \$70.75. The Landlord provided sufficient evidence as to the requested cost of repair and/or replacement of these items.

I find that the Landlord has presented evidence that the rental unit was not cleaned entirely by the Tenants when they moved out. I find it is reasonable to award the Landlord \$250.00 of the requested \$714.00 in cleaning fees the Landlord paid.

However, I find that the Landlord failed to provide sufficient evidence that the Tenants were responsible for the cracks in the windows in the bedroom. There was insufficient evidence to support a finding that the Tenants broke the windows. I dismiss that portion of the Landlord's application, without leave to reapply.

For the above reasons, the Landlord's application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is granted in part for a monetary order in the amount of \$1,873.46, and dismissed without leave to reapply in part as more particularly set forth above.

Tenants' Claim for Monetary Damages

Section 5 of the Act provides that neither landlords nor tenants may avoid the Act, and any attempt to avoid or "contract out" of the Act or its regulations is of no effect.

In this case, the continuation of the tenancy at the expiration of the first tenancy agreement was not severed by virtue of the parties' agreeing to terminate the initial tenancy period at the end of the annual term. The subsequent execution of a second tenancy agreement by the parties is a continuation of the initial tenancy and was not the commencement of a new tenancy subject to a new negotiated rental rate. The Landlord's position taken at the hearing is thus prohibited under section 5 of the Act. Section 41 states that a landlord may not increase rent except in accordance with the Act and the regulations implementing the Act. Section 43(5) provides that if a landlord collects a rent increase that does not comply with the Act and regulations, the tenant may recover the increase.

The Tenants have provided sufficient evidence to sustain their burden of proof that, on a balance of probabilities, the Landlord assessed and collected a rent increase that was not permitted under the Act and regulations in the amount of \$400.00 a month for 14 months, totaling \$5,600.00.

However, I find the Tenants have not provided sufficient evidence to sustain their claim for damages related to loss of heat in the rental unit. The number of days was estimated, and the calculation was not tied to any stated or provable temperature setting. Therefore, the Tenants' request for damages related to a loss of heat in the unit is dismissed without leave to reapply.

The Tenants' application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is granted in part as to the unauthorized rent increase, and dismissed, without leave to reapply in part with regard to the loss of heat issue.

Are the Tenants or the Landlord entitled to recover the filing fee for this application from the other party?

As each party was successful in their respective applications, authorization to recover the filing fee for that party's application from the other party under section 72 of the Act is set-off by an award to the other party. Therefore, I decline to authorize either party to recover the filing fee from the other party.

Conclusion

The Landlord's application is granted as to those items of loss or damage more fully set forth herein in the amount of \$1,873.46. The remaining items the Landlord requests compensation are dismissed, without leave to reapply.

The Tenants' application is granted with regard to the claim for recovery of payment of unauthorized rent increases in the amount of \$5,600.00. The remaining items for which the Tenants claim compensation are dismissed, without leave to reapply.

Neither Landlord nor Tenants is reimbursed their filing fee from the other party as each party was partially successful in their respective applications.

The Landlord's monetary award is ordered deducted from the monetary order to the Tenants, and the Tenants are granted a monetary order in the net amount of \$3,726.54.

The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 14, 2023

Residential Tenancy Branch