



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, LRSD, FFL, MNSDS-DR, FFT

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*).

The landlords applied for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant’s security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenants, pursuant to section 72.

This hearing also dealt with the tenant’s cross-application pursuant to the *Act* for:

- authorization to obtain a return of double their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties participated in the teleconference. Both parties gave affirmed evidence and were given a full opportunity to give testimony, submissions, and arguments.

Issue to be Decided

Are the landlords entitled to a monetary award for loss or damages arising out of this tenancy?

Are the landlords entitled to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Are the landlords entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Are the landlords entitled to recover the filing fee for this application from the landlord?

Background, Evidence

Both parties agree to the following. The tenancy began on May 28, 2022 and ended on May 28, 2024. The monthly rent of 2,550.00 was due on the last day of each month. The parties conducted move in and move out condition inspection reports. The tenants provided their forwarding address on May 29, 2024.

CY testified that the tenants left the unit damaged requiring them to paint the entire unit prior to their new incoming tenants moving in on May 31, 2024. CY testified that a door and a sink need to be removed and replaced at some point but are awaiting the outcome of this hearing. RV testified that the unit was painted when the subject tenants moved in and that they didn't return some keys. CY testified that they are seeking \$2390.00 for painting costs, \$600.00 for removing and replacing a door, \$650.00 for replacing a sink and \$50.00 for key/fobs. The landlords withdraw their claim of \$200.00 for move out fee as that costs applies to different tenants.

MC testified that he agrees that he owes \$50.00 for key/fob and can agree that some minor scuffs on one wall is their responsibility. MC testified that he would be agreeable to \$100.00 for some paint and their time to touch up the one wall but adamantly disputes the landlords claim of \$2,390.00. MC testified that he disputes the landlords claim that the door and sink need to be replaced. MC submits that there is only some very minor wear and tear to both and that they are fully functional not requiring replacement. MC testified that he withdraws his claim seeking double the deposit as he later realized the landlords filed within the legislated timeline.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out 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.

Firstly, I address the landlords claims and my findings as follows.

The landlords did not provide sufficient proof of their costs incurred. The landlords only provided estimates for the door and sink which have yet to be replaced. The landlords testified that they purchased six gallons of paint to paint the suite but didn't submit the receipts. As noted above the applicant must satisfy all four elements as noted above. The landlords have not provided '*evidence that can verify the actual monetary amount of the loss or damage.*' It is worth noting that the landlords rented out the unit at a higher rate and have not provided sufficient evidence to show any loss. Based on the above, I find that the landlord is not entitled to the amounts as claimed save and except for the amounts agreed to by MC; \$50.00 for key/fob and \$100.00 for some paint supplies for a total award of \$150.00.

The landlord holds the security deposit of \$1,250.00 plus the accrued interest of \$47.65= \$1,297.50. Applying the offsetting provision under section 72 of the Act, the landlord is entitled to retain \$150.00 and return the remaining \$1,147.50 to the tenants.

As neither party was completely successful in their application, they must each bear the cost of their filing fee as I decline to award the recovery to either party.

Conclusion

The landlord has established a claim for \$150.00. I order that the landlord retain that amount in full satisfaction of the claim. The landlord is to return the remaining amount of \$1,147.50 to the tenants. I grant the tenants an order under section 67 for the balance due of \$1,147.50. This order may be filed in the Small Claims 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: September 3, 2024

Residential Tenancy Branch