



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FF MND MNSD

Introduction

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

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- 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 this application, 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 confirmed receipt of the landlord's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the tenants were duly served with the Application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to retain a portion or all of the security deposit in satisfaction of their monetary claim?

Is the landlord entitled to recover the cost of the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on March 1, 2014, with monthly rent set at \$2,380.00 before the tenants had moved out. The landlord still holds a \$1,100.00 security deposit. The tenants testified that they had moved out on July 1, 2017, and the landlord testified that the tenants had moved out on July 3, 2017. Both parties confirmed in the hearing that a forwarding address was provided on June 13, 2017. Both parties confirmed that a move-in inspection was completed, the tenants dispute the fact that a move-out inspection was done. The landlord testified that a move-out inspection was completed, but no report was completed or provided to the tenants.

The landlord is requesting a monetary order in the amount of \$5,592.20 for the following damages and losses for this tenancy:

Item	Amount
Cleaning Services	\$550.00
Repairs	2,163.00
Overholding for July 2017	690.20
Cabinet Repairs	2,000.00
Refrigerator Bins	189.00
Total Monetary Order Requested	\$5,592.20

The landlord testified that the unit was not left in acceptable condition. The landlord testified that the apartment was built in 2011, and they had taken possession in 2014 and had immediately rented to the tenants. The landlord testified that the tenants had cleaned the carpet, but the carpet was still dirty. The landlord submitted an invoice for \$550.00 for professional cleaning, stating that the tenants failed to properly clean the unit when they had moved out. The tenants dispute this claim, stating that the apartment was built in 2011, and the carpets and apartment was in the same condition as it was in 2014 when they had moved in.

The landlord also submitted an invoice for \$2,163.00 for repairs, painting, and cleaning. The invoice listed removal of drawings on walls, cleaning of stains on the kitchen and bathroom cabinets, repainting of the master bedroom wall, repairs to loose hinges, door

trims, repainting of bathroom door, power washing of balcony, cleaning of two bedroom carpets, and miscellaneous repairs.

The landlord also submitted a \$2,000.00 claim for cabinet repairs, which was last replaced in 2011. The landlord also made a monetary claim of \$988.94 for four refrigerator bins that were cracked and broken. The landlords testified that they were not able to find replacement bins for this particular refrigerator.

The landlord also submitted a monetary claim of \$690.20 for the tenants' failure to move out until July 3, 2017. The landlord testified that the apartment took 9 days to clean, after which the landlords had moved into the suite themselves. The landlord is seeking 6 days of rent in compensation for the overholding and inability to move in for July 1, 2017.

The tenants dispute the entire monetary claim for damages, stating that they had left the unit in the same condition as the unit was in 2014, with the exception of regular wear and tear..

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The evidence of the landlord is that the tenants had moved out on July 3, 2017, while the tenants testified that they had moved out on July 1, 2017. The landlord submitted a monetary claim of \$690.20, a portion of the monthly rent of \$2,380.00. It was undisputed that the tenants had failed to move out by June 30, 2017, even though the landlord did

not receive monthly rent for July 2017. Even though the landlord did not re-rent the suite, I am satisfied they were unable to take possession of the unit until July 1, 2017, and I am satisfied that the tenants failed to pay rent for July 2017. I, therefore, allow the landlord's claim for a monetary order for overholding in the sum of \$690.20 for the tenants' failure to properly vacate the suite by June 30, 2017, and for the failure of the tenants to pay rent for July 2017 as required by section 26 of the *Act*.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The landlord testified that both a move-in and move-out inspection were completed, although it was undisputed that the landlord failed to provide a move-out inspection report to the tenants. I note that the landlord had failed to comply with section 35 of the *Act* which requires the landlord to perform a move-out inspection, and which requires the landlord to provide a tenant of a copy of that report.

The landlord provided a summary of the damages caused by the tenants, which were supported by invoices and pictures. The tenants did not dispute that there was damage to the suite, but they did argue that these damages occurred prior to their tenancy. Without a move-out inspection report, I find that there is no way to determine which damages occurred during this tenancy. Although I acknowledge that the landlord did incur some cost in cleaning and repairing the home, I find that the landlord failed to sufficiently demonstrate that the tenants are responsible. In the absence of sufficient documentation or witness testimony to support that the damage was caused by the tenants during this tenancy, I am dismissing the landlord's application for monetary compensation for damage and cleaning.

The landlord continues to hold the tenants' security deposit of \$1,100.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' security deposit in partial satisfaction of the monetary claim.

As the landlord was not completely successful in their application, I am allowing partial recovery of the filing fee for this application in the amount of \$50.00.

Conclusion

I issue a Monetary Order in the amount of \$359.80 in the tenants' favour under the following terms which allows for the return of the tenants' security deposit, less a monetary award for overholding by the tenants, and recovery of half of the filing fee for this application.

Item	Amount
Overholding for July 2017	\$690.20
Filing Fee	50.00
Less Security Deposit	-1,100.00
Total Monetary Order to Tenants	\$359.80

The tenants are provided with this Order in the above terms and the landlord must be served with a copy of 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.

The remainder of the landlord's application is dismissed 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: February 27, 2018

Residential Tenancy Branch