



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "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;
- a monetary order for loss of rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's evidence, with the exception of a painting invoice the landlord had emailed to the tenants. As neither party raised any issues regarding service of the application or the remaining evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

In regards to the painting invoice, I find that because the landlord did not serve it in accordance with sections 88 of the *Act* and the tenant denied receipt of it, I have not relied on it to form any part of my decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to a monetary order for loss of rent?

Is the landlord authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Is the landlord authorized to recover the filing fee for this application from the tenants?

Background and Evidence

As per the submitted tenancy agreement, the tenancy began on August 15, 2016 on a month-to-month basis. The landlord resides upstairs, while the tenants reside in the rental unit below. Rent in the amount of \$1,300.00 was payable on the first of each month. The tenants remitted a security deposit in the total amount of \$1,250.00 at the start of the tenancy, which the landlord still retains in trust. The parties agreed that a written inspection was conducted at move-in and a copy of the report was provided to the tenants.

On June 12, 2018 the parties signed a mutual agreement to end tenancy effective September 12, 2018 by 1:00 p.m. On July 24, 2018 the tenants provided written notice to the landlord that they would vacate the rental unit earlier, specifically by August 5, 2018.

The tenants vacated the unit on August 3, 2018 and requested the landlord conduct the inspection this same date. The landlord did not conduct the inspection or accept the key this date. As a result, the tenants took photographs of the unit and left the key in the landlord's residential mailbox. The photographs form part of the tenants' documentary evidence.

The landlord testified that three notices of final inspection were served to the tenants. The tenants acknowledged receipt of the Notice of Final Opportunity for August 7, 2018 at 7:00 p.m. and confirmed that they did not attend the unit this date for the inspection. The landlord attended the unit on August 7, 2018 and completed the inspection in the tenants' absence.

The landlord seeks compensation in the amount of \$4,315.00, including the following;

| Item | Amount |
|-------------------------------|------------|
| Sump pump | \$945.00 |
| Garage Door | \$1,200.00 |
| Rent in lieu of proper notice | \$1,170.00 |
| Cleaning & Damage | \$1,000.00 |
| Total Claim | \$4,315.00 |

The landlord also seeks to recover the \$100.00 filing fee for this application from the tenants and to retain all or a portion of the tenants' security deposit in satisfaction of the monetary order requested.

In reply, the tenants testified that they are mature, responsible adults that did not deliberately flush anything down the toilet that would cause the sump pump to malfunction. It is the tenants' position that the landlord and his young family are more likely responsible to any damage sustained to the sump pump. In regards to the garage door, the tenants take full responsibility. They explained that a tire had rolled down the driveway causing significant damage to the garage door. The tenants are agreeable to paying the landlord compensation in the amount of \$1,200.00 for this damage. The tenants testified that the mutual agreement to end tenancy was signed because the landlord had advised the tenants that they were moving back to China. After signing the agreement on June 12, 2018, the tenants immediately began looking for a new rental unit. Once a new unit was secured the tenants gave written notice. The tenants alleged that the landlord intentionally used the wrong form to end the tenancy; a 2 Month Notice to End Tenancy should have been used. The tenants testified that they do not owe compensation for loss of rent, the landlord owes them. While the tenants admit nail holes were not patched they testified that the unit was left in a reasonably clean state.

Analysis

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 this case, the onus is on the landlord to prove, on a balance of probabilities, the following four elements:

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.

Subsection 37(2) of the *Act* specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

In regards to the sump pump, I find the landlord has provided insufficient evidence to establish the sump pump required replacement due to the actions or neglect of the tenants. The landlord has provided insufficient evidence to rule out that the other occupants in the shared house did not contribute to the sump pump issue. For this reason, I dismiss the landlord's monetary claim in the amount of \$945.00, without leave to reapply.

On the basis that the tenants agreed to compensate the landlord for the garage door damage, I award the landlord \$1,200.00 for the garage door repair.

Section 44 of the *Act* establishes that a tenancy may end if the landlord and tenants agree in writing to end the tenancy. Under section 45 of the *Act*, a tenant may end a periodic tenancy by giving the landlord notice on a date that is the day before the day in the month that rent is payable under the tenancy agreement. In this case the tenancy did not end September 12, 2018 as agreed upon, rather it ended August 3, 2018 after notice was issued by the tenants on July 24, 2018. I find the tenants ended the tenancy contrary to the *Act* when they failed to provide sufficient notice. For this reason I award the landlord \$1,174.18 in compensation for loss of rental income ($\$1,300.00/31 = \$41.94 \times 3 \text{ days} = \$125.82 - \$1,300.00$).

Upon review of the submitted photos and condition inspection reports I am satisfied that the tenants left the unit in a reasonably clean state. I am further satisfied that the walls sustained some damage but I attribute this to reasonable wear and tear as a result of two year tenancy. The landlord's other claims in relation to damage were not supported with sufficient evidence to establish the damage or loss occurred due to the actions or neglect of the tenants. Accordingly, I dismiss the landlord's monetary claim in the amount of \$1,000.00 without leave to reapply.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$1,250.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$1,124.18. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$1,224.18.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,224.18 for the following items:

| Item | Amount |
|-------------------------------|--------------|
| Garage Door | \$1,200.00 |
| Rent in lieu of proper notice | \$1,174.18 |
| Less Security Deposit | (\$1,250.00) |
| Filing Fee | \$100.00 |
| Total Claim | \$1,224.18 |

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 22, 2018

Residential Tenancy Branch