



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDL-S

Introduction

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

- a monetary order for money owed or compensation for monetary loss or money owed 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.

KH ("landlords") appeared as agent for the landlords in this hearing. 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 landlords' application for dispute resolution hearing and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenants duly served with the landlords' application and evidence package. The tenants submitted written evidence for this hearing, which was not served on the landlords. As the tenants' evidence was not served to the landlords in a manner required by section 88 of the *Act*, the tenants' evidentiary materials will be excluded for the purposes of this hearing.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation for money owed or losses?

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

Background and Evidence

This month-to-month tenancy began on May 14, 2014, and ended on March 31, 2019. Monthly rent was set at \$2,495.00 at the beginning of the tenancy. Neither party could recall the exact monthly rent at the end of the tenancy. The tenants had paid a security deposit in the amount of \$1,247.50, which the landlords still hold.

The landlords are requesting monetary compensation as follows:

Refrigerator Door	\$1,144.75
Vegetable Tray	180.79
Handle	378.10
Cover	27.20
Dishwasher	213.15
Total Monetary Award Requested	\$1,943.99

The landlords' agent testified in the hearing that the home was brand new when the tenants had moved in. The landlords are seeking compensation as set out in their application for damage to the refrigerator and dishwasher during this tenancy. The landlords provided photos as well as copies of both the move-in and move-out inspection reports for this tenancy.

The tenants confirmed in the hearing that although they had originally agreed to compensate the landlords \$213.15 for the damaged dishwasher, the tenants are now disputing the entire claim. The tenants testified that they had lived in the rental unit for almost 5 years, and that the damage claimed by the landlords reflect regular wear and tear, as well as the need for maintenance by the landlords.

The tenants testified that the dishwasher was not draining properly. The landlords had called a repair person who had discovered a broken piece of glass, as well as food particles that needed to be cleaned. An invoice was included in the landlords' evidentiary materials for the amount of \$213.15. The tenants feel that they were not made aware of their obligations to maintain the dishwasher, and maintenance should be landlords' responsibility.

Furthermore, the tenants feel the home was not completely brand new as the home was staged for approximately a year before they had moved in, and therefore experienced high traffic due to the number of showings. The tenants testified that there were existing issues with the refrigerator such as a loose handle, which they simply lived with. The

tenants feel that in the 5 years they were responsible tenants who took care to leave the home in reasonably clean and undamaged condition as the end of the tenancy.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the landlords must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlords bear the burden of establishing their claim on the balance of probabilities. The landlords must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlords must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlords must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

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.

Section 32 of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I have considered the testimony and evidence of both parties, and while the rental unit may have been brand new at the beginning of the tenancy, I find that the landlords did not provide sufficient evidence to establish that the tenants failed to fulfill their obligations as required by section 32 and 37 of the *Act* as stated above.

As stated above, the landlords bear the burden of establishing their claim. I find that the landlords failed to establish that it was due to the tenants' neglect or intentional actions that the damage had occurred. I accept the testimony of the tenants that although the home was brand new, in the course of the 5 years that they had lived there, the tenants took care to maintain the home. I also accept their testimony that they took care and attention to leave the home in reasonably clean and undamaged condition. I find that the claims above reflect the general wear and tear of a home over a span of almost

5 years, rather than the tenants' actions or neglect. On this basis, the landlords' entire monetary claim is dismissed without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlords were not successful in her application, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for this application. The landlords must bear the cost of this filing fee.

The landlords continue to hold the tenants' security deposit of \$1,247.50. I order that the landlords return the entire deposit to the tenants.

Conclusion

The landlords' entire monetary claim is dismissed without leave to reapply. The tenants will be issued a monetary order in the amount of \$1,247.50 for the return of their security deposit.

The tenants are provided with this Order in the above terms and the landlords must be served with a copy of this Order as soon as possible. Should the landlords 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: August 6, 2019

Residential Tenancy Branch