



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 an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlords and tenants attended. The hearing process was explained, and an opportunity was given to ask questions about the hearing process. Each party had the opportunity to call witnesses, and present affirmed testimony and written evidence. No issues of service were raised. I find the landlords served the tenants in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The tenancy began in February 2018 for monthly rent of \$1,400.00. The tenants provided a security deposit of \$700.00 and a pet deposit of \$300.00 (together “the deposit”) totalling \$1,000.00 which the landlords hold. A copy of the tenancy agreement was submitted. The tenants have not authorized the landlords to retain the deposit.

The tenants vacated on November 14, 2019 and the landlords brought an Application for Dispute Resolution within 15 days.

The landlords claimed the tenants damaged walls requiring repairs and painting, removed insulation, and damaged trim. The landlords stated that they had calculated the cost of repairs, did not repair the damage, and did not submit a professional estimate or receipts.

The landlords withdrew the claim for replacement of a handle. The landlords filed two Monetary Order Worksheets and at the hearing clarified their claim for damages as follows:

ITEM	AMOUNT
Repairs to walls, repainting	\$1,042.00
Trim damage - repair	\$100.00
Insulation - replacement	\$150.00
TOTAL CLAIM	\$1,292.00

The landlords testified the unit was in good condition in all material respects on moving in. The landlords claimed damages on moving out caused by the tenants. The landlords submitted photographs of some wall damage and improperly mudded walls and did not submit photographs of the unit at moving in.

The tenants claimed that the unit was in as good condition on moving out, or better, then when moving in. They stated they did some repairs and yard work. They said they did not paint the unit when they moved in, as claimed by the landlord; they denied doing any damage. They submitted a video of the condition of the unit on moving out which indicated the unit was clean and in good repair in all visible areas.

The landlords relied on a condition inspection report on moving in and moving out which ostensibly showed damage on moving out. However, the tenants stated that the report submitted by the landlords was falsified and their signature forged on the moving in report.

The tenants said that the report done on moving in was taken away by the landlord who promised to provide them with a copy; he never did. They said the original report “vanished” and they were unsuccessful in repeated attempts to obtain a copy.

The tenants were represented on moving out by an agent because the relationship between the parties was so acrimonious that the police were involved. The tenants denied that the report on moving out was the report completed by the agent. The tenants testified that the landlords retaliated against them for requesting mold eradication and fabricated damage to the unit.

The landlord claimed compensation for damages of **\$1,292.00** and requested authorization to apply the deposit of \$1,000.00 to the award.

The landlord requested reimbursement of the filing fee of \$100.00.

The tenants requested the return of their deposit.

Analysis

I have reviewed all evidence and testimony before me and will refer only to the relevant facts and issues meeting the admissibility requirements of the rules of procedure.

I have considered all the submissions and evidence presented. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide enough evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Landlord's claim – compensation/damages

It is the landlords' obligation to establish the claim on a balance of probabilities.

I do not give the condition inspection report any weight because of the doubt cast on its authenticity by the tenants who I found credible and forthright. The only other evidence the landlords submitted in support of the damage were pictures of some walls and missing insulation; the tenants claimed the pictures accurately portrayed the unit on both moving in and moving out.

The landlords submitted no evidence as to the condition of the unit upon moving in. I am unable to determine if the pictures they submitted of wall damage which they stated were taken at the time of moving out, illustrate any damage.

Therefore, I am unable to conclude that the landlords meet the burden of proof with respect to the first element above, that is, that any damage exists.

In considering all the evidence, I find the landlords have not met the burden of proof with respect their claim.

I therefore dismiss this claim without leave to reapply.

Filing Fee

As I have dismissed the landlords' application without leave to reapply, I do not award the landlords reimbursement of the filing fee.

Security Deposit

As I have dismissed the landlords' application without leave to reapply, I direct that the landlords return the deposit of \$1,000.00 to the tenants.

Conclusion

The landlords' claim is dismissed without leave to reapply. The landlords are directed to return the deposit.

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: April 23, 2020

Residential Tenancy Branch