



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, FF

Introduction

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Although the landlords did not specifically request a monetary award for damage or losses arising out of this tenancy, the Details of the Dispute section of their application clearly identified damage caused by the tenant as the reason for their request for applying for authorization to retain the tenant's security deposit. As such, I have included a claim for damage pursuant to section 67 of the *Act* within the landlords' application for dispute resolution.

The tenant did not attend this hearing, although I waited until 1:49 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The male landlord (the landlord) attended the hearing on behalf of himself and acting as the other landlord's agent. He was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony supported by written evidence that the landlords sent the tenant a copy of the dispute resolution hearing package by registered mail to the last address provided to the landlords' agent on April 23, 2015. The landlords provided a copy of the Canada Post Customer Receipt containing the tracking number for this registered mailing. The landlord gave me permission to check the Canada Post Online Tracking system to verify that the package was delivered to the tenant. I confirmed that the Canada Post system identified this package as having been delivered to the tenant. In accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the landlords' dispute resolution hearing package on April 28, 2015, the fifth day after its registered mailing.

The landlords also supplied copies of the Canada Post Customer Receipt and Tracking Number with respect to their registered mailing of their written evidence to the tenant on August 5, 2015. In accordance with sections 88 and 90 of the *Act*, I find that the evidence package was deemed served to the tenant on August 10, 2015.

Issues(s) to be Decided

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award for damage requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This one year fixed term tenancy covered the period from February 1, 2014 to March 31, 2015. Monthly rent was set at \$1,450.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$725.00 security deposit paid on or about January 25, 2014. The landlords entered into written evidence a copy of the joint move-in condition inspection report of February 1, 2014.

The tenancy ended on April 1, 2015, at which time the tenant vacated the rental unit. The landlord testified that the tenant was responsible for failing to participate in a joint move-out condition inspection of the premises at the end of this tenancy. The landlords entered into written evidence a copy of the joint move-in condition inspection report undertaken with the new tenants who moved into the rental unit the same day that the tenant/Respondent in this application vacated the premises.

The landlord gave undisputed sworn testimony that the property management company that the landlords hired to manage this property obtained the tenant's forwarding address in mid-April 2015. The landlords applied for authorization to retain the security deposit on April 21, 2015, well within the 15-day time period for doing so.

The landlords' application to retain the security deposit was on the basis of damage to the carpets (estimated at \$1,423.00), chips in the flooring that the landlord maintained were caused during the course of this tenancy, and cleaning that still needed to be undertaken by the new tenants when they commenced their new tenancy for this rental unit on April 1, 2015. The landlord provided written evidence and sworn testimony that the landlords credited the new tenants with \$235.00 towards their tenancy to compensate them for the lack of cleaning that had been apparent when they moved into the rental unit on April 1, 2015.

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 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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for

a rental unit of this age. Paragraph 37(1)(b) of the *Act* also establishes that a tenant must leave a rental unit reasonably clean and undamaged at the end of a tenancy.

Based on the undisputed sworn testimony and written evidence, including invoices, photographs, estimates and copies of the relevant inspection reports, I find on a balance of probabilities that the tenant did not leave this tenancy reasonably clean and undamaged at the end of this tenancy. I further find that the damage exceeded what would normally be expected as a result of normal wear and tear during this tenancy. For this reason, I allow the landlords' undisputed claim for a monetary award equivalent to the value of the security deposit currently held by the landlords. I order the landlords to retain the security deposit plus applicable interest. No interest is payable over this period.

As the landlords have been successful in this application, I allow the landlords to recover their \$50.00 filing fee from the tenant.

Conclusion

I order the landlords to retain the tenant's security deposit. I issue a monetary Order in the landlords' favour in the amount of \$50.00, an amount which allows the landlords to recover their filing fee from the tenant.

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 30, 2015

Residential Tenancy Branch

