



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 cross applications. The landlord is seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants have filed an application seeking the return of the security deposit. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Is either party entitled to a monetary order as claimed?

Background, Evidence

The tenants' testimony is as follows. The tenancy began on July 1, 2012 and ended on October 31, 2015. The tenants were obligated to pay \$1500.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$700.00 security deposit. The tenant stated that she gave the landlord one full month's notice to vacate the unit by October 31, 2015. The tenant stated that she verbally told the landlord her forwarding address "sometime in September". The tenant stated that she disputes the landlords' claims for damages and cleaning and that he has exaggerated the amounts.

The landlord gave the following testimony. The landlord stated that condition inspection reports weren't conducted at move in or move out, and that everything was done verbally. The landlord stated that all aspects of this tenancy were conducted verbally and that he was able to work out all issues by this method. The landlord stated that the tenant left the oven dirty and damaged several walls. The landlord stated that the cost to conduct repairs far exceed the security deposit. The landlord stated that he did not have the tenants' permission to withhold any portion of the deposit or an order from the

Branch allowing him to do so. The landlord is seeking to retain the security deposit to cover some of the costs plus his filing fee.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the parties claim and my findings around each are set out below.

Landlords Claim

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.

The landlord did not conduct move in or move out condition inspection reports, or provide before and after photos of the unit. It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support his claim and I therefore dismiss this portion of their application.

Tenants Claim

It is worth noting that the tenant did not provide their forwarding address in writing to the landlord as is required by the *Act*. The landlord only received a forwarding address when he received the tenants notice of hearing documents, therefore the doubling provision of Section 38 does not apply in this circumstance. The landlord confirmed he did not have the tenants' permission or an order from the Branch allowing him to retain

the security deposit. Based on the above the tenant is entitled to the return of the security deposit.

Conclusion

The tenant is entitled to the return of the security deposit. I grant the tenant an order under section 67 for the balance due of \$700.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlords' application is dismissed.

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 30, 2016

Residential Tenancy Branch

