



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

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

- a monetary order for compensation for damage or loss pursuant to section 67;
- 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;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Issues

Is the landlord entitled to a monetary award for compensation for damage or loss?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background & Evidence

The tenancy began on November 1, 2014 and ended on May 31, 2016. The tenant paid a security deposit of \$1050.00 and a pet deposit of \$1050.00 at the start of the tenancy. The landlord returned \$872.00 to the tenant on June 15, 2016 and continues to retain the balance of \$1228.00. The tenant provided a forwarding address on April 25, 2016. A condition inspection report was not completed at the beginning of the tenancy.

The landlord is claiming \$728.00 in loss suffered as a result of damage to hardwood flooring caused by the tenant's dog. The landlord testified that he had to accept a discount offer on the sale of the property as result of the damage. The purchaser took on the responsibility of repairing the flooring in exchange for the discounted offer. The landlord submitted an e-mail exchange of a quote he received to repair the damage. The quote stated the repair work would involve a minimum charge of \$650.00 plus tax which is the amount claimed by the landlord. The landlord submits that this is a reasonable estimate for the repair work and the discount on the sale price of the home amounted to more than this amount.

The landlord is claiming \$200.00 for the removal of some garbage bags and a rabbit cage left in the garage at the end of the tenancy. The landlord testified he asked his realtor to remove these items and offered to pay him \$200.00.

The landlord is claiming \$300.00 to cover NSF charges and late fees incurred during the tenancy.

The tenant acknowledged that damage to the flooring was caused as a result of liquid damage from her dogs training pad being placed on this area of the flooring. The damage resulted in three of the floorboards being warped.

The tenant disputes the claim for loss due to the garbage bags and rabbit cage left in garage and testified that these items were supposed to be picked up on the regular scheduled garbage day. The tenant argues that the landlord has not provided any receipts the garbage removal.

The tenant agrees to the \$300 deduction for late rent charges incurred in the duration of the tenancy.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the applicant must satisfy 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 other party 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 applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I accept the landlord's claim for damage to the hardwood flooring. The tenant acknowledged she caused the damage. I accept the landlord's testimony that he accepted a discounted offer on the sale of the property as a result of this damage and suffered a loss. I find the quote provided by the landlord to be a reasonable estimate to repair the damage. The landlord is awarded \$728.00, which can be deducted from the security deposit.

The landlord's claim for garbage removal is dismissed, as the landlord has not provided any receipts to support this claim.

The landlord was permitted to deduct \$300.00 from the security deposit for late rent charges as agreed to by the tenant.

Section 38 of the *Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

Pursuant to section 24 of the *Act*, the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord:

- (a) does not comply with section 23 (3) *[2 opportunities for inspection]*,
- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find the tenant did provide a forwarding address in writing to the landlord. The landlord made an application within fifteen days of the end of the tenancy. However, the landlord's right to claim against the deposit for damages was extinguished as the landlord failed to complete a condition inspection report at the start of the tenancy. The tenant's security deposit was not refunded within 15 days as required by section 38 of the *Act* and the doubling provisions of section 38 therefore apply.

The tenant is awarded \$3600.00, which is double the original security deposit and pet deposit less the amount of deduction agreed to by the tenant $[(\$2100.00 - 300.00) \times 2]$. The amount of \$872.00 returned to the tenant and \$728.00 awarded to the landlord for damages is reduced from this amount for a total monetary order in favor of the tenant in the amount of \$2000.00.

The tenant is granted a Monetary Order in the amount of \$2000.00.

As the landlord was overall not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$2000.00. Should the landlord 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: December 08, 2016

Residential Tenancy Branch