



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNR MNSD OPC

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (“the Act”) for an order as follows:

- an Order of Possession pursuant to section 47 of the *Act*;
- a Monetary Order pursuant to section 67 of the *Act*;
- an Order to retain the security deposit pursuant to section 38 of the *Act*; and
- a return of the Filing Fee pursuant to section 72 of the *Act*.

Both the landlord and the tenants attended the hearing. The landlord was represented at the hearing by resident manager S.S. and agent M.S. (the “landlords”). The tenant was represented at the hearing by his sister/agent J.B. (the “tenant”). All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

At the outset of the hearing the landlords explained they no longer sought an Order of Possession as the tenant had vacated the rental unit on the last weekend of February 2017. As per the landlords’ request, all portions of the landlords’ application other than the pursuit of the Monetary Order, an Order to retain the Security Deposit and the return of the filing fee are withdrawn.

The tenant confirmed receipt of the Landlords’ Application for Dispute Resolution package (“Landlords’ Application”) and evidentiary package by way of Registered Mail. In accordance with section 89 of the *Act*, I find that the tenant was duly served with the Landlords’ Application and evidentiary package.

Issue(s) to be Decided

Are the landlords entitled to a Monetary Order?

Can the landlords retain the Security Deposit?

Are the landlords entitled to recover the filing fee?

Background and Evidence

Testimony was provided by the landlords that the tenancy in the rental unit formerly occupied by the tenant began on August 1, 2014. Rent was \$694.00 per month and a security deposit of \$342.50 continues to be held by the landlords.

The landlords explained that they were seeking a Monetary Order and to retain the Security Deposit because the tenant provided them with written notice of his desire to end the tenancy on February 23, 2017. They stated that because this was less than one month's notice, they were entitled to a Monetary Order. The landlords provided a copy of the residential tenancy agreement as part of their evidentiary package. I note that section 32 of the agreement says that the tenant must give at least one month's written notice prior to ending a tenancy.

The tenant stated that all belongings were removed from the rental unit on the weekend of February 25, 2017. She stated that a move out condition inspection was performed on February 25, 2017 in the presence of the landlords and no damage was found in the rental unit. The landlords confirmed this and noted that no charges were applied upon check out.

The landlords stated that renovations that were needed in the rental unit were performed following the vacancy by the tenant. They stated that the rental unit was once again occupied by a new tenant on April 1, 2017.

Analysis – Monetary Order and Security Deposit

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 landlords to prove their entitlement to their claim for a monetary award.

During the course of the hearing the landlords explained that they sought a Monetary Order because the tenant had not provided them one month notice of his desire to vacate the rental unit. While I take note of the landlords' testimony and the residential tenancy agreement which says that a tenant must give one month's notice prior to vacating a rental unit, the landlords have not demonstrated under section 67 of the *Act* that, *damage or loss stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party.*

The landlords testified that rental unit was being renovated with work that was required to upgrade the unit. Furthermore, on the condition inspection performed on February 25, 2017 with the tenant's sister it was noted that there was no damage and "no charges were applied upon checkout."

For these reasons, I dismiss the landlord's application for a Monetary Order and to retain the security deposit.

Conclusion

The landlord's application for a Monetary Order is dismissed.

The landlord's application to retain the security deposit is dismissed.

The landlord must bear the cost of their own filing fee for this application.

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 7, 2017

Residential Tenancy Branch