



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

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

- authorization to retain all or a portion of the security deposit pursuant to section 38;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The named tenant JB spoke for both co-tenants.

As both parties were in attendance I confirmed that there were no issues with service of the landlord's application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were served with the landlord's application and the parties were served with their respective evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

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

Background and Evidence

The parties agreed on the following facts. This tenancy started in March, 2016 when the landlord purchased the rental building and tenancy from the previous owner. The

tenant had been residing in the rental unit since November 4, 2013. The tenancy ended on February 3, 2017 when the tenant vacated the rental unit.

The landlord testified that he had little knowledge about the details of the tenancy as he was provided little written record of the tenancy by the previous owner. The landlord testified that the monthly rent was \$1,300.00. The landlord was unaware of whether a security deposit had been paid at the start of the tenancy. The landlord said that there was no condition inspection report prepared at the start of the tenancy in the materials he received from the previous owner. The landlord confirmed that he did not prepare a condition inspection report at the end of the tenancy. The landlord testified that the rental unit required cleaning after the tenant had vacated. The landlord specifically mentioned that the tenant had left a rabbit cage on the rental premises and did not remove it until several weeks later. The landlord is seeking a monetary award for the cost of cleaning and damages as he said he was unable to find new tenants for the rental unit due to the condition left by the tenant.

The tenant testified that a security deposit of \$650.00 was paid at the start of the tenancy and is still held by the landlord. The tenant confirmed that no condition inspection report was prepared at either the start or the end of the tenancy. The tenant testified that he provided a forwarding address to the landlord in writing when moving out on February 3, 2017. The tenant said that he has not provided written authorization that the landlord may retain any portion of the security deposit.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the evidence of the parties that the tenant provided written notice of the forwarding address on February 3, 2017. I further accept the evidence of the parties that the landlord filed an application claiming against the security deposit on February 17, 2017, within the time frame granted under section 38(1)(c) of the *Act*.

The parties have testified that no condition inspection report was prepared at the start of the tenancy. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) 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

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I find that the landlord has extinguished any right to claim against the security deposit by failing to prepare a condition inspection report at the start of the tenancy. I dismiss the landlord's claim to retain all or part of the security deposit.

I find that the landlord has provided insufficient evidence to support his claim for damage and loss. The landlord did not submit invoices for cleaning, estimates of time spent restoring the rental unit, or written evidence showing that there was a loss as a result of the condition of the rental unit. The landlord claims that the rental unit could not be rented out but the parties testified that a new tenant has not taken possession of the rental unit as at the date of the hearing. I find there is insufficient evidence to show that the landlord suffered any loss as a result of the tenant's actions. Accordingly, I dismiss the landlord's claim for compensation for loss.

Conclusion

The landlord's claim is dismissed without leave to reapply.

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 24, 2017

Residential Tenancy Branch