



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNSD MND

Introduction

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

- a Monetary Order for damage to the unit, site or property, pursuant to section 67 of the *Act*;
- an application to keep all or part of the security deposit, pursuant to section 72 of the *Act*; and
- a request to be reimbursed by the tenant for the filing fee, pursuant to section 72 of the *Act*.

Only the landlord participated in the conference call hearing. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that on November 21, 2016 he served both tenants individually with separate Applications for Dispute Resolution by way of Canada Post Registered Mail. Tracking numbers were provided to the hearing confirming service of these applications. Pursuant to sections 89 and 90 of the *Act* the tenants are deemed to have been served with the landlord's Application for Dispute Resolution on November 24, 2016.

Issue(s) to be Decided

- Can the landlord retain the tenants' security deposit?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Can the landlord recover the filing fee?

Background and Evidence

Undisputed oral testimony was provided to the hearing by the landlord that this tenancy began on July 1, 2015 and ended on October 31, 2016. Rent was \$990.00 per month and a security deposit of \$495.00 continues to be held by the landlord.

The landlord stated that a condition inspection report following the conclusion of the tenancy was performed on October 31, 2016 with the tenants. As part of the landlord's

undisputed testimony, it was reported that the tenants signed this report and provided their forwarding address to him on this day.

The landlord explained that he suffered financial loss by having to pay for the removal of a large amount of debris that was left in the rental unit following the conclusion of the tenancy. When asked if he had invoices for this work, the landlord provided undisputed testimony that they had been submitted to the *Residential Tenancy Branch* as part of his evidentiary package. No physical evidence was received for the hearing. Only the landlord's undisputed oral testimony was provided to the hearing.

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 his entitlement to a claim for a monetary award.

As the landlord was unable to provide the hearing with any physical evidence demonstrating the financial loss he has suffered it is very difficult for me to issue a Monetary Order without proof of expenses. The landlord has not produced any receipts or other physical accounts of the loss he has suffered. Furthermore, no breakdown was provided indicating how the landlord arrived at the figure of \$1,523.00.

Section 38 of the *Act* requires the landlord to either return a tenants' 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 and or upon receipt of the tenants' forwarding address in writing. If that does not occur, the landlord is required to 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 tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

In the landlord's undisputed testimony, it was stated that a condition inspection report was performed by the parties on October 31, 2016, at which time the tenants provided

their forwarding address. On November 15, 2016, the landlord applied to retain the security deposit, 15 days after receiving the tenants' forwarding address.

While I found the landlord to be a credible witness, I have insufficient basis on which to award a Monetary Order in the amount requested for the damage that was suffered. However, section 37(2) of the Act requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." The landlord provided undisputed testimony that the unit was left very dirty and required extensive efforts to remove all of the debris left inside. The landlord explained that he suffered financial loss from having to pay for the removal of the items in the unit. As the tenants did not appear at the hearing to dispute the landlord's allegations that damage was done to the rental unit which required them to surrender the security deposit, I accept the landlord's undisputed oral testimony and allow the landlord to retain the tenants' security deposit.

As the landlord was partially successful in his application to recover monies from the tenants he can therefore recover the cost of the filing fee. A Monetary Order of \$100.00 will be issued to the landlord.

Conclusion

I order the landlord to retain the tenants' security deposit in full.

I issue a Monetary Order in the landlord's favour in the amount of \$100.00 against the tenants. The landlord is provided with a Monetary Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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: May 24, 2017

Residential Tenancy Branch