



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Issue to be Decided

Is the landlord entitled to retain all or a portion of the tenant's security and pet deposits 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 landlord's testimony is as follows. The tenancy began on June 1, 2012 and ended on October 1, 2016. The tenants were obligated to pay \$1150.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$550.00 security deposit and a \$550.00 pet deposit. The landlord testified that the tenants caused damaged to the unit by their negligence that exceeds normal wear and tear. The landlord testified that the tenants became overwhelmed by the property and weren't able to maintain it. The landlord testified that the amount of damage caused by the tenants far exceeds the security deposit but is content with that as compensation. The landlord testified that the amount of repairs and replacement of items has cost \$2812.70. The landlord testified

that the following items required repair, replacement or labour; bathroom, flooring, painting of walls, blinds, shower and tub, lawn care, sprinkler heads, security, weather stripping, towel bar and mouldings. The landlord wishes to retain the security and pet deposits and to be granted the recovery of the filing fee for this application.

The tenants gave the following testimony. The tenants testified that they take responsibility for the broken blinds, the towel bar and the weather stripping. The tenants testified that they agree to pay the \$222.00 for those items. The tenants testified that they dispute the remainder of the landlords claim. The tenants testified that they had tried to resolve the matter with the landlord but were given different monetary amounts each time they spoke to her.

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 landlord's claim and my finding are set out below.

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.

Both parties confirmed that there wasn't a written tenancy agreement or written condition inspection reports conducted at move in or move out. The tenants testified that the landlords have failed to prove their claim. The tenants testified that the landlords have submitted conflicting evidence and testimony. 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. In addition, the landlord referred to certain responsibilities and obligations that the tenants had but without a tenancy agreement to support those terms, it's unclear what was expected of the tenants. The landlord has not provided sufficient evidence to support their claim and

I therefore dismiss their application save and except the items that the tenants agreed to; \$222.00 for weather stripping, the towel bar and blinds.

The landlord is entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$322.00. I order that the landlord retain \$322.00 from the deposits and return the remaining \$778.00 to the tenants. I grant the tenants an order under section 67 for the balance due of \$778.00. This order may be filed in the Small Claims 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 02, 2017

Residential Tenancy Branch