



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

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

- a monetary order for damage to the rental unit 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; and
- authorization to recover the filing fee for this application from the tenant 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.

As both parties were in attendance I confirmed that there were no issues with service of the landlord's application for dispute resolution and the parties' evidentiary materials. The tenant confirmed receipt of the landlord's application package. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the landlord's application and evidence.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

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

Background and Evidence

The parties agreed on the following facts. This tenancy began in August, 2016 and ended on January 31, 2017. The monthly rent was \$2,350.00. The tenant paid a security deposit of \$1,175.00 at the start of the tenancy which is still held by the

landlord. The parties did not complete a condition inspection report at the start of the tenancy as the landlord was out of town.

The landlord testified that she invited the tenant to participate in a condition inspection report at the end of the tenancy but the tenant declined to participate. The tenant disputes that she was offered an opportunity to participate in a condition inspection. No copy of a condition inspection report was submitted into written evidence.

The parties agreed that the tenant provided the landlord with a forwarding address in writing sometime in February, 2017. The landlord said that the rental unit had some damage which requires repairs and cleaning. The landlord submitted into written evidence photographs of the rental unit as evidence of the damage that requires cleaning. The landlord testified that she was provided quotes by trades people regarding the cost of various repairs and believes that the total required is \$1,720.00.

The tenant disagrees with the landlord's assessment of the rental unit and did not give written authorization that the landlord may keep 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 during the month of February, 2017. The landlord filed an application for authorization to retain the full security deposit on February 8, 2017 within the 15 days provided.

However, 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.

The landlord testified that she was out of the country at the start of the tenancy and therefore could not arrange or attend a condition inspection report. I do not find the landlord's excuse to be reasonable. The landlord could have appointed an agent to attend in her stead if she were unavailable. The landlord could have scheduled the inspection when she returned. The landlord chose not to do so and therefore, 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 in accordance with the *Act*.

Based on the undisputed evidence before me, I find that the landlord had extinguished her right to apply to retain the security deposit for this tenancy and has failed to return the tenant's security deposit in full. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a \$2,350.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

The landlord claims the amount of \$1,720.00 for damages to the rental unit. Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. Pursuant to section 7(2) of the *Act* the claimant must take reasonable steps to attempt to minimize the damage or loss.

While the landlord has submitted photographs and testimony regarding the damage to the rental unit in the absence of a condition inspection report there is little evidence of the original condition. I find that there is insufficient evidence to show that the damages to the rental unit were caused by the tenant. The landlord testified that she has been provided estimates from trades people about the cost of repairs. However, the landlord has not provided any written estimates or quotations in support of the amount claimed. I find, based on the evidence submitted by the parties that the landlord has not proven there is damage or loss arising as a result of the tenant's violation of the *Act*, regulation or tenancy agreement. Consequently, I dismiss the landlord's claim.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$2,350.00 against the landlord. The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. 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.

The landlord's application is dismissed.

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: June 13, 2017

Residential Tenancy Branch