



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 landlords' 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.

The tenant did not attend this hearing which lasted approximately 11 minutes. The landlords attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord VP (the "landlord") spoke for both co-landlords.

The landlord testified that the landlords' application for dispute resolution dated March 10, 2017 was served on the tenant by registered mail sent on March 15, 2017. The landlord provided a Canada Post tracking number as evidence of service. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' application for dispute resolution and evidence package on March 20, 2017, five days after mailing.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation as claimed?

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

Background and Evidence

The landlord provided the following undisputed facts. This tenancy began in March, 2005 and ended on February 28, 2017. The rent at the end of the tenancy was \$1,300.00. A security deposit of \$600.00 was paid by the tenant at the start of the tenancy and is still held by the landlords.

The landlord said that no condition inspection report was prepared at the start or the end of the tenancy. The landlord said that the rental unit was viewed at move-in but no report was prepared. At the end of the tenancy the landlord said that the tenant was unavailable to conduct a condition inspection.

The landlord said that the rental unit was considerably damaged and required expenditure to clean and repair. The landlord submitted into written evidence photographs of the rental unit in support of their monetary claim.

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 landlords' evidence that this tenancy ended on February 28, 2017. The landlord filed an application for authorization to retain the security deposit on March 10, 2017, within the 15 days provided by the *Act*.

However, the landlord 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 a move-in walkthrough was conducted but no condition inspection report was prepared or submitted into written evidence. Consequently, I find that the landlords have 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 landlords had extinguished their right to apply to retain the security deposit for this tenancy and have failed to return the tenant's security deposit in full. I accept the undisputed evidence of the landlord that the tenant did not waive their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlords' 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 \$1,200.00 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 submitted into written evidence estimates from trades people about the cost of repairs in the monetary worksheet. However, the landlords have 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 \$1,200.00 against the landlords. The tenant is provided with a Monetary Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: August 9, 2017

Residential Tenancy Branch