



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application pursuant to section 72.

The tenant and a representative of the landlord, G.K. (the landlord), both attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another.

The landlord acknowledged receipt of the Tenant's Application for Dispute Resolution (the Application) and evidentiary package that was sent by Canada Post Registered mail and the tenant acknowledged receipt of the landlord's evidence. Pursuant to section 88 and 89 of the *Act*, I find both parties have been duly served with these documents.

The tenant confirmed that they are seeking a return of the remainder of their security deposit, in the amount of \$238.40, that the landlord continues to retain. The tenant is also seeking to recover the filing fee for this application in the amount of \$100.00.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of all or a portion of her security deposit?

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

Background and Evidence

While I have turned my mind to all the documentary evidence, including witness letters and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord gave written evidence that this tenancy began on June 01, 2013, with a monthly rent of \$960.00 due on the first day of each month. The tenancy agreement shows a security deposit of \$480.00 was obtained by the landlord at the beginning of the tenancy. The landlord and the tenant both confirmed this to be true.

The landlord returned \$241.60 of the security deposit to the tenant and the tenant is seeking the return of the remaining \$238.40 of the security deposit that the landlord continues to retain.

The joint condition inspection report, provided by the landlord in their evidence, indicates that \$298.40 was to be deducted from the security deposit. The total amount of deductions included \$60.00 for carpet cleaning, \$50.40 for cleaning the blinds and \$188.00 for the purposes of cleaning the rental unit. The tenant has signed the condition inspection report indicating that they “agree that this report fairly represents the condition of the rental unit and that the above charges are to be deducted from the security deposit and/or pet deposit and that any amounts still owing are due and payable.”

The landlord has provided a written statement from the landlord’s representative L.L., who conducted the move-out inspection with the tenant and obtained the tenant’s signature and forwarding address.

Copies of e-mail exchanges between the tenant and the landlord, indicating that the landlord had subsequently agreed to waive the carpet cleaning charges in the amount of \$60.00, were included in the landlord’s evidence.

Copies of invoices for the cleaning of the blinds and the cleaning of the rental unit are also included in the landlord’s evidence as well as a picture of a stained rug.

The tenant submitted in their evidence a witness statement from a person who was present at the time of the move-out inspection. The tenant also provided a few pictures of the rental unit being cleaned.

In the tenant's testimony, the tenant referred to an e-mail from her moving company in which the moving company stated that the rental unit appeared clean. I advised the tenant that I did not have that e-mail in the evidence package provided to the Residential Tenancy Branch (RTB). Although I heard sworn testimony from the parties regarding this e-mail, I found no need to require the tenant to send a copy of this e-mail to the RTB as this evidence has little bearing on the issues at hand.

The tenant testified that there was no damage to the rental unit and that the landlord has not provided any evidence that cleaning was needed. The tenant questioned why the landlord was able to establish their own standard for what they considered to be clean and not have to prove that standard. The tenant testified that they signed the condition inspection report under duress as they were told by L.L. that they would not get their security deposit if they did not sign the report and that L.L. told the tenant that late notice to end the tenancy was given by the tenant so they should accept whatever amount of security deposit was offered. The tenant, in reference to the picture of the rug provided by the landlord, testified that one picture does not prove damage. The tenant testified that they asked the landlord, in the e-mail exchanges referenced above, for evidence of cleaning being required for the rental unit. The tenant testified that she admitted to the landlord in the same e-mail exchanges that the window track might have been a little dirty and offered to concede a little of the remaining security deposit but that the landlord refused to give any more of the security deposit back to the tenant.

The landlord testified that L.L. is no longer working for the landlord but that L.L. did provide a written statement about her recollection of the events. The L.L. stated that it would be better if the landlord was able to provide pictures of the rental unit and that photographs should be taken for disputed items. The landlord testified that they want to provide units to future tenants with a high standard of cleanliness. The landlord questioned why the tenant would sign the condition inspection report if they did not agree with it and that no one forced the tenant to sign the document.

The tenant testified that they should not have signed the condition inspection report. The tenant testified that the photos provided in their evidence show that the unit was clean. The tenant testified that L.L. told the tenant that they were required to be out of the rental unit by one p.m. and that the Residential Tenancy Branch would not hear the tenant's case if the tenant was not out of the rental unit on time. The tenant testified that

they talked to a lawyer after the inspection who advised them that this statement by L.L. was not true and they have the right to pursue the remainder of the damage deposit. The tenant testified that they signed the document based on negligent misrepresentation by L.L.

The landlord testified that they cannot comment on what occurred during the inspection as they were not a party to it. The landlord testified that the pictures provided by the tenant do not prove the cleanliness of the rental unit.

Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 38 (4) (a) of the *Act* stipulates that a landlord may retain an amount from a security deposit if at the end of the tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

I have reviewed all documentary evidence and sworn testimony. I find the landlord acted in accordance with section 38 (4) (a) of the *Act* and had the right to retain the amount noted on the condition inspection report for the cleaning of the rental unit and the cleaning of the blinds.

I find that, based on the tenant's testimony, the tenant's witness's statement and L.L.'s written statement, the tenant was only being requested to provide their forwarding address and to sign the condition inspection report but no instruction was given to either accept or not accept that the condition inspection report fairly represented the condition of the rental unit. I acknowledge that the inspection may have been stressful for the tenant but I do not find that they signed the condition inspection report under duress,

which implies the application or threat of physical force to compel another to act against their will.

I find that the tenant's photographs only show a small portion of the rental unit and do not conclusively demonstrate the cleanliness of the entire rental unit. For example, the stove is one of the points of contention and the tenant has not provided a photograph of the inside of the stove to demonstrate its cleanliness at the time of the inspection.

I further find the landlord is not required, under section 38 (4) (a) of the *Act*, to prove that the rental unit needed cleaning as the tenant provided their written agreement that the condition inspection report fairly represented the condition of the unit and agreed with the associated charges as stated on the condition inspection report. I find the landlord has provided the invoices for the cleaning of the rental unit and the cleaning of the blinds to prove that the tasks were completed and the landlord paid for those services.

For the above reasons, the tenant's application is dismissed, without leave to reapply.

As the tenant has not been successful in this application, I dismiss the tenant's request to recover her filing fee.

Conclusion

I dismiss the tenant's application, 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: September 27, 2017

Residential Tenancy Branch