



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 damages 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;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

Issues

Is the landlord entitled to an award for damages?

Is the landlord entitled to retain all or a portion of the security deposit?

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

Background and Evidence

The tenancy began on May 1, 2017 and ended on June 30, 2017 after the tenants provided notice to end the fixed term tenancy early. The lease was for a one year fixed term supposed to be ending on April 30, 2018. The tenants found new tenants who entered into a new lease agreement for the rental unit effective July 1, 2017. The tenants paid a security deposit of \$2200.00 at the start of the tenancy which the landlord continues to hold. This amount included a \$200.00 fee for a move-in/out clean up fee.

The tenants provided a forwarding address in writing to the landlord on June 30, 2017. The landlord application to retain the security deposit was filed on July 17, 2017.

The landlord is claiming an amount of \$236.60 to replace a broken mirror on a sliding closet door. The landlord submitted a move-in and move-out condition inspection report detailing the damage on the move-out report. The damage is not noted on the move-in report. The landlord submitted a receipt for the replacement door. Although the receipt does not specify an item name, the landlord testified it was for the replacement mirror closet door. The landlord submitted a picture of the broken mirror door.

The landlord is also claiming an amount of \$2,506.00 for repairing a damaged living room laminate floor and painting expense to fix holes in the living room wall. The landlord submitted a quote for this work. The landlord testified that the repair work had not yet been completed as she was awaiting the outcome of this decision. The landlord submitted two black and white pictures of the alleged damage.

The tenant argues that no one came to the rental unit to do any quote for the repair work. She testified that she has spoken to the new tenants who advised her of this. The tenant further argues that the alleged damages existed at the start of the tenancy but were just not noticed at the time of the move-in inspection as it was done late in the evening and rushed. The tenant argues the receipt submitted by the landlord for the replacement closet mirror does not specify any item name so she does not know what that receipt was for. The tenant argues the alleged damage to the living room floor was only to a small quarter sized area and the landlord is charging for the replacement of the entire floor. The tenant further argues the landlord's application was not made within the timelines permitted under the Act.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

The tenants provided a forwarding address to the landlord on June 30, 2017. The landlord was required to make an application within 15 days which in this case fell on

Saturday, July 15, 2017. As this day was a holiday, and the landlord's application was filed on the next business day, July 17, 2017, I find the landlord's application was made within the timelines permitted under the Act.

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

Residential Tenancy Policy Guideline #16 "Compensation for Damage or Loss" provides the following guidance:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I accept the landlord's claim in the amount of \$236.60 for the replacement of the closet mirror. I accept the move-in inspection report as a fairly accurate reflection of the state of repair of the rental unit at the start of the tenancy. It appears the parties completed a thorough inspection of the unit detailing various pre-existing damage on the report. There is no mention of damage to the closet mirror on this report. I do not accept the tenant's argument that this was just overlooked during the initial inspection. I also accept the landlord's testimony that the receipt submitted was for a replacement closet door as the amount claimed appears to be a reasonable amount for replacing such an item. The landlord is awarded \$236.60.

I do not accept the landlord's claim for the quote submitted to fix holes in the living room walls and the flooring. The landlord submitted only two black and white pictures of the alleged damage in which the damage does not be very extensive. The landlord did not provide any evidence as to why the entire floor needed replacement versus only the damaged area. The invoice submitted by the landlord was only a quote and the landlord has not yet had the repair work completed. As such, I find the landlord has not

made attempts to mitigate the loss or provide sufficient evidence of the amount of value of the alleged loss. This part of the landlord's claim is dismissed without leave to reapply.

As the landlord was for the most part not successful in this application, I find that the landlord is not entitled to recover the filing fee paid for this application from the tenants.

The landlord continues to hold a security deposit in the amount of \$2200.00. The landlord is permitted to retain \$236.60 from this security deposit in full satisfaction of the monetary award and the balance of \$1963.40 is to be returned to the tenants forthwith.

The tenants are granted a Monetary Order in the amount of \$1963.40.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$1963.40. 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.

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: January 15, 2018

Residential Tenancy Branch