



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the Act). The landlord applied 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;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

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

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package upon the other party via Canada Post Registered Mail. Both parties have confirmed receipt of the submitted documentary evidence submitted by the other party. I accept the undisputed affirmed evidence of both parties and find pursuant to section 90 of the Act that both parties have been sufficiently served.

During the hearing the tenant confirmed through the assistance of her translator that the only claim she was making, was for the flooring damage of \$800.00 based upon the quote provided.

During the hearing both the landlord (with the assistance of her translator/daughter) and the tenant were given multiple opportunities to present evidence and make submissions on their applications.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage and recovery of the filing fee?

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

Is the tenant entitled to a monetary order for return of the security deposit and recovery of the filing fee?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on July 1, 2016 on a fixed term tenancy ending on June 30, 2017 as per the submitted copy of the signed tenancy agreement. The monthly rent was \$750.00 payable on the 1st day of each month. A security deposit of \$375.00 was paid.

Both parties confirmed that the tenancy ended on July 30, 2017 and that the landlord received the tenant's forwarding address in writing for the return of the security deposit in a letter dated August 29, 2017. Both parties confirmed that the tenancy ended on July 31, 2017 and that the tenant provided her forwarding address in writing to the landlord in a letter on August 29, 2017 via Canada Post Registered Mail.

The landlord seeks a monetary claim of \$800.00 which is based upon a quote for 190 square feet of tiling for \$997.50 dated August 12, 2017. The landlord clarified that the amount filed is what she feels is fair in the circumstances. The landlord stated that the work was done through friends and through the purchase of tiles from a different invoice (which was not submitted). The landlord relies solely on the 2 submitted photographs as proof that the damaged floor was repaired.

The tenant seeks a monetary claim of \$375.00 for return of the security deposit and the recovery of the \$100.00 filing fee.

The landlord claims that the tenant vacated the rental premises leaving it with damaged flooring (tiling) beside the sink due to water damage. The landlord has submitted 5 photographs of the damaged flooring and 2 photographs of the condition of the flooring after the repairs.

The landlord has submitted in support of this claim:

7 photographs of the condition of the flooring before and after repairs

An invoice dated August 8, 2017, from a plumber detailing damage flooring and an inspection for leaking. No leaks found.

A copy of a utilities invoice, Water, dated July 26, 2017

A copy of a utilities invoice, Electricity, dated July 21, 2017

A copy of an estimate/quote, dated August 12, 2017 for tiling

The tenant has disputed the landlord's claims stating that the flooring was damaged prior to her tenancy beginning. The tenant stated that during the tenancy the landlord had attempted to repair the flooring twice, without success.

The landlord argued that the rental unit was newly renovated at the beginning of the tenancy. Both parties confirmed that no condition inspection reports for the move-in or the move-out were completed. The landlord argued the plumber's invoice with the submitted photographs are proof that the tenant caused the damaged during the tenancy.

Analysis

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 burden of proof lies with the landlord. The landlord relies solely on a plumber's invoice confirming that there was floor damaged caused by water, but not from any leaking pipes. The landlord also relies upon the 5 photographs showing floor damage. The landlord claims that the tenant is responsible. The tenant has disputed the landlord's claims stating that the water damage was not caused by the tenant, but was a pre-existing condition at the start of the tenancy which the landlord had attempted to twice repair, but failed. I find on a balance of probabilities that the landlord has failed to provide sufficient evidence that the tenant caused the floor damage. As such, the landlord's claim is dismissed.

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In this case, both parties confirmed that the tenancy ended on July 31, 2017 and that the tenant provided her forwarding address in writing for the return of the \$375.00 security deposit via Canada Post Registered Mail on August 29, 2017 to the landlord. The landlord applied for dispute on August 9, 2017. In this case, I find that as the landlord has withheld the security deposit and failed in her claim (application) for damages that the tenant is entitled to the return of the \$375.00 security deposit.

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

Conclusion

The landlord's application is dismissed without leave to reapply.
The tenant is granted a monetary order for \$475.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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: February 07, 2018

Residential Tenancy Branch