



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDLS, FFL, MNSD, FFT

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 compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- a return of all or part of the security deposit for this tenancy pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord 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. The tenant SK primarily spoke on behalf of both co-tenants (the “tenant”).

As both parties were present service of documents was confirmed. The parties each testified that they had been served with the respective application for dispute resolution and evidence package of the other. Based on the undisputed testimonies I find that the landlord was served with the tenant’s application dated October 16, 2017 and evidentiary materials and the tenants were served with the landlord’s application dated October 17, 2017 and the evidence in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Are the tenants entitled to a return of all or a portion of the security deposit?

Is either party entitled to a return of the filing fee from the other?

Background and Evidence

The parties agreed on the following facts. This tenancy began in January, 2014 and ended in September, 2017. The monthly rent was \$1,150.00 at the end of the tenancy. A security deposit of \$550.00 was paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at the start or the end of the tenancy. The parties did participate in a move-in walkthrough of the rental unit and stains in the carpet were noted in an addendum to the tenancy agreement.

The tenants moved out of the rental unit on September 30, 2017. The tenants provided their forwarding address in writing by email date October 16, 2017. The tenants did not provide written authorization that the landlord may retain any portion of the security deposit.

The landlord submits that the carpets in the rental unit were stained at the end of the tenancy. The landlord testified that they have consulted with specialists and have been advised that the carpets need to be replaced. The landlord submitted into written evidence photographs of the rental unit which were taken after the tenants vacated. The landlord seeks a monetary award in the amount of \$550.00 for the replacement of the carpets.

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 this tenancy ended on September 30, 2017 and the tenants gave written notice of their forwarding address on October 16, 2017. The

landlord did not return the security deposit to the tenants. The present application by the landlords seeks a monetary award but does not seek authorization to retain the security deposit.

Furthermore, the parties gave evidence that no condition inspection report was prepared at any time during the tenancy. Section 24 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 23 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report. While the parties testified that they noted the damage to the rental unit in an addendum to the tenancy agreement, I find that the form and contents of the addendum submitted into evidence is not a sufficient substitute for a condition inspection report.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. The tenants did not provide written authorization that the landlord may retain any portion of the security deposit for this tenancy. 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 tenants are entitled to an \$1,100.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

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. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find that there is insufficient evidence in support of the landlord's claim for a monetary award for damages. In the absence of a proper condition inspection report I am unable to determine that the condition of the rental unit at the end of the tenancy can be attributed to the tenants. The photographs submitted into evidence show some discoloration but I find there is insufficient evidence to conclude this was caused by the tenants' breach and not simply the wear and tear one would expect from a multi-year tenancy. For this reason I dismiss the landlord's claim for a monetary award.

As the tenants' application was successful the tenants may recover the \$100.00 filing fee for this application.

Conclusion

The landlord's application is dismissed without leave to reapply.

I issue a monetary award in the tenant's favour in the amount of \$1,200.00 against the landlord.

The tenants are 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.

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: May 25, 2018

Residential Tenancy Branch