



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FF

Introduction

This hearing dealt with the landlord's 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 landlord and the tenant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

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

The tenant acknowledged receipt of the Application for Dispute Resolution (the Application) and an evidentiary package, which were sent by registered mail to the tenant, shortly after the Application was filed by the landlord on January 03, 2018. In accordance with sections 88 and 89 of the *Act*, I find that the tenant is duly served with the Application and an evidentiary package.

During the course of the hearing the landlord referred to receipts that were not in the tenant's evidence package or in the evidence package provided to the Residential Tenancy Branch (RTB). The landlord stated that he had an associate provide evidence to the RTB and that, although he confirmed with the RTB that an evidence package was received, he could not personally verify the receipts were provided to the RTB.

Rule 3.14 of the RTR Rules of Procedure states that documentary evidence intended to be relied on at the hearing must be received by the respondent and the RTB not less than 14 days before the hearing. I find that the landlord did not serve the landlord or the RTB with any receipts and that the tenant may be prejudiced by their consideration as the tenant has not had a chance to respond and review this evidence.

The landlord acknowledged receipt of the tenant's evidence package which was sent to him by way of registered mail in June 2018. In accordance with section 88 of the *Act*, I find that the landlord is duly served with the tenant's evidence package.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage to the rental unit?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

A tenancy agreement was provided by the landlord showing that this tenancy began on July 15, 2015, with a monthly rent of \$1,200.00, due on the 15th day of each month with a security deposit in the amount of \$600.00.

The landlord provided in evidence;

- A copy of a Report of Rental Premises and Contents in which a detailed report regarding the cost of various items for the rental unit including, but not limited to, steam cleaning of carpets, installation of new lock and keys, replacement of ceiling fan/light, damaged table and various other repairs totalling an amount of \$965.00. The Report then indicates that \$235.00 of the \$600.00 security deposit is owing to the tenant. The Report goes on to state that the tenant did not complete an inspection report as proper notice was not given to the landlord;
- A copy of a Report of Rental Premises and Contents which detail a walkthrough completed by the landlord and the tenant on August 04, 2015. The tenant signed the report on this same date;
- A copy of a notice to end the tenancy from the tenant dated November 14, 2017;
- A copy of the forwarding address of the tenant dated December 19, 2017; and

- Six pictures taken from within the rental unit.

In addition to some of the same items provided by the landlord, the tenant provided in evidence;

- A copy of a written statement from the tenant dated June 14, 2018, in which the tenant states that her representative did a walk through with the landlord but that no condition inspection report was completed in writing by the landlord and provided to the representative to be signed;
- A copy of a witness statement from the tenant's representative who completed a walkthrough with the landlord at the rental unit. The representative states that the landlord did not have a walkout condition inspection report for him to sign on the tenant's behalf;
- Various pictures taken from within the rental unit; and
- A copy of a check from the landlord to the tenant dated December 30, 2017, in the amount of \$235.00

The landlord stated that there were multiple issues with the rental unit that required repairs and that all of the associated costs are provided in the landlord's report. The landlord submitted that the tenant removed a fan and replaced it with a light fixture and that the landlord now has to replace it. The landlord testified that no move out inspection report was completed due to the tenant not giving the landlord sufficient notice. The landlord confirmed that he did complete a walkthrough with the tenant's representative and did not provide him with anything to sign after the walkthrough was completed to confirm the condition of the rental unit.

The tenant disputed the items that the landlord claimed needed repair as she stated that there was no condition inspection report completed with the tenant's representative and that none of the items for repair that the landlord listed in their report were confirmed with the tenant's representative. The tenant submitted that she advised the landlord that the fan did not work but that no action was taken by the landlord and so she replaced the fan with a light fixture and left it in the rental unit. The tenant testified that she had the carpets steam cleaned the evening before the move out day, that the landlord had known about it and told her to advise him when it was completed which was not until later in the evening. The tenant confirmed that the landlord did not attend that evening to do a walkthrough and that the tenant was not available the next day which is why the tenant had to assign a representative to do the walkthrough for her. The tenant stated that a portion of her security deposit in the amount of \$235.00 was returned but that she did not give written consent for the landlord to keep the rest of the security deposit

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 landlord 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 tenant 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 landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Having reviewed all documentary evidence and affirmed testimony, I find that the only agreed upon item that was changed from the beginning of the tenancy is the ceiling fan that was replaced by the tenant with a light fixture; however, I find that the landlord has not provided any evidence in the form of receipts or invoices to show the actual amount required to compensate for the claimed loss or to repair the damage.

In regards to all of the remaining items, I find that the landlord did not have a condition inspection report completed and signed which would confirm the items that the landlord is claiming and establish a loss. I further find that that the landlord has not provided any receipts or invoices for any of the items listed in their own report and all of the amounts appear to be estimates of the repairs to be done, not the actual cost of the repairs that were completed.

I find that it is not reasonable for the landlord to complete a report for the rental unit which determines a total loss of \$965.00 in repairs to be completed and then states that they are giving \$235.00 back to the tenant with no explanation of that amount. I find that, based on a balance of probabilities, if the landlord established a claim that is more than the value of the security deposit, they would keep the whole deposit to off-set the landlord's loss.

For the above reasons, I find that the landlord has not provided sufficient evidence that they have incurred any loss or proof of the actual amounts required to compensate for damage to the rental unit.

Therefore, I dismiss the landlord's Application for a monetary award for damage to the rental unit, without leave to reapply.

Section 36 (2) of the *Act* establishes that, unless the tenant has abandoned the rental unit, the right of a landlord to claim against a security deposit for damage to the rental unit is extinguished if, having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that the tenant had a representative available to complete an inspection of the rental unit and that the landlord failed to complete a condition inspection report with the tenant's representative and have them sign it, which is not in compliance with section 36 (2) the *Act*. I find that the landlord's right to retain all or a portion of the security deposit was extinguished when they failed to complete an inspection report with the tenant's representative.

For the above reason, the landlord's Application to retain all or a portion of the security deposit is dismissed, without leave to reapply.

As the landlord has not been successful in their Application, the landlord's Application to recover the filing fee from the tenant is dismissed, without leave to reapply.

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.

RTB Policy Guideline # 17 C 1. states that an arbitrator will order the return of a security deposit on a landlord's application to retain all or a part of the security deposit unless the right of a tenant has been extinguished under the *Act*.

RTB Policy Guideline # 17 C 3. states that unless a tenant has specifically waived the doubling of the deposit, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the *Act*.

As I have dismissed the landlord's Application to retain the security deposit due to the extinguishment of their right to keep it under the *Act* due to the incomplete condition

inspection report, I find that the tenant is entitled to a monetary award of \$1,200.00 for double the return of their security deposit.

Conclusion

The landlords' Application is dismissed in its entirety, without leave to reapply.

Pursuant to section 67 of the *Act*, I grant a monetary Order in the tenant's favour under the following terms, which doubles the return of the security deposit, less the amount already returned to the tenant:

Item	Amount
Return of the Security Deposit with doubling provision (\$600.00 X2)	\$1,200.00
Less the portion already returned to the tenant	-235.00
Total Monetary Order	\$965.00

The tenant is provided with this 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 these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: July 31, 2018

Residential Tenancy Branch