



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BIT ENTERPRISES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent ("landlord"), the tenant and the tenant's advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was the property manager for the landlord company named on this application and that he had permission to speak on its behalf, as an agent at this hearing. The tenant confirmed that his advocate had permission to speak on his behalf at this hearing. This hearing lasted approximately 61 minutes.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

The landlord stated that he did not receive the tenant's written evidence package. The tenant said that he left it in the landlord's mailbox on August 1, 2018. As per sections 88 and 90 of the *Act*, the landlord would be considered deemed served on August 4, 2018, three days after the tenant's evidence was left in his mailbox. As the evidence is deemed served late, less than 7 days prior to the hearing date, contrary to Rule 3.15 of the Residential Tenancy Branch *Rules of Procedure*, I cannot consider it in my decision.

Issues to be Decided

Is the landlord entitled to a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit?

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

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in the fall season of 2012 with the former landlord. The landlord purchased the rental unit on June 27, 2017. The tenancy ended on October 31, 2017. Monthly rent of \$875.00 was payable on the first day of each month. A security deposit of \$400.00 was paid by the tenant and the landlord continues to retain this deposit in full. Both parties signed an estoppel certificate indicating the month-to-month term of the tenancy, the amount of rent and the security deposit paid to the landlord. This was a tenancy according to both parties, despite the fact that no written tenancy agreement was signed. A move-out condition inspection report was not completed by the landlord for this tenancy. The tenant did not give the landlord written permission to keep any part of his security deposit.

The tenant stated that he provided a forwarding address to the landlord by way of a letter sent by registered mail. He said that the landlord signed for the mail on December 22, 2017. The landlord stated that he received the forwarding address on December 29, 2017. The landlord filed this application to retain the tenant's security deposit on January 4, 2018.

The landlord seeks a monetary order of \$417.38 plus the \$100.00 application fee. The landlords seeks the above amount for garbage disposal because he said that the tenant left his garbage in the back alley behind the rental building after the landlord told him to clean and dispose of his own garbage. The landlord provided photographs which indicate a date of November 1, 2017, stating that the tenant's roommate's name was on some of the garbage and there was nothing in the garbage bin in the area. The landlord explained that he used his cousin's company to dispose of the garbage, provided an

invoice for the above amount, and indicated that the cost was high because the tenant left behind two mattresses, a bike and other large items to be disposed.

The tenant disputes the landlord's application. He said that he cleaned the rental unit and disposed of his garbage in the garbage bin in the back alley. He claimed that he paid approximately \$700.00 to move his items from the rental unit and that he kept all of his furniture when moving. He stated that he did not even have two mattresses in the one-bedroom rental unit, he did not throw out a toilet, or many of the other items in the landlord's photographs. He explained that since the rental property was being demolished by the landlord and the landlord issued notices to end tenancy to the other residents in the building, they had left behind their garbage in the same area.

The tenant agreed that some of the items in the landlord's photographs, including the ones with his roommate's name on it, were from the rental unit. However, the tenant claimed that someone took his items out of the garbage bin and threw it everywhere. The tenant's advocate agreed that the landlord informed him via email on November 8, 2017, to let the tenant know to pick up his items from the rental unit, that he conveyed this message to the tenant, and that the tenant informed him that he had retrieved his bike and other items from the rental unit after the advocate told him to do so.

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 on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

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.

I dismiss the landlord's application for garbage disposal costs of \$417.38 without leave to reapply. I find that the landlord failed to complete a move-out condition inspection report, indicating that the tenant left garbage on the rental property. The landlord said that he did not complete a move-out report because the rental unit was in good

condition and the tenant's garbage was left in the back alley not inside the unit. However, move-out inspection reports indicate the yard and outside areas of a rental unit and the landlord could have added this information to the damages section of the report. The tenant could have then agreed or disagreed with this damage. Moreover, the landlord has held the tenant's security deposit for this reason and is claiming that the tenant is responsible for these damages. Therefore, the landlord should show a written record that the tenant did not comply with his cleaning obligations at the end of the tenancy. I also note that the landlord's garbage disposal invoice indicates a date of November 22, 2017, when the landlord claimed that the cleaning was done within a week of the tenant moving out on October 31, 2017.

As the landlord was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenant's security deposit of \$400.00. No interest is payable on the deposit during the period of this tenancy. Even though the tenant did not make an application for the return of his deposit or to receive double the deposit, as per Residential Tenancy Policy Guideline 17, I am required to deal with the return of the deposit on the landlord's application to keep the deposit and I must consider double the deposit unless the tenant has specifically waived this right, which he has not.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to 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 authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities. The tenancy ended on October 31, 2017. The tenant provided a written forwarding address to the landlord on December 18, 2017, with the landlord confirming receipt on December 29, 2017. The tenant indicated that the landlord signed for the registered mail of the forwarding address on December 22, 2017, but the landlord said that he did not receive it on that date.

The tenant did not give the landlord written permission to retain any amount from his security deposit. The landlord did not return the deposit to the tenant. The landlord filed his application to retain it on January 4, 2018. Whether the landlord received the address on December 22 or 29, 2017, he is still within the 15 days to file his application. However, the landlord did not complete a move-out condition inspection report as required by section 36 of the *Act*, so his right to claim against the deposit for damages was extinguished. In accordance with section 38(6)(b) of the *Act*, I find that the tenant is entitled to receive double the value of his security deposit of \$400.00, totalling \$800.00, from the landlord, due to the extinguishment.

I find that the tenant was unable to provide documentary evidence that he paid a pet damage deposit of \$200.00 to this landlord, as the landlord indicated it was paid to the former landlord and he did not receive it from the former landlord.

Conclusion

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

I issue a monetary order in the tenant's favour in the amount of \$800.00 against the landlord. 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: August 22, 2018

Residential Tenancy Branch