



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNDL FF

Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the “*Act*”).

The tenants seek:

- a monetary award pursuant to section 67 of the *Act*.

The landlord seeks:

- a monetary award pursuant to section 67 of the *Act*,
- to withhold the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application 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 tenants were represented at the hearing by tenant B.G.M. Both parties confirmed receipt of each other’s applications for dispute resolution and evidentiary packages.

Issue(s) to be Decided

Is either party entitled to a monetary award?

Can the landlord recover the filing fee?

Can the landlord retain the tenants’ security deposit?

Background and Evidence

Testimony provided by both parties explained this tenancy began on August 1, 2013 and ended on February 1, 2018. Rent was \$1,600.00 per month and a security deposit of \$800.00 paid at the outset of the tenancy continues to be held by the landlord.

Both parties acknowledge the tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") on December 30, 2017. Both parties agreed the tenants vacated the property on January 31, 2018 with the keys being returned to the landlord on February 1, 2018. The landlord confirmed no "free" month of rent was provided to the tenants following the issuance of the 2 Month Notice.

The tenants sought a monetary award of \$2,300.00. Tenant B.G.M. said the landlord had failed to provide the tenants with compensation as is due pursuant to section 51 of the *Act*. In addition, the tenants sought a return of their security deposit.

The landlord acknowledge retaining the tenants' security deposit and said no compensation was given pursuant to section 51 of the *Act* due to the large amount of damage to the walls and ceiling of the rental unit. The landlord said he was seeking a monetary award of \$1,758.75 in satisfaction for a return of the supplies required to re-paint the unit and for the labour associated with this re-painting. As part of his evidentiary package, the landlord provided a monetary order worksheet detailing his expenses, photos of the unit and a copy of the condition inspection report.

Both parties confirmed the rental unit was painted by the tenants when they first took possession of the rental unit in August 2013.

Analysis

I will start by considering the tenants application for a monetary award and then turn my analysis to the landlord's application.

Tenants' Application

The tenants have applied for a monetary award of \$2,300.00. Specifically, the tenants are looking for a return of their security deposit, along with compensation pursuant to section 51 of the *Act*.

Section 51 of the *Act* states as follows, “A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] **is entitled** to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.” During the hearing the landlord acknowledged failing to provide the tenants compensation pursuant to section 51; however, the landlord argued that a large amount of damage was present in the unit following the conclusion of the tenancy, and it was for this reason that no compensation was given.

Section 51 does not provide a landlord with an avenue to deny tenants compensation due to faults with a rental unit following the conclusion of the tenancy agreement. The correct course of action is to apply for a monetary award to recover damages, as the landlord has done, and then to have this application assessed on its individual merits. As no compensation was provided to the tenant pursuant to section 51 of the *Act*, I find, based on the testimony of both parties, that the tenants are entitled to a monetary award equivalent to \$1,600.00 reflecting “the equivalent of one month’s rent payable under the tenancy agreement.”

The second portion of the tenants’ application concerns a return of their security deposit.

Section 38(1) of the *Act* requires the landlord to either return a tenant’s security or pet 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 and upon receipt of the tenant’s 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 or pet deposit.

In this case, a review of the condition inspection report provided by the landlord shows the landlord was provided the tenants’ forwarding address in writing on March 9, 2018 and applied for dispute resolution on March 12, 2018. I find the landlord has therefore fulfilled his responsibilities related to the security deposit pursuant to section 38 of the *Act*.

A security deposit may only be withheld when the landlord has recourse under the *Act* to do so. I find no reason why the landlord should withhold the tenants’ security deposit and therefore order it be returned to the tenants.

Landlord's Application

The landlord has applied for a monetary award of \$1,785.75.

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 onus is on the landlord to prove entitlement to a claim for a monetary award.

The landlord argued that a large amount of damage had occurred in the rental unit. Specifically the landlord said the walls and ceiling required re-painting and stated a significant amount of labour was required to attend to the matter.

Residential Tenancy Policy Guideline #40 provides direction for determining the useful life of building elements. *Policy Guideline #40* states the useful life of interior paint is 4 years (or 48 months). The parties agreed the rental unit was repainted on August 1, 2013 when the tenants took possession of the rental unit. I find that the useful life of that initial paint job has therefore expired by the end of this tenancy. I find the landlord is not entitled to a return of any money sought in relation to the painting that is required, as the unit was beyond its useful life related to paint.

I find the remainder of the landlord's monetary application relates to matters beyond the scope of the tenancy. The landlord sought compensation for time spent travelling to the rental unit and for various other matters which can regularly be expected of a landlord such as attending to the property. I find the tenants are in no way responsible for the costs for which the landlord seeks compensation. I therefore decline to award the landlord any portion of his monetary award.

As the landlord was unsuccessful, he must bear the cost of his own filing fee.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$2,400.00 against the landlord. This amount includes a return of the outstanding security deposit (\$800.00)

with compensation of one month's rent (\$1,600.00) per section 51 of the *Act*. 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.

The landlord is ordered to return the tenants' security deposit.

The landlord's application for a monetary award is dismissed without leave to reapply.

The landlord must bear the cost of his own filing fee.

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: October 4, 2018

Residential Tenancy Branch