



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDCL-S, FFL

Introduction

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

- an order of possession for cause pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' 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 tenants pursuant to section 72.

Tenant AH (the "tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Tenant AH confirmed she had authority to speak on behalf of tenant DT, who was not present for the hearing.

The tenant confirmed receipt of the landlord's hearing package, evidence and amendment by way of registered mail. As the tenant did not raise any issues regarding service of the application, evidence or amendment, I find that the tenants were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the landlord testified that the tenants vacated the rental unit on September 30, 2018, pursuant to a 1 Month Notice to End Tenancy ("1 Month Notice"). Consequently, the landlord is no longer seeking an order of possession and this portion of the landlord's application is dismissed without leave to reapply.

Issue(s) to be Decided

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

Is the landlord authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

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

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on June 1, 2018 on a fixed term until June 1, 2019. Rent in the amount of \$2,500.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$1,250.00 at the start of the tenancy.

The parties agreed that the tenants left the unit undamaged and at the end of the tenancy the landlord provided a cheque in the amount of \$1,250.00 for the security deposit. The landlord later cancelled the cheque and filed this application for the retention of the security deposit.

The landlord testified that she had no intention of returning the security deposit as the tenants breached the tenancy agreement by subletting the unit without her consent. She testified that she only issued the cheque to ensure return of the keys. The landlord seeks to retain the security deposit in the amount of \$1,250.00 and to recover the postage fees in the amount of \$22.68. The landlord also seeks to recover the filing fee in the amount of \$100.00.

In reply, the tenant testified that although they did not dispute the 1 Month Notice, they did not sublet the unit. The tenant reiterated that the unit was left undamaged and is therefore entitled to the return of the security deposit.

Analysis

Under the *Act*, a landlord may make a claim against a security deposit for damage to the rental unit or for losses the landlord has incurred such as unpaid rent, loss of rental revenue, unpaid utilities, cleaning and other fees payable under the *Regulations*.

In this case, the landlord made a claim against the deposit for breach of the tenancy agreement. Retention of the security deposit is not intended to be used as a punitive measure; rather it is to be used to offset damage or loss. Because the landlord failed to establish damage or any specific loss resulting from the breach, I find the landlord is not entitled to retain the security deposit. Accordingly, I order the landlord to return the security deposit in the amount of \$1,250.00 to the tenants.

I dismiss the landlord's claim of \$22.68 for postage used in preparation for this hearing process, as the only hearing-related costs recoverable under section 72 of the *Act* are for filing fees.

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

Conclusion

The landlord's application for an order of possession is dismissed without leave to reapply.

I issue a monetary order in the amount of \$1,250.00 to the tenants for the security deposit.

The landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement is dismissed without leave to reapply.

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 31, 2018

Residential Tenancy Branch