



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the landlords' 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 landlords did not attend this hearing, although I waited until 1:45 p.m. in order to enable the landlords to connect with this teleconference hearing scheduled for 1:30 p.m.

The tenant and the tenant's legal counsel attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Tenant A.W. (the tenant) indicated that he would be the primary speaker for the tenants

The tenant confirmed receipt of the Application for Dispute Resolution (the Application) which was sent by registered mail to the tenant in February 2018. In accordance with section 89 of the *Act*, I find that the tenant is duly served with the Application.

The tenant confirmed receipt of an Amendment to an Application for Dispute Resolution (the Amendment) which was sent by registered mail to the tenant in February 2018. In accordance with section 89 of the *Act*, I find that the tenant is duly served with the Amendment.

The tenant stated that they did not receive any evidence from the tenant. The landlord had only submitted a copy of the tenancy agreement to the Residential Tenancy Branch. As the tenancy agreement is a document signed by the landlords' agent and the tenants, I find that the tenant is not prejudiced by its consideration and I will consider it.

The tenant did not provide any evidence of service of their evidence to the landlords; however, as one of the items is the Condition Inspection Report that was signed by the landlords' agent and the tenant at the move-in and move-out of the rental unit, I find that landlord is not prejudiced by its consideration and I will consider it.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for damage to the rental unit?

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

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

A copy of the tenancy agreement was provided in evidence to show that this tenancy began on March 04, 2016, with a monthly rent of \$4,495.00, due on the first day of each month. The tenancy agreement indicates a security and pet damage deposit in the amount of \$4,495.00. The tenant gave undisputed affirmed testimony that they paid the security deposit to the landlord and that the landlord continues to retain it.

A copy of the Condition Inspection Report was also provided which was signed by the landlords' agent and the tenant on the move-out date of January 17, 2018, and which has the tenant's forwarding address.

Analysis

Rules 7.1 and 7.3 of the Rules of Procedure provides as follows:

Commencement of the hearing - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

I find that the landlord applied for the security deposit on January 31, 2018, with 15 days of receiving the tenant's forwarding address pursuant to section 38 of the Act.

I further find that the landlord had the Condition Inspection Report completed and signed by the tenant and had provided a copy to the tenant. For the above reasons, I find that the landlord has not extinguished their right to make an application under the Act, however:

In the absence of any evidence or submissions from the applicants, I order the landlords' Application dismissed, without liberty to reapply.

RTB Policy Guideline # 17 C 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.

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.

As I have dismissed the landlords' Application to retain the security deposit, I find that the tenant is entitled to a monetary award of \$4,495.00 for the return of their security and pet damage deposit.

Conclusion

Pursuant to section 67 of the *Act*, I grant a monetary Order in the tenants' favour in the amount of \$4,495.00. The tenant is provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: September 18, 2018

Residential Tenancy Branch