



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDLS FFL

Introduction

This review hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

Both parties attended the hearing and were given a full opportunity to be heard, present evidence, make submissions and call witnesses.

As both parties were present service of documents was confirmed. The parties each testified that they were in receipt of the other’s materials. Based on the undisputed testimonies I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?
Is the landlord entitled to recover the filing fee for their application?

Background and Evidence

The parties confirmed the following information. This periodic tenancy began on June 1, 2011 and ended on April 30, 2018. Rent was \$1,500.00 payable on the first of each month. A security deposit of \$775.00 was paid by the tenant and is still held by the landlord. The parties participated in a move-in and move-out inspection and prepared a condition inspection report.

The tenant confirmed that they have not provided the landlord with a forwarding address and refused to do so during the hearing.

The parties confirmed that the tenant obtained an extra fob during the tenancy which was not returned. The landlord seeks a monetary award of \$200.00 for the replacement of the fob.

The parties confirmed that there was a strata fine incurred due to the tenant in the amount of \$500.00.

The landlord claims that the rental unit was damaged beyond the expected wear and tear due to the tenant's occupancy. The landlord seeks to recover the amount of \$8,200.00 for the repairs to the ceiling, washroom, floors and painting of walls. The landlord submitted photographs of the damage to the rental unit and receipts of the costs incurred.

The parties each submitted a copy of a condition inspection report. The copies are substantially identical but for the portion of the report dealing with the End of Tenancy. The version submitted by the landlord shows that the tenant agrees that the report is a fair representation of the condition of the unit and is signed by the tenant. The version provided by the tenant shows a check mark beside the statement that the tenant does not agree that the report fairly represents the rental unit. There is a space provided for the tenant to give the reasons why they disagree with the report left blank on both copies.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

With the contradictory testimony and written evidence of the parties I must first make a finding of credibility. Each party submits that their version of the condition inspection report submitted is the unaltered version and the other to have been amended afterwards.

Taken in its entirety I find the landlord to be more credible. The landlord gave cogent, consistent testimony. Where they were unable to recall specific facts they did not guess

or provide conjecture but referenced their own notes and were forthright about the limits of their recollection. The documentary evidence submitted by the landlord is clear, legible and appears to be consistent with the other documents in evidence.

In comparison I found the tenant's testimony lacked an air of believability. Their testimony lacked details and contradicted itself at points. The tenant did not answer questions put to them and gave evasive responses. Furthermore, in the area of the document where the tenant is given the opportunity to give reasons for why they disagree with the assessment of the rental unit condition the tenant did not provide any written reasons. If the tenant had objected to the landlord's assessment it is reasonable to expect that the tenant would have made some comments on the inspection report. The tenant failed to do so. I find that the tenant's testimony that their version of the condition inspection report is the unaltered true version to lack an air of reality.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

I accept the landlord's evidence that the rental unit was in a state of disrepair at the end of the tenancy. I find that the version of the condition inspection report submitted by the landlord which shows the tenant agreed that they are responsible for the ceiling, floor, bathroom and painting to be an accurate record of the parties intention at the end of the tenancy. Therefore, I find that the landlord is entitled to recover the amount for these items in the total amount of \$8,200.00.

I accept the evidence of the parties that the tenant obtained an extra fob during the tenancy which was not returned. I find that the tenant breached the Act by failing to return all keys and accordingly the landlord is entitled to a monetary award of \$200.00 for this item.

I accept the evidence that the tenant incurred strata fines by their behaviour during the tenancy. I accept the evidence that the total of the fines is \$500.00 and issue a monetary award in that amount payable to the landlord.

As the landlord's application was successful the landlord may recover the \$100.00 filing fee for their application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$775.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

I grant the landlord a monetary award in the amount of \$8,225.00.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$8,225.00. The tenant must be served with this Order as soon as possible. Should the tenant 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: September 20, 2018

Residential Tenancy Branch