



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL - S

Introduction

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

- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted via teleconference and was attended by the landlord. No one was in attendance on behalf of the tenant. The landlord submitted documentary evidence that the tenant was served notice of this application and this hearing by registered mail on March 8, 2018. Canada Post tracking information was submitted in the landlord's evidence that shows that the item was unclaimed by the tenant. Based on the submissions of the landlord, I find the tenant was served in accordance to section 89 of the *Act*. Therefore, I continued in the absence of the tenant.

Issue to be Decided

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

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's undisputed testimony is as follows. The tenancy began on March 1, 2015 and ended on January 31, 2018. The tenant was obligated to pay \$850.00 per month and at the outset of the tenancy the tenant paid a \$425.00 security deposit which the landlord still holds. The landlord testified that he and the tenant conducted a written condition move in inspection. The landlord testified that the tenant left the unit dirty and damaged at move out. The landlord testified that he gave the tenant three opportunities to attend and participate in the move out inspection, one of which was in writing. The landlord testified that the tenant did not attend at any time. The landlord testified that the tenant dropped off the keys and his forwarding address

on February 7, 2018. The landlord testified that he wanted to resolve the matter with the tenant but the tenants' phone was disconnected. The landlord requests to retain the security deposit and the recover the filing fee.

Analysis

Section 36 of the Act addresses the matter before me as follows:

Consequences for tenant and landlord if report requirements not met

- 36** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and
 - (b) the tenant has not participated on either occasion.

Based on the undisputed evidence and documentation before me, I find that the tenant has extinguished their right to their deposit, accordingly; the landlord is entitled to retain the security deposit. The landlord is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$525.00. I order that the landlord retain the \$425.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$100.00. This order may be filed in the Small Claims 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 21, 2018

Residential Tenancy Branch