



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPITAL REGION HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

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

- a monetary order for damage to the rental unit and 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 the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 97 minutes. The landlord's three agents, "landlord KKU," "landlord TB" and "landlord KKE," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's three agents confirmed that they had permission to speak on behalf of the landlord company named in this application at this hearing (collectively "landlord").

Landlord KKU testified that the tenant was served with the landlord's application for dispute resolution hearing package on February 8, 2018, by way of registered mail. The landlord provided a Canada Post receipt and tracking number with this application. Landlord KKU stated that the mail was sent to the forwarding address provided by the tenant in an email, dated January 31, 2018, which the landlord provided with this application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on February 13, 2018, five days after its registered mailing at a forwarding address provided by the tenant.

Issues to be Decided

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

Is the landlord entitled to retain the tenant's security deposit?

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

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord's three agents, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Landlord KKU testified regarding the following facts. This tenancy began on December 1, 2014 and ended on October 31, 2017. Monthly rent of \$623.00 was payable on the first day of each month. A security deposit of \$375.00 was paid by the tenant and the landlord continues to retain this deposit in full. Both parties signed a written tenancy agreement. A move-in condition inspection report was completed with the tenant, while a move-out condition inspection report was completed without the tenant. The tenant provided a notice to move out by October 31, 2017 but left the door open for a few days after leaving the unit empty. The landlord then determined the unit to be abandoned. The landlord had written permission from the tenant to keep her entire security deposit of \$375.00 by way of an email, dated February 2, 2018. The tenant provided a written forwarding address to the landlord in an email, dated January 31, 2018. The landlord filed this application to retain the tenant's security deposit on February 6, 2018.

The landlord seeks a monetary order of \$12,049.14 for various damages to the rental unit, plus the \$100.00 application filing fee.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;

2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Residential Tenancy Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Overall, I found the landlord's evidence to be confusing and difficult to follow. This hearing lasted 97 minutes because all three agents were asking each other questions and trying to figure out their own case, since they were not adequately prepared for this hearing. The landlord's three agents all testified during this hearing, while only one of them (landlord TB) was involved in the move-out condition inspection and report. He indicated that his report was "self-explanatory" as were the small photographs he took that did not properly represent the condition of the unit that he said he saw when he performed the move-out inspection. Two of the other landlord agents (landlord KKU and landlord KKE) indicated what they thought the landlord's usual practice and procedure was in hiring trades to perform repairs but did not have actual knowledge of the landlord's claims, stating that the property manager that specifically dealt with these repairs was out of town. When I asked the dates that the work was performed, they did not know. They claimed that the invoice dates, some of which were months after the tenant vacated the rental unit, were not necessarily the dates when the work was performed. According to landlord KKU and landlord KKE, the landlord's assistant wrote in figures on the estimates provided by professionals. These figures were recorded by the assistant using her own calculations and taxes without providing proper references.

The landlord did not provide a copy of a Notice of Final Opportunity to Conduct a Move-Out Condition Inspection, but all three landlord agents said that one is usually issued in the landlord's practice. The landlord communicated with the tenant over email repeatedly about her forwarding address and the move-out damages they were claiming and asking for written permission to keep her security deposit. Yet, they did not email the tenant about conducting a move-out condition inspection or report, instead deciding that the rental unit was abandoned despite the fact that the tenant gave notice to vacate on October 31, 2017. Therefore, the tenant did not have an opportunity to participate in a move-out condition inspection and report with the landlord.

I dismiss the landlord's entire application for \$12,049.14 without leave to reapply. The landlord failed part 3 of the above test by failing to provide receipts for any of the repairs that were supposedly paid by them. Landlord KKE said that she had receipts in front of

her during the hearing but she failed to provide copies, despite the fact that the landlord had ample time to do so from the time this application was filed on February 6, 2018 and this hearing date of September 4, 2018, almost seven months later. The landlord only provided confusing invoices, with their own writing and calculations all over them, without knowing the dates the work was actually done.

The landlord continues to hold the tenant's security deposit of \$375.00. Over the period of this tenancy, no interest is payable on the tenant's security deposit. I order the landlord to retain the tenant's entire security deposit in the amount of \$375.00. The tenant provided written permission to the landlord to keep it in an email, dated February 2, 2018, for chargebacks involving some floods during the tenancy. I find that the landlord is not entitled to retain any more than the security deposit because it failed to provide receipts for the floods and other chargebacks.

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

Conclusion

I order the landlord to retain the tenant's entire security deposit in the amount of \$375.00.

The remainder of the landlord's application 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: September 05, 2018

Residential Tenancy Branch