



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the landlord's 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 female 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.

At the outset of the hearing, the female tenant confirmed that she had received the landlord's hearing package. As the female tenant did not raise any issues regarding service of the application or the evidence, I find that the female tenant was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

On March 16, 2018, the landlord applied for dispute resolution naming two tenants as respondents. During the hearing the landlord testified that on March 20, 2018 she forwarded the landlord's application for dispute resolution hearing package via registered mail to the male tenant which was returned to her unclaimed. The address used for service was the forwarding address provided by the female tenant. Section 90 of the *Act* deems a party served with documents five days after mailing even if the recipient does not pick up the mail. Based on the testimony of the parties and in accordance with sections 89 and 90 of the *Act*, I find that the male tenant has been deemed served with the application March 25, 2018, the fifth day after its registered mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

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 tenants?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on September 1, 2017 on a fixed term until August 31, 2018. Rent in the amount of \$2,400.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$1,200.00 at the start of the tenancy, which the landlord still retains in trust. The tenants also remitted a pet deposit in the amount of \$1,200.00, which was returned to the tenants on March 17, 2018. The tenants vacated the rental unit on March 1, 2018 and based on the documentary evidence, the tenants' agent provided a forwarding address this same date.

The tenant provided affirmed testimony that she did not receive a copy of the move-out inspection report. The landlord could not confirm or deny this as she had a property manager conduct the move-out inspection. The property manager was not present for the hearing.

The landlord is seeking authorization to retain the security deposit in the amount of \$1,200.00 to offset a damage claim. The landlord testified that because snow covered the ground at the time of the move-out condition inspection, considerable burn marks to the outdoor deck surface were not noted. The landlord testified that it was not until the snow melted that burn marks were observed. The landlord has obtained three estimates to replace the deck surface, ranging from \$1,920.00 to \$3,592.00. The landlord seeks \$2,000.00 to cover the cost of replacing the deck surface.

The tenant did not dispute the damage occurred during the tenancy; she disputed that she caused the damage.

Analysis

Section 36 of the *Act* establishes that when a landlord fails to provide a copy of the condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. Because the tenant claims the landlord in this case did not provide a copy of the move-out inspection report, and the landlord failed to prove otherwise, the landlord lost her right to claim the security deposit for damage to the property.

The landlord was therefore required to return the security deposit to the tenant within 15 days of the later of the two of the tenancy ending and having received the tenants' forwarding address in writing. The landlord received the tenants' forwarding address on March 1, 2018 but did not return the security deposit within 15 days of that date.

Because the landlord's right to claim against the security deposit for damage to the property was extinguished, and she failed to return the tenants' security deposit within 15 days of having received their forwarding address, section 38 of the *Act* requires that the landlord pay the tenants double the amount of the 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. In this case the landlord must prove the following four elements:

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's guest in violation of the *Act*, *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

Section 37 of the *Act*, establishes that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Upon review of the photographs and undisputed testimony of the landlord I am satisfied that the tenants left the rental unit contrary to section 37(2) of the *Act*. Accordingly, I

find the landlord is entitled to recover the estimated cost to repair the deck in the submitted amount of \$2,000.00.

In summary, the landlord owes the tenants double the amount of the security deposit in the amount of \$2,400.00 and the tenants owe the landlord \$2,000.00 for the damage claim. Setting off the amounts owed ($\$2,400.00 - \$2,000.00 = \$400.00$) I must order, pursuant to section 67 of the *Act*, that the landlord pay the tenants the sum of \$400.00.

As the landlord was not entirely successful in her application, I do not award compensation for the filing fee.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$400.00.

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 11, 2018

Residential Tenancy Branch