



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DUTTONS & CO. REAL ESTATE LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On July 7, 2018, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to retain the security deposit in satisfaction of this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing; however, the Tenants did not make an appearance. All in attendance provided a solemn affirmation.

The Landlord advised that the Notice of Hearing package and evidence was served to the Tenants by registered mail on July 13, 2018 (the registered mail tracking number is on the first page of this decision). Based on the undisputed testimony, and in accordance with Sections 89 or 90 of the *Act*, I am satisfied that the Tenants received the Notice of Hearing package and evidence.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to monetary compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on June 1, 2017 and that the tenancy ended when the Tenants vacated the rental unit on July 3, 2018. Rent was established at \$1,395.00 per month, due on the first of each month. A security deposit of \$697.50 and a pet damage deposit of \$350.00 were also paid.

The Landlord advised that the water for the whole rental building was shut off on April 22, 2018 and all the tenants of the building were asked to make sure their taps were turned off. When the water was turned back on, another tenant noticed that there was a flood and notified the strata. Upon investigation, it was determined that the Tenants left their tap on and when the water to the building was restored, the Tenants' sink overflowed, causing the flood. He provided documentary evidence of a plumber entering the rental unit on April 23, 2018 corroborating that the Tenants were responsible for the flood. The Landlord is seeking compensation in the amount of **\$500.00** for the cost of the deductible to rectify the flooding issue.

He advised that a forwarding address in writing was provided on July 3, 2018. As well, he indicated that he returned the security deposit and pet damage deposit to the Tenant, less the \$500.00, within 15 days of receiving the forwarding address in writing.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, the Landlord complied with Section 38 of the *Act* when he returned the deposits and made a claim to keep the portion he was seeking compensation for, within 15 days of receiving the forwarding address in writing. As the Landlord has complied with the *Act*, I am satisfied that the doubling provisions do not apply in this instance.

With respect to the Landlord's claim for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is

claiming for compensation, “It is up to the party who is claiming compensation to provide evidence to establish that compensation is due”, that “the party who suffered the damage or loss can prove the amount of or value of the damage or loss”, and that “the value of the damage or loss is established by the evidence provided.”

When reviewing the totality of the evidence before me, I do not find there to be any contrary evidence provided to refute the Landlord’s position. As such, I am satisfied that the Landlord has demonstrated that the Tenants were negligent and responsible for the flooding issue. As such, I am satisfied that the Landlord has established a claim in the amount of **\$500.00**. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain this amount from the security deposit in satisfaction of the debts outstanding, which he has already done.

As the Landlord was successful in his application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$100.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: November 29, 2018

Residential Tenancy Branch