



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 and loss pursuant to section 67;
- authorization to retain the security deposit for this tenancy pursuant to section 38; and
- authorization to recover the filing fees from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As both parties were present service of documents was confirmed. The tenant confirmed receipt of the landlord's application and evidence. The landlord confirmed receipt of the tenant's evidence. Based on the undisputed testimonies I find that each party was 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 retain the security deposit for this tenancy?

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

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in March, 2017 and ended on April 30, 2018. The monthly rent was \$2,500.00. A security deposit of \$1,250.00 was paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at either the start or the end of the tenancy. The tenants provided a forwarding address to the landlord on or about May 5, 2018.

The landlord submits that there was water damage caused to the unit below the rental suite in February and March, 2018. The landlord believes that the damage originated due to the tenants and seeks a monetary award for the cost of repairs. The landlord submitted into written evidence two invoices for the work performed. The landlord testified that he believes the professionals who attended would testify that the tenants caused the water damage.

The tenant disputes that the water damage was caused by their action or negligence. The tenant testified that they believe they have filed an application for dispute resolution of their own but was unable to provide a file number or evidence to show that they had filed an application with the Residential Tenancy Branch. The tenant testified that they had not provided any authorization that the landlord may retain any portion of the security deposit for this tenancy.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

I accept the parties' evidence that the tenant provided a forwarding address on or about May 5, 2018. The landlord filed their application for dispute resolution on May 17, 2018. I find that the landlord filed their application within the 15 days of receiving the forwarding address as required under the *Act*.

The parties have testified that no condition inspection report was prepared at any time during this tenancy. Section 24 of the *Act* outlines the consequences to the landlord if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Furthermore, section 38 (5) of the *Act* provides that the landlord's right to claim for damages or obtain the tenant's written consent to retain the security deposit for damages is extinguished when the landlord does not complete a condition inspection report at the start of the tenancy.

I accept the undisputed evidence of the parties that no condition inspection report was prepared at any time for this tenancy. Accordingly, I find that the landlord has extinguished their right to claim against the security deposit for damages to the rental unit. I order that the security deposit of \$1,250.00 be returned to the tenants.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find that the landlord has not provided sufficient evidence to meet their evidentiary burden. While I accept the landlord's evidence that there was some water damage and they incurred costs for repairs I find that there is insufficient evidence to show that the damage was caused by the tenants. The landlord testified that he has been told by the professionals who attended at the site that the most likely cause was the tenants but I find that hearsay evidence is not reliable. The landlord did not submit sworn statements nor did they call any witnesses. The landlord testified that they have the phone numbers for the witnesses but they did not call in to the teleconference hearing. Pursuant to Rule of Procedure 7.19 parties are responsible for having their witnesses available at the hearing.

I find that the photos and video evidence submitted by the landlord to be insufficient to show that the water damage to the neighboring unit was caused by the tenant's actions or negligence. Consequently, I dismiss the landlord's application.

Conclusion

I issue a monetary award in the tenants' favour against the landlord in the amount of \$1,250.00. The tenants are provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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 6, 2018

Residential Tenancy Branch