



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 tenants' 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 tenants pursuant to section 72.

Tenant SN attended the hearing and confirmed she had authority to speak on behalf of tenant MN, who was not present. The landlord attended the hearing. Each party was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

During the hearing, tenant SN testified that the landlord incorrectly spelled her first name in the application. Accordingly, I have amended the landlord's application to reflect the spelling provided by the tenant during the hearing.

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 August 1, 2017 on a fixed term until July 31, 2108. Rent in the amount of \$1,300.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$650.00 at the start of the tenancy, which the landlord still retains in trust. Tenant SN vacated the unit on July 12, 2018 whereas tenant MN vacated the unit on July 29, 2018.

The landlord testified that she received the forwarding address of tenant SN on August 3, 2018 and the forwarding address of tenant MN on August 30, 2018.

The landlord seeks compensation in the amount of \$290.35, including the following;

Item	Amount
Cleaning	\$177.49
Cleaning	\$100.00
Window Lock	\$12.86
Total Claim	\$290.35

The landlord testified that tenant MN agreed to the above deductions from the security deposit as evidenced by her signature on the move-out inspection report. The landlord also seeks to recover the filing fee from the tenants in the amount of \$100.00.

In reply, tenant SN testified that she was unaware of the condition of the unit at the time tenant MN vacated. She testified that prior to her vacancy she cleaned the unit and during her tenancy she never noticed a broken window lock.

The parties agreed that a written inspection report was not provided to the tenants at move-in and that only tenant MN attended the move-out inspection.

Analysis

Pursuant to Residential Tenancy Policy Guideline #13, co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Upon review of the submitted tenancy agreement, I am satisfied that tenants SN and MN were co-tenants. Because tenants SN and MN entered into a fixed term tenancy and tenant SN

moved out before the end of the fixed term, tenant SN remains responsible for any damages relating to the tenancy.

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 onus is on the landlord to prove, on a balance of probabilities, 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 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.

Subsection 37(2) of the *Act* specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Based on the testimony of the landlord, the condition inspection report signed by tenant MN, the photographs and the invoices before me, I find that the co-tenants left the rental unit contrary to section 37(2) of the *Act*. Accordingly, I find that the landlord is entitled to compensation in the amount of \$290.35 for cleaning and the window lock.

Under section 38 of the *Act*, when a landlord fails to provide a copy of a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. In this case, the landlord applied to keep the security deposit in partial compensation of monetary claims for damage to the property as well as for cleaning costs. As the landlord's claim was not only for damage to the property, I find that the landlord complied with the requirement under section 38 to make an application to keep the deposit. Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address to file an arbitration application claiming against the deposit. In this case, the landlord filed an application to retain the deposit within the fifteen days allowable under the *Act*.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee for a total award of \$390.35.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$390.35 of the \$650.00 security deposit in full satisfaction of the monetary award. The tenants are entitled to the remaining \$259.65 security deposit balance.

Conclusion

The landlord is entitled to \$390.35. I order the landlord to retain \$390.35 from the security deposit in full compensation of this amount. The tenants are entitled to the return of the balance of the security deposits. I therefore grant the tenants a monetary order for the balance of the deposits, in the amount of \$259.65.

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 09, 2018

Residential Tenancy Branch