



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 Application for Dispute Resolution by the Landlords filed under the *Residential Tenancy Act* (the “Act”), for a monetary order for damages to the rental unit, for permission to retain the security deposit, and for the return of their filing fee. The matter was set for a conference call.

The Landlord and his Representative (the “Landlord”) and the Tenant his Representative (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Landlord and the Tenant testified that they received each others documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damages to the rental unit?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

Both parties testified that the tenancy began on February 1, 2017, rent was in the amount of \$1,100.00 and was to be paid by the first day of each month. The Parties

also agreed that at the outset of the tenancy, the Tenant paid a \$550.00 security deposit. Both parties agreed that the Tenant moved out of the rental unit on June 30, 2018, in accordance with the *Act*. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they had not conducted the move-in inspection with the Tenants at the beginning of the tenancy. The Landlord testified that they had conducted a move-out inspection with the previous renter and just transferred the information from that document to a move-in inspection for this Tenant. The Landlord and Tenant also testified that the previous renter had not finished moving out of the rental unit before the Tenant had started moving in.

The Parties also agreed that the Landlord was in receipt of the Tenant's written forwarding address on July 20, 2018.

Both parties agreed that the move-out inspection had been completed with both the Landlord and the Tenant present. The Landlord provided a copy of the move-in/move-out inspection report into documentary evidence.

The Landlord testified that the Tenant returned the rental unit to him uncleaned. The Landlord testified that he had to clean the carpets twice, they were so dirty. The Landlord also testified that the Tenant had left the window tracks and the kitchen cupboard shelves dirty. The Landlord is requesting \$250.00 for cleaning the carpets in the rental unit twice and \$100.00 of additional cleaning that was needed at the end of the tenancy.

The Tenant testified that he had fully cleaned the rental unit when he left, including cleaning the carpets. The Tenant testified that the Landlord had not indicated to him, or on the move-out inspection report, that additional cleaning was required.

The Landlord testified that the Tenant had damaged the doorbell and that it needed to be replaced at the end of the tenancy. The Landlord testified that the Tenant had allowed a battery to expire in the doorbell, which then corroded so badly that the doorbell was unrepairable. The Landlord is requesting \$30.18 to recover his costs to replace the doorbell. The Landlord submitted a receipt for the new doorbell into documentary evidence.

The Tenant testified that the doorbell had stopped working at least six months ago and that he had called the Landlord to repair the doorbell. The Tenant testified that when the Landlord arrived to repair the doorbell, he had become mad that it was not working and tore it off the wall and told the Tenant that he had to repaint the area of the wall where the doorbell had been. The Tenant testified that he painted the area where the doorbell had been as the Landlord had requested.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the parties entered into a tenancy, beginning on February 1, 2017, in accordance with the *Act*.

I accept the testimony of both parties that the move-in inspection had not been completed in accordance with the *Act*. Section 23 of the *Act* states the following:

Condition inspection: start of tenancy or new pet

23(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (3), and
- (b) the tenant does not participate on either occasion.

I find that the Landlord was in breach of section 23 of the *Act* when he did not ensure that the move-in inspection had been completed in accordance with the *Act*.

Consequences for tenant and landlord if report requirements not met

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

- (a) does not comply with section 23 (3) *[2 opportunities for inspection]*,
- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Consequently, I find that the Landlord had extinguished his right to claim against the security deposits for damage caused during this tenancy.

I have reviewed the Landlord's application for this hearing, and I find that the Landlord has made a claim against the deposit due to damages to the rental and that he has retained the security deposit pending the outcome of this hearing.

Return of security deposit and pet damage deposit

38 (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

As I have previously found that the Landlord had extinguished his right to claim against the deposits for damages, I find that the Landlord is in breach of the *Act* by holding on to the security deposit pending the results of their application.

Section 38(1) of the *Act* gives a landlord, 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the security deposit or repay the security deposit to the tenant. As the Landlord has extinguished his right to claim against the deposits, I find that the Landlords had until July 5, 2018, to comply with section 38(1) of the *Act* to repay the deposit in full to the Tenant, which he has not done.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return the deposit, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

- 38 (6)** If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenant is entitled to the return of double the security deposit, in the amount of \$1,100.00.

In regards the Landlord's claim for compensation due to damage to the rental unit. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and

- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.”

In order for me to determine if the Tenant damaged the rental property during their tenancy, the Landlord needs to prove that the condition of the rental unit has changed during the tenancy.

The move-in/move-out inspection is the official document that represents the condition of the rental unit at the beginning and the end of a tenancy. However, in this case, it has already been determined that this document was not completed in accordance with the *Act*. Therefore, I will not consider the move-in/move-out inspection report submitted into evidence by the Landlord in my decision. In the absence of that document, I must rely on verbal testimony regarding the condition of the rental unit at the beginning and the end of this tenancy.

Throughout the hearing, the parties to this dispute offered conflicting verbal testimony regarding the condition the rental unit at the beginning and end of this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

As this is the Landlord’s application, I have carefully reviewed the documentary evidence provided into evidence by the Landlord, and I find that there is no evidence before me that shows the condition of the rental unit at the beginning or end of this tenancy. As there is no documentary evidence to out weight the contradictory verbal testimony of the parties, in this case, I find that the Landlord has not provided sufficient evidence to prove that the condition of the rental unit had changed during this tenancy or that the Tenant had damaged the rental unit. Therefore, I dismiss the entirety of the Landlord’s claim for the recovery of his costs and for compensation due to damage to the rental unit.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in his application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the Landlord's claim without leave to reapply.

I find that the Landlord breached section 38 of the *Act*, and I order the Landlord to return the doubled security deposit, in the amount of \$1,100.00 to the Tenants within 15 days of receiving this decision.

I grant the Tenant a conditional **Monetary Order** in the amount of **\$1,100.00**, to be served on the Landlord if he does not comply as ordered. The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order. 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: December 3, 2018

Residential Tenancy Branch