Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   MNDL-S, FFL

Introduction

This hearing was scheduled in response to 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 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 tenant confirmed that she had received the landlord's application and evidence. The tenant confirmed that she did not provide any documentary evidence for the hearing. As the tenant did not raise any issues regarding service of the application or the evidence, I find that the tenant was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Clarification of Landlord's Application

During the hearing the landlord testified that he applied for a claim for loss of rent in the amount of $1,700.00. Although the landlord applied for compensation for damage in the amount of $1,700.00, his monetary order worksheet did not specify a loss of rent but instead listed monetary amounts for other damages totaling $971.14. Despite this ambiguity, upon reflection of the application I have concluded that the landlord's application for $1,700.00 was for loss of rent and the monetary order worksheet was completed in an effort to prove damages resulted in a loss of rent.

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 tenant's security deposit in partial satisfaction of the monetary order requested?

Is the landlord authorized to recover the filing fee for this application from the tenant?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on February 1, 2016 on a month-to-month basis. Rent in the amount of $1,700.00 was payable on the first of each month. The tenant remitted a security and pet deposit in the total amount of $1,700.00 at the start of the tenancy, which the landlord still retains in trust. The parties agreed that a written inspection was conducted at move-in and a copy of the report was provided to the tenant.

On June 14, 2018 the tenant provided written notice to the landlord that she would vacate the rental unit by July 31, 2018.

On July 31, 2018 the tenant verbally authorized the landlord to retain $100.00 of her security deposit in exchange for vacating a day late. On August 1, 2018, the landlord conducted the condition inspection report with the tenant's adult son who was acting as her agent. The tenant was present but refused to sign the condition inspection report.

The landlord testified that the unit was left damaged and because of this, the landlord was unable to immediately re-rent the unit. The landlord seeks compensation in the amount of $1,700.00 for loss of August rent. The landlord also seeks to recover the $100.00 filing fee from the tenant and to retain all or a portion of the tenant's security deposit in satisfaction of the monetary order requested.

During the hearing, the tenant acknowledged the unit sustained some damage from her tenancy in the form of wall damage in the living room from her dog, paint residue left on walls in a bedroom, lime scale buildup on a shower and toilet, and one missing lightbulb.

Analysis

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts

and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

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. 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.

When premises cannot be immediately re-rented due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord must mitigate the loss by completing the repairs in a timely manner. Based on the condition inspection reports, receipts and testimony of the parties I am satisfied the landlord had to have the unit repaired and cleaned before it could be re-rented and did so in a timely manner. I therefore find the landlord has established his claim to recover a loss of rent for August. I find the landlord is entitled to $1,700.00, the amount indicated on the tenancy agreement.

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 $1,800.00.** In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of $1,700.00 in partial satisfaction of the monetary award and I grant an order for the balance due $100.00.

Conclusion

I issue a monetary order in the landlord's favour in the amount of $100.00.

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: December 19, 2018

_____
Residential Tenancy Branch