



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent and for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord and the tenant 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. The landlord had an assistant attend the hearing to provide support.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant details of the respective submissions and/or arguments are reproduced here.

The tenant acknowledged receipt of the Application for Dispute Resolution (Application) and the landlord's evidence while the landlord acknowledged receipt of the tenant's evidence. In accordance with sections 88 and 89 of the *Act*, I find that the parties are duly served with these documents.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent and for damage to the rental unit?

Is the landlord entitled to retain all or a portion of the tenant's security deposit?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

Written evidence was provided that this tenancy began on June 01, 2016, with a monthly rent of \$3,100.00, due on the first day of each month. The landlord confirmed that they currently retain a security deposit in the amount of \$1,550.00.

The landlord also provided in evidence:

- A copy of an invoice dated February 05, 2018, for cleaning the rental unit in the amount of \$367.50;
- A copy of an estimate for repairs to the rental unit in the amount of \$3,990.00;
- Pictures of the rental unit when the landlord first purchased the premises;
- A copy of an explanation of the landlord's claim which states that the tenant did not give proper notice to move out of the rental unit and that they are seeking to be compensated for cleaning, repairs and unpaid rent.

The tenant provided the following evidence:

- A copy of a text message exchange between the landlord and the tenant in which the landlord asks where the house keys are and the tenant indicates that he was waiting until 10:30 (p.m.) for someone to do an inspection; and
- A copy of a text message exchange between the landlord and the tenant in which the tenant gives the landlord their forwarding address and the landlord responds that they cannot return the security deposit due to damage to the rental unit;

The landlord submitted that the tenant owed \$3,100.00 for February 2018 unpaid rent as she only received notice of the tenant moving in January 2018 for the tenancy to end at the end of that same month. The landlord stated that they are claiming for cleaning costs in the amount of \$367.50. The landlord admitted that the other quote is an estimate for repairs and that they have not paid to have the work completed. The landlord confirmed that they did not have a condition inspection report completed at the beginning or at the end of this tenancy. The landlord stated that they were given 15 days from the date of a previous hearing to make an Application to keep the security deposit.

The tenant confirmed that they gave notice in January 2018 to move out at the end of January 2018 and did not pay the rent for February 2018. The tenant stated that they felt justified to end the tenancy early as it was their understanding that the downstairs unit would not have regular occupants and the promise was broken. The tenant testified that they sent their forwarding address to the landlord by text on February 05, 2018, and that they were not able to find this evidence for the previous hearing.

The tenant stated that they waited for the landlord's friend until late at night to do a condition inspection before moving out but that the friend never appeared and no

condition inspection was completed. The tenant submitted that the landlord did not make an Application within 15 days of receiving the tenant's address.

Analysis

Pursuant to 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. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

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.

Section 45 of the Act establishes that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement

I find that the tenant confirmed that they only gave notice in January 2018 to move out that same month and did not provide any evidence to demonstrate that they were entitled to withhold it or end the tenancy early under the *Act*. Therefore, I find that the tenant's notice is in violation of the Act and the landlord is entitled to a monetary award for the unpaid rent owed for February 2018 in the amount of \$3,100.00.

Section 24 (2) of the *Act* establishes that the right of a landlord to claim against a security deposit for damage to the rental unit is extinguished if, at the beginning of the tenancy, the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 35 of the *Act* states that, at the end of a tenancy, the landlord must offer the tenant at least two opportunities to inspect the condition of the rental unit with the tenant and complete a condition inspection report in accordance with the Residential Tenancy Regulations (the *Regulations*) before a new occupant occupies the rental unit or after the day the tenant ceases to occupy the rental unit or on another mutually agreed day.

Section 17 of the *Regulations* provides that a landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times, and that if the tenant is not available at the first times offered, the tenant may propose an alternative time to the landlord. The *Regulations* goes on to state that the landlords must consider the tenants' proposed time before proposing a second opportunity to the tenants, different from the first opportunities described above, by providing the tenants with a notice in the approved form.

Section 36 (2) of the *Act* establishes that, unless the tenant has abandoned the rental unit, the right of a landlord to claim against a security deposit for damage to the rental unit is extinguished if, having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Having reviewed the evidence and testimony, I find that the landlord has not completed a condition inspection with the tenant at the beginning or the end of the tenancy and did not provide any evidence or testimony that they attempted to do one. For this reason I find that the landlord is not able to establish the condition of the unit prior to and after the tenancy which would establish that they suffered any loss or damage to the rental unit beyond wear and tear. I further find that the landlord has not actually suffered a loss for any completed repairs as they only provided an estimate and confirmed that they have not paid for any repairs to the rental unit.

I accept the tenant's testimony and evidence that they were of the understanding that the landlord was sending a representative to do a walkthrough and that the tenant waited for a long time but that the representative never appeared. I find that the landlord is not able to establish that the rental unit needed to be cleaned as they did not do a condition inspection with the tenant at the end of the tenancy to establish the cleanliness of the rental unit.

For the above reasons I find that the landlord has not provided sufficient evidence to establish that they have suffered a loss for any damage to the rental unit. Therefore, the landlord's Application for a monetary award for damage to the rental unit is dismissed, without leave to reapply.

Section 38 (1) of the *Act* stipulates that within 15 days of either the tenancy ending or the date the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit. I find that the landlord received the tenant's forwarding address on February 05, 2018. As the tenant did

not agree in writing for the landlord to retain any amount from their security deposit, I find the landlord had until February 20, 2018, to obtain the tenant's written consent to keep the security deposit or to file an application for dispute resolution in accordance with section 38 of the *Act*.

I find that the landlord filed their Application on June 08, 2018, which is more than the 15 days from receiving the tenant's forwarding address as permitted pursuant to section 38 (1). I further find that there is no evidence provided to show that the landlord had the tenant's agreement in writing to keep the security deposit. For the above reason, the landlord's Application to retain all or a portion of the security deposit is dismissed, without leave to reapply.

Although the landlord states that they were given more time in a previous Decision, I find that the Arbitrator dismissed that application with leave to reapply and made no orders to conclusively deal with the security deposit. I further find that the landlord had admitted to getting a text on February 3rd or 4th of 2018 about the security deposit being sent to the tenant's work and that the tenant's evidence demonstrates that they had actually provided an address to the landlord had acknowledged at the time. I find that the landlord had the tenant's forwarding address on February 05, 2018, and that they were obligated to respond accordingly pursuant to section 38 of the *Act*.

Section 38 (6) of the *Act* stipulates that a landlord who does not comply with section 38 (1) of the *Act* may not make a claim against the security deposit or any pet damage deposit and must pay double the amount of the security deposit, pet damage deposit or both, as applicable.

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. Pursuant to sections 38 (6) and 67 of the *Act*, I find that the landlord must pay the tenant double the security deposit as they have not complied with section 38 (1) of the *Act*.

Therefore, I find that the tenant is entitled to a monetary award of \$3,100.00, which is comprised of double the security deposit (\$1,550.00 X 2) plus applicable interest. There is no interest payable over this period.

Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's doubled security deposit in the amount of \$3,100.00 in full satisfaction of the unpaid rent owed by the tenant for February 2018 in the amount of \$3,100.00.

As the landlord was partially successful in their application in recovering unpaid rent, they may recover \$33.00 of the filing fee related to this application.

Conclusion

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$33.00 for the partial recovery of the filing fee. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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 13, 2018

Residential Tenancy Branch