



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S MNDL-S FFL

Introduction

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

- A monetary award for damages, loss and unpaid rent pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present service of documents was confirmed. The tenant confirmed receipt of the landlord's application dated August 14, 2018 and evidentiary materials. The landlord confirmed receipt of the tenant's evidence. Based on the testimonies of the parties 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 from the tenant?

Background and Evidence

While I have turned my mind to all the evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

This tenancy began in February, 2018 and ended in July, 2018 by way of an Order of Possession issued by an adjudicator at a previous dispute resolution proceeding under the file number on the first page of this decision. The monthly rent was \$1,700.00. A security deposit of \$850.00 was paid at the start of the tenancy and is still held by the landlord. The parties participated in a condition inspection at both the start and end of the tenancy.

The landlord claims the amount of \$561.75 for the cost of cleaning and maintenance required after the tenancy ended. The landlord submitted some receipts for the expenses and testified as to the condition of the suite.

The landlord said that because the tenant did not vacate the suite in a timely manner they were unable to get a new occupant in for August 1, 2018 for the full rental amount. The landlord testified that they were able to find a new occupant for the month of August, 2018 but were only able to charge \$500.00 rent for that month. The landlord seeks a monetary award of \$1,200.00 for the loss of rental income for August, 2018.

The tenant disputes the landlord's evidence and testified that the rental unit was left in an acceptable condition. The tenant questioned the dates of the receipts submitted by the landlord and the veracity of the expenses claimed. The tenant testified that they have not given written 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 and pet damage 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 and pet damage deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the deposits as per section 38(4)(a).

I accept the evidence of the parties that this tenancy ended July 31, 2018 and the tenant had provided a forwarding address to the landlord prior to that date. The landlord filed their application for authorization to retain the security deposit on August 14, 2018. As such, I find that the landlord was within 15 days of July 31, 2018 as set out in the *Act* to apply to retain the deposit.

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 accept the landlord's evidence that they were unable to find a new occupant to take possession of the rental unit for August, 2018 at the full market rate and had to reduce the rent for the month from \$1,700.00 to \$500.00. I accept the evidence of the landlord that this was caused as the tenant failed to vacate the rental unit in a timely manner after being served with an Order of Possession. Accordingly, I find that the landlord is entitled to a monetary award in the amount of \$1,200.00 for the loss of rental income for August, 2018.

I accept the landlord's evidence that the rental suite required some cleaning and work after the tenancy ended. While the tenant disputes the extent of the work done I find that the landlord has submitted sufficient evidence in the condition inspection report completed that some work was necessary. I find that the landlord's expenses and description of work to be reasonable under the circumstances.

I find that the tenant's submissions consist of unfounded accusations that the landlord is behaving maliciously and details about the relationship between the parties that are irrelevant to the matter at hand.

I find that the landlord has met their evidentiary burden of showing on a balance of probabilities that they have suffered damage and loss as a result of the tenant and the monetary amount of those losses. Accordingly, I issue a monetary award in the landlord's favour in the amount of \$1,761.75.

As the landlord's application was successful the landlord may recover their filing fee of \$100.00 from the tenant.

In accordance with section 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$850.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,011.75 under the following terms:

Item	Amount
Cleaning Costs	\$561.75
Loss of Rental Income	\$1,200.00
Filing Fees	\$100.00
Less Security Deposit	-\$850.00
Total Monetary Order	\$1,011.75

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