



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT MNDCL-S MNDL-S FFL

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* ("Act").

The landlord applied for:

- a Monetary Order for damages and loss pursuant to section 67;
- authorization to retain the security and pet damage deposit for this tenancy pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of all or a portion of the security and pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's spouse BB (the "landlord") primarily spoke on behalf of the landlord.

As both parties were present service of documents was confirmed. The tenant confirmed receipt of the landlord's application and evidence. The landlord confirmed receipt of the tenant's application and evidence. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Rule 2.10 of the Residential Tenancy Branch Rules of Procedure grants me the authority to join applications for dispute resolution and hear them at the same hearing. I was originally scheduled to only hear the landlord's application but as the parties consented to the matters being combined and as I find that the applications pertain to the same issue of the security and pet damage deposit and the same facts would be considered I ordered that the matters be combined.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damages and loss arising out of this tenancy?

Is the tenant entitled to a monetary award equivalent to double the value of the security and pet damage deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is either party entitled to recover the filing fee for this application from the other?

Background and Evidence

The parties agreed on the following facts. This tenancy began in April, 2017 and ended on July 31, 2018. The monthly rent was \$2,250.00. A security deposit of \$1,125.00 and pet damage deposit of \$1,125.00 were paid at the start of the tenancy and are still held by the landlord. The tenant provided a forwarding address to the landlord on August 10, 2018.

The landlord testified that a condition inspection report was prepared at both the start and the end of the tenancy together with the tenant. The landlord said that they have only submitted a handwritten copy of a condition inspection report signed solely by the landlord into evidence but a second copy signed electronically by the tenant exists. The copy of the inspection report submitted into evidence notes there is no damage to the unit and that it just needs a deep clean.

The tenant disputes completing a condition inspection report electronically, by paper or at all. The tenant testified that they have not given written authorization that the landlord may retain any amount of the deposits for this tenancy.

The landlord said that at the time the inspection report was prepared at the end of the tenancy the tenant was informed that there would be deductions made for deep cleaning but the amounts were unknown. The landlord seeks a monetary award in the

amount of \$1,050.00 representing 35 hours of cleaning performed at a rate of \$30.00. The landlord also says that there was a loss of \$508.00 for rental income as the new occupants of the suite had to be reimbursed for the state of the unit left by the tenant.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security 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.

Section 24 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 23 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

I find the landlord's testimony that there exists an electronic version of a condition inspection report completed and signed by both parties but that they failed to submit that into evidence and instead submitted a copy completed by hand by the landlord duplicating all of the information to not be believable. I do not find that there is an air of reality to the suggestion that the landlord completed two copies of the condition inspection report, one signed by both parties at the time of the inspection and another where the landlord wrote by hand the same information in the electronic version and signed solely by the landlord. The only copy of a condition inspection report submitted into evidence is the version signed solely by the landlord with no evidence that the tenant was given an opportunity to participate in the inspection. I find the tenant's explanation that no condition inspection report was completed at either the start or the end of the tenancy to be more reasonable, logical and likely.

I find that no condition inspection report was prepared at either the start or the end of the tenancy. Accordingly, I find that the landlord extinguished their right to claim against the security and pet damage deposit

Based on the undisputed evidence before me, I find that the landlord has extinguished their right to claim against the security and pet damage deposit by failing to complete a condition inspection report in accordance with the *Act* and has failed to return the

deposits in full within 15 days of received the tenant's forwarding address. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a \$4,500.00 Monetary Order, double the value of the security and pet damage deposit paid for this tenancy. No interest is payable over this period.

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 find that the landlord has provided insufficient evidence in support of their monetary claim. While the landlord submitted evidence about the condition of the suite, I find there is insufficient evidence that there is anything more than the wear and tear that one would expect from a tenancy. In order to make a claim for a monetary award for loss or damages the applicant must show on a balance of probabilities that there are losses greater than that which would be expected in the ordinary course of occupying a rental suite. I find that the evidence presented does not meet that evidentiary burden.

I find that there is insufficient evidence that the loss of rental income the landlord claims arose as a result of the tenant's violation. I find the landlord's evidence for this portion of their claim to be unconvincing. I find that there is insufficient evidence that the tenant breached the *Act*, regulations or tenancy agreement such that the landlord suffered damages or loss.

For the above reasons I dismiss the landlord's application.

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

Conclusion

I issue a monetary award in the tenant's favour against the landlord in the amount of \$4,600.00 representing double the amount of the security and pet damage deposit for this tenancy and the filing fee.

The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. 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.

The landlord's application is dismissed without leave to reapply.

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 21, 2018

Residential Tenancy Branch