



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNDL-S

Introduction

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

- authorization to retain 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 its application from the tenant, pursuant to section 72.

Both parties 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 parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

The landlord gave the following testimony. The one year fixed term tenancy began on July 1, 2017 and ended on June 30, 2018. The tenant was obligated to pay \$1890.00 in rent per month. At the outset of the tenancy the landlord collected a security deposit of \$945.00 from the tenant which they still hold. The landlord testified that the tenant did

some minor damage to the unit and seeks to retain a portion of the deposit to cover those costs.

The landlord testified that a written condition inspection was conducted at move in with the tenant. The landlord testified that a written move out condition inspection was not conducted at move out. The landlord testified that the tenant was moving onto his new place and that she did not provide a second opportunity in writing to the tenant. The landlord testified that they seek \$472.53 for a damaged floor, \$62.50 for a dryer repair, and \$200.00 for a door repair that has not yet been done but will be sometime in the future. The landlord testified that all of these issues arose as a direct result of the tenants' negligence and failure to report and mitigate damages immediately to the landlord. The landlord also seeks the recovery of the \$100.00 filing fee. The landlord seeks to retain \$835.03 of the security deposit.

The tenants' agent gave the following submissions. The agent submits that the tenant adamantly disputes all of the landlords' claims. The agent submits that the tenant did in fact advise the landlord of all issues immediately and that the costs could have been greater had it not been for their quick reporting. The agent submits that there is little if any damage and that it could be attributed to wear and tear.

Analysis

While I have turned my mind to all the documentary 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.

Section 36 of the Act addresses the issue before me as follows:

Consequences for tenant and landlord if report requirements not met

36 (2) *Unless the tenant has abandoned the rental unit, the right of the 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 35 (2) [2 opportunities for inspection],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) 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.

In addition to the above, Residential Tenancy Regulation 17 states:

Two opportunities for inspection

17 (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1)

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

The landlord conceded and acknowledged that she did not provide a second opportunity to the tenant in writing or in the approved form, accordingly; I find that the landlord has extinguished their right to the security deposit.

Furthermore, Residential Tenancy Policy Guideline 17 states:

9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
- to file a claim against the deposit for any monies owing for other than damage to the rental unit;
- to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and
- to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

As the landlords claim is for damages only and that they have extinguished their right to the security deposit, I must dismiss this application. The landlord is to return the security deposit to the tenant.

The landlord has not been successful in their application.

Conclusion

I grant the tenant an order under section 67 for the balance due of \$945.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlords' application is dismissed in its entirety.

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: January 08, 2019

Residential Tenancy Branch