



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation for damages, to retain the security deposit towards compensation owed, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord was present for the teleconference hearing while no one called in for the Tenant during the approximately 20-minute duration of the hearing. The Landlord was affirmed to be truthful in his testimony and stated that the Notice of Dispute Resolution Proceeding package and a copy of his evidence was sent to the Tenant by registered mail. The Landlord provided the registered mail tracking number which is included as the first tracking number listed on the front page of this decision.

Entering the tracking number on the Canada Post website confirms that it was delivered and claimed by the Tenant. The Landlord also testified that he sent a copy of his amendment form to the Tenant in November 2018 and a copy of the remainder of his evidence on January 18, 2019, all by registered mail. As such, I find that the Tenant was duly served in accordance with Sections 88 and 89 of the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

The Landlord filed the Application for Dispute Resolution on October 15, 2018 claiming monetary compensation in the amount of \$1,450.00. On November 7, 2018 the Landlord filed an amendment to the application to change his monetary claim to \$0.00. This was clarified with the Landlord during the hearing and he stated that he filed the amendment as he was no longer seeking compensation for damages beyond the security deposit amount. He stated that he was now only seeking to keep the security deposit of \$450.00 towards the cost of cleaning and repairs.

The Landlord submitted additional evidence to the Residential Tenancy Branch on January 18, 2018. In the evidence package, he included a letter in which he stated that he was seeking to retain the security deposit in the amount of \$450.00.

As the Landlord provided testimony and evidence that he served the Tenant with the initial application and evidence, the amendment form, and the final evidence package, I am satisfied that the Tenant was aware that the Landlord was seeking to retain the security deposit and had not intended to withdraw his claim.

The Landlord provided the registered mail tracking number for the evidence package that was mailed to the Tenant on January 18, 2019 and it is included as the second tracking number on the front page of this decision. Entering the tracking information on the Canada Post website confirms that the package was delivered to the Tenant. As such, I am satisfied that the Tenant was aware of the Landlord's claims and accept that the Landlord did not intend to reduce his monetary claim to \$0.00, but instead to retain the security deposit in the amount of \$450.00 and not seek additional compensation.

Issues to be Decided

Should the Landlord be allowed to retain the security deposit towards compensation owed?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlord provided undisputed testimony on the tenancy. The tenancy began on July 15, 2017 and ended on October 1, 2018. Monthly rent was set at \$900.00 and a security deposit of \$450.00 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the details as stated by the Landlord. The Landlord testified that the rent was increased to \$936.00 beginning in September 2018.

The Landlord stated that the Tenant left the unit very dirty and also left some belongings behind. He stated that he arranged a time to meet with the Tenant to conduct the move-out inspection on October 1, 2018 but she chose to not participate in the inspection. He stated that he then scheduled another time and date later in October 2018 and she did not attend for that inspection. As such, he conducted the move-out inspection on his own on October 8, 2018.

The Landlord submitted the Condition Inspection Report into evidence. The move-in inspection was completed on July 15, 2017 and was signed by both the Tenant and Landlord. The move-in report notes small areas of damage in the rental unit, such as chips and dents, but does not note any major damage or any areas that were unclean.

The move-out inspection was completed by the Landlord on October 8, 2018 and was also witnessed and signed by his son. The move-out inspection notes the same areas of minor damage from the move-in inspection as well as some additional damage and dirty areas throughout the rental unit. The Landlord testified that the Tenant smoked in the rental unit, despite the tenancy agreement stating that it was a non-smoking unit. He submitted that smoking in the rental unit caused significant dirt and grime throughout the unit.

The Landlord submitted a photo of the stove which shows cigarette butts and other garbage in the area underneath the burners. The Landlord testified that it would have cost a few hundred dollars extra to have the cleaning company clean the stove. As he was unsure how to properly remove the cigarettes and other debris, he had a stove repair person conduct the cleaning. The Landlord submitted the invoice for this into evidence, which was dated October 10, 2018 in the amount of \$156.93.

The Landlord also submitted an invoice from a cleaning company, dated November 1, 2018 in the amount of \$568.00. The invoice states the following:

Total cleaning of lower level suite including all surfaces due to tenants smoking in suite

The Landlord also submitted an email from a cleaner dated October 5, 2018. The email provides a minimum estimate of \$500.00 to complete the cleaning and the cleaner notes that significant scrubbing will be required throughout all areas of the rental unit due to the dirt and smoke residue. A handwritten note on the printed email states that if the stove is cleaned by others, it will reduce the cleaning time required by approximately 2 hours.

The Landlord stated that the repairs and cleaning required in the rental unit cost him more than \$450.00, but he is only seeking to retain the security deposit towards the amount spent. He stated that the Tenant signed a letter on October 1, 2018 which is when her forwarding address was provided, and the Tenant agreed to pay the cost of cleaning.

The letter dated October 1, 2018 was submitted into evidence and was signed by both parties. The letter states the following regarding cleaning of the rental unit:

The landlord will arrange to clean the lower suite, including steam cleaning of the carpets, and deduct the cost from my damage deposit.

The Landlord stated that no specific costs were discussed with the Tenant and instead she agreed that the Landlord may deduct the amount of the cleaning from the security deposit.

Analysis

I refer to Section 38(1) of the *Act* which states the following:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I accept the undisputed testimony and evidence of the Landlord that the tenancy ended on October 1, 2018, the same day that the Tenant's forwarding address was provided in writing. As the Landlord filed for dispute resolution on October 15, 2018, I find that he applied within the 15 days allowable under the *Act*.

Although the Landlord stated that the Tenant agreed to pay the cleaning costs, I refer to Section 38(4)(a) of the *Act* which states the following:

- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
 - (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant

While the Tenant agreed to pay for the cleaning, there was no amount agreed upon and therefore it is not clear as to the amount that the Tenant agreed could be deducted. However, Section 38(4)(b) allows for an arbitrator to order that the Landlord may retain an amount from the security deposit.

As stated in Section 7 of the *Act*, if a party is in breach of the *Act*, the other party must be compensated for any losses that occur.

Section 37 of the *Act* states that the rental unit must be left reasonably clean at the end of the tenancy. I accept the testimony of the Landlord that the rental unit was left very dirty, especially due to smoke residue throughout the unit. Both the email from the cleaner, as well as the cleaning invoice note the unit was dirty and that there was cleaning required due to smoking in the rental unit. The invoice from the cleaner establishes that cleaning took place in the amount of \$568.00. As such, I find that the rental unit was not left reasonably clean and therefore the Tenant was in breach of Section 37(2)(a) of the *Act*.

I accept the Landlord's testimony that he provided at least 2 opportunities for the Tenant to participate in a move-out inspection and that she chose not to. The move-out inspection conducted by the Landlord notes areas throughout the rental unit that required cleaning.

Accordingly, I find that the Landlord has established his claim to retain the security deposit of \$450.00 towards the amount paid for cleaning. I accept the Landlord's testimony that he is not seeking the full cleaning bill of \$568.00, and instead am satisfied that he spent at least \$450.00 on cleaning.

Pursuant to Section 38(4)(b) the Landlord may retain the full security deposit amount of \$450.00. As the Landlord was successful with the application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee paid for the Application for Dispute Resolution in the amount of \$100.00.

Conclusion

The Landlord may retain the security deposit in the amount of \$450.00.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. 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: February 08, 2019

Residential Tenancy Branch