



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDL-S

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security 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.

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

The landlord testified that they served their application and evidence on the tenant by registered mail on October 19, 2018. The landlord provided a Canada Post tracking number as evidence in support of their service. The tenant disputed receiving the landlord's application by registered mail. The tenant confirmed that they had obtained a copy of the application and have a copy of the condition inspection report which is the sole documentary evidence submitted by the landlord. Based on the testimonies of the parties I find that the tenant was prepared to proceed with the hearing and that there was no issue of procedural unfairness. Accordingly, I find that the tenant was sufficiently served with the landlord's materials in accordance with section 71 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 in satisfaction of a monetary award?

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

Background and Evidence

The parties agreed on the following facts. This tenancy began in the autumn of 2017 and ended on September 30, 2018. A security deposit of \$900.00 was paid at the start of the tenancy and is still held by the landlord. The parties participated in both a move-in and move-out inspection. A copy of the condition inspection report was submitted into evidence.

The parties did not agree on the assessment of damages at the end of the tenancy. The landlord seeks to retain \$637.73 from the security deposit for this tenancy. The tenant agrees with a deduction of \$33.78 for replacement of some lightbulbs but disagrees with the remaining amount claimed by the landlord.

The landlord gave testimony about the costs incurred at the end of the tenancy. The landlord did not submit any receipts, invoices or estimates for the work they claimed.

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. 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).

In the present case the parties gave evidence that the tenancy ended on September 30, 2018 and a forwarding address was provided on that date. The landlord filed their application on October 15, 2018, within the 15 days provided under the *Act*.

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.

The tenant testified that they agree with the landlord's claim for \$33.78 for replacement of some of the lightbulbs in the rental suite. Accordingly, I issue a monetary award in that amount in the landlord's favour.

While the landlord gave testimony about the costs incurred they did not provide any documentary evidence in the form of receipts, estimates, invoices or ledgers showing that there has been any loss suffered. I find the landlord's testimony without any supporting evidence to be insufficient to show that there has been a loss. The landlord gave precise figures that they said were paid but did not provide sufficient evidence to support their claim. I find that the landlord has not met their evidentiary burden on a balance of probabilities to show that they have suffered any loss as a result of the tenant nor that the amounts claimed are an accurate figure for the amount of the loss. Consequently, I dismiss the balance of the landlord's application without leave to reapply.

Conclusion

I issue a monetary award in the tenant's favour in the amount of \$866.22, the balance of the security deposit for this tenancy less the amount of \$33.78 agreed to by the tenant.

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.

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 11, 2019

Residential Tenancy Branch