



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDCL-S MNDL

Introduction

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

- a monetary order for damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this 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.

As both parties were present service of documents was confirmed. While the parties questioned if they had received the full contents of the other's evidence, they each testified that they had received a package from the other. 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*.

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 for their application from the tenant?

Background and Evidence

The parties agreed on the following facts. This fixed term tenancy began in February 2018 and ended on September 30, 2018. The monthly rent was \$1,100.00 payable on the first of each month. A security deposit of \$550.00 was paid by the tenant and is still held by the landlord. No condition inspection report was prepared at either the start or the end of the tenancy.

The parties agree that the tenant is responsible for paying utilities under the tenancy agreement. The landlord seeks an amount of \$129.00 for unpaid utilities and the tenant agreed that they owe that amount.

The landlord gave evidence that the rental unit was provided furnished and the tenant caused damage to the suite requiring it to be repainted. The landlord also claims for various items that were missing from the rental suite at the end of the tenancy. The landlord submitted into evidence photographs of the suite they say were taken both before and after the tenancy. The landlord seeks a monetary award of \$5,350.00 for the cost of repairs and replacement of items.

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 security deposit as per section 38(4)(a).

I accept the evidence of the parties that this tenancy ended on September 30, 2018. The landlord filed their present application on October 13, 2018, within the 15 days provided under the *Act*.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* on the part of the other party. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and loss they claim.

The tenant testified that they agree with the amount of \$129.00 as the outstanding utilities for this tenancy. Accordingly, I issue a monetary award in that amount in the landlord's favour.

While the landlord claims for damages to the rental suite I find that in the absence of a proper condition inspection report showing the condition of the suite at the start of the tenancy there is insufficient evidence to determine that the tenant is responsible for any of the losses claimed.

Furthermore, section 24 of the *Act* provides that if the landlord does not complete a condition inspection report in accordance with the guidelines, they extinguish their right to claim against the security deposit.

The *Act* requires the completion of a condition inspection report specifically in contemplation of situations such as this where the parties disagree on the assessment of damages. In the absence of a proper condition inspection report signed by the parties at the start of the tenancy, I find that there is insufficient evidence in support of the landlord's claim for damages. I find that the photographs submitted by the landlord are not a sufficient substitute to show the condition of the suite or to establish that the tenant is responsible for damages on a balance of probabilities.

I find that there is insufficient evidence in support of the landlord's claim for damages and loss and dismiss this portion of their application.

As the landlord was not wholly successful in their application I find that they are entitled to partial recovery of \$50.00 of their filing fee.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$179.00 of the security deposit for this tenancy in satisfaction of their monetary award.

Conclusion

The landlord is authorized to retain \$179.00 of the \$550.00 security deposit for this tenancy. The landlord is ordered to return the balance of the security deposit to the tenant.

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 21, 2019

Residential Tenancy Branch