



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing was scheduled in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The landlord attended the hearing. Tenant LD and tenant DT were represented by an advocate. Each party was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Is the landlord authorized to recover the filing fee for this application from the tenants?

Background and Evidence

In this case, the tenants named in the application are tenants in common, sharing the same unit with separate tenancy agreements. As per the submitted tenancy agreements and testimony of the parties, the month-to-month tenancy for tenant LD began on May 1, 2018 and the month-to-month tenancy for tenant DT began June 1, 2018. Rent in the amount of \$800.00 plus fifty percent of the utilities were payable on the first of each month, by each tenant. The tenants each remitted a security deposit in the amount of \$400.00 at the start of their respective tenancies, which the landlord still retains in trust. The tenants vacated the rental unit September 30, 2018.

A condition inspection was conducted on June 1, 2018 at move-in and on September 30, 2018, at move-out. The landlord testified that he provided copies of the reports to the tenants whereas the tenants testified that the landlord did not provide copies.

The landlord testified that he seeks \$3,700.00 in compensation for damage to the walls, carpet, kitchen cabinets, glass cooktop and hardwood floors. The landlord also seeks \$400.00 in compensation for unpaid utilities and \$100.00 for the filing fee. The landlord has provided copies of the condition inspection reports, photographs, two estimates and two utility bills to support his claim.

In reply, the tenants advocate submitted that tenant LD held a prior tenancy with this landlord for the same unit and had already forfeited her original security deposit for some of the same damages the landlord now claims. The advocate contended that because the property contained two units and a trailer on one meter, it was unconscionable for the landlord to collect fifty percent of the utilities from each tenant.

Analysis

Section 59 of the *Act* stipulates that an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. In this case, the landlord did not provide a monetary order worksheet with a breakdown of damages, testify to the specific amounts required to repair the damages or provide receipts. I therefore dismiss the landlord's monetary claim in the amount of \$3,700.00, without leave to reapply.

Under section 6 of the *Act*, a term of a tenancy agreement is not enforceable if the term is unconscionable. Pursuant to the *Regulations*, a term of a tenancy agreement is

unconscionable if the term is oppressive or grossly unfair to one party. Based on the tenants' undisputed testimony that the property contains three units on one single meter, I find fifty percent of the bill is an unreasonable portion for the tenants to pay. Accordingly I find the term unenforceable as it is unconscionable. I dismiss the landlord's monetary claim in the amount of \$400.00 for unpaid utilities, without leave to reapply.

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit. I find that although the landlord complied with the requirement under section 38 to make an application to keep the deposit, I find the landlord failed to satisfy his burden in proving his claim and consequently is not entitled to retain the security deposit. I order the landlord to return the security deposit in the amount of \$400.00 to each tenant.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

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

I issue a monetary order in the amount of \$400.00 to tenant LD and a monetary order in the amount of \$400.00 to tenant DT for the security deposit.

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 26, 2019

Residential Tenancy Branch