



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. I accept the Landlord's evidence that the Tenant was served with the application for dispute resolution, notice of hearing and all evidence provided for this hearing (the “Materials”) by registered mail on December 7, 2018 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant is deemed to have received the Materials on December 12, 2018.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on April 15, 1982 and ended on November 30, 2018. At the outset of the tenancy the Landlord collected \$262.50 as a security deposit. The Landlord received the Tenant's forwarding address on December 4, 2018. The Tenant left

furnishings at the unit and agreed in writing that the Landlord could retain the security deposit to offset the costs of removal of the furnishings. No move-in inspection was conducted. The Landlord removed the furnishings, provides a copy of the invoice and claims the costs of \$1,082.75.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must, inter alia, leave the rental unit reasonably clean. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Based on the undisputed evidence that the Tenant left the unit with furnishings and considering the invoice that provides as evidence of the Landlord's costs for the disposal, I find that the Landlord is entitled to the costs of **\$1,082.75**. As the Landlord's claim has been successful I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,182.75**.

Section 38(4)(a) of the Act provides that a landlord may retain an amount from a security deposit or a pet damage deposit if, 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. Based on the Landlord's undisputed evidence I find that the Tenant authorized the Landlord to retain her security deposit against costs for removing the Tenant's furnishings from the unit.

I note that the current section 24 of the Act deals with the extinguishment of a landlord or tenant's right to either claim against or claim return of the security deposit where no move-in inspection has been conducted. This section affects the landlord's right to rely on a tenant's agreement in writing for the landlord to retain the security deposit for damage to the unit. However section 100(1) of the Act provides that section 24 of the Act does not apply to a landlord or tenant in respect of a tenancy that started before January 1, 2004. As the tenancy started prior to 2004 I find that the Landlord is not

stopped from claiming against the security deposit on the Tenant's written agreement despite the lack of a move-in condition inspection. I find therefore that the Landlord is entitled to retain the security deposit of **\$262.50** plus interest of **\$452.73** for a total of **\$715.23** against the costs of removing the furnishings. Setting this amount off the Landlord's entitlement of **\$1,082.75** leaves **\$367.52** owed by the Tenant.

Conclusion

I Order the Landlord to retain the security deposit plus interest of **\$715.23** in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$367.52**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: March 29, 2019

Residential Tenancy Branch