



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DIVERSE PROPERTY MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FFT MNDL-S FFL

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (“*Act*”).

The landlord applied for:

- a Monetary Order 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.

The tenant applied for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord 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. The corporate landlord was represented by its agents. The agent SM (the “landlord”) primarily spoke on behalf of the landlord.

The tenant confirmed that they had received the landlord’s application and evidence. Based on the testimony I find that the tenant was served with the landlord’s application and materials in accordance with sections 88 and 89 of the *Act*.

The tenant said that he left it to his partner to serve the tenant's application and evidentiary materials. The tenant testified that he does not know how or if the tenant's hearing materials were served on the landlord. The landlord testified that they had not received any of the tenant's materials.

I find that there is insufficient evidence that the tenant served their application on the landlord. In the absence of any information regarding how service was performed and the landlord's testimony that they have not received any materials I find that I am unable to find that the tenant's application was served in accordance with the *Act*. Consequently, I dismiss the tenant's application.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damages and loss arising out of this tenancy?

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 December 2017 and ended on November 30, 2018. The tenant gave notice to end the tenancy by a letter dated October 1, 2018 where they also provided a forwarding address.

A security deposit of \$530.00 was paid at the start of the tenancy and is still held by the landlord. The parties participated in a condition inspection report at both the start and the end of the tenancy.

The landlord testified that the rental unit required some cleaning, carpet cleaning and touch-up painting as a result of the tenancy. The landlord submitted into evidence photographs and video taken of the suite as evidence of its condition. The landlord claims the amount of \$60.00 for carpet cleaning, \$280.00 for suite cleaning and \$200.00 for spot painting in the suite for a total amount of \$540.00. The landlord testified that the cleaning and work was undertaken by the corporate landlord internally and no receipts or invoices for the work were created. The landlord also explained that the work was completed using existing inventory and no additional paint, cleaning equipment or tools were purchased.

The tenant disputes that the rental suite required the level of cleaning and repairs undertaken by the landlord. The tenant testified that they performed a thorough cleaning of the suite themselves. The tenant disputes that they are responsible for the damage to the suite claimed by the landlord.

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.

In the matter at hand the tenancy ended on November 30, 2018 and the landlord filed their application for dispute resolution to retain the security deposit on December 15, 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. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the landlord's evidence that the rental suite required some cleaning and work after the tenancy. While I appreciate that the tenant performed cleaning of their own, I find that the evidence shows that there was still more cleaning that was required in order to return the suite to a state where it could be rented out to new tenants. I accept the landlord's evidence that the work involved carpet cleaning, spot painting and general cleaning.

However, I find there is insufficient evidence to support the full amount of the monetary award claimed by the landlord. In the absence of actual invoices and work logs showing the time spent working on the suite I find there is insufficient evidence to verify the amount of the loss suffered by the landlord. I find, under the circumstances and based on the totality of the evidence, a monetary award in the amount of \$430.00,

approximately 75% of the amount claimed by the landlord is appropriate. I issue a monetary award in the landlord's favour in that amount accordingly.

As the landlord's application was successful the landlord is also entitled to recover their filing fee for this application.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in satisfaction of the monetary award. No interest is payable over this period.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord is authorized to retain the \$530.00 security deposit for this tenancy in full satisfaction of the monetary award in their favour.

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: March 26, 2019

Residential Tenancy Branch