



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDL-S

Introduction

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

- authorization to recover the filing fee for this application from the landlord per section 72;
- authorization to retain a portion of the tenant's damage deposit for compensation for damage or loss under the *Act*, regulation or tenancy agreement per section 67.

The landlord called into the scheduled hearing. The tenant did not call in although I left the conference bridge open for the duration of the hearing (15 minutes). I confirmed the notice of proceeding included the correct telephone numbers and access codes and monitored the bridge for indication of any additional callers. Only the landlord and I were present for the duration of the hearing.

The landlord stated she provided the application for dispute resolution, supporting evidence and the notice of this proceeding to the tenant by registered mail on December 7, 2018. The tracking number is recorded on the cover sheet of this decision.

Per rule 7.3 of the Rules of Procedure, I conducted the hearing in the absence of the tenant.

Issue(s) to be Decided

- Is the landlord entitled to keep \$355.00 of the tenant's security deposit as compensation for damage or loss?
- Is the landlord entitled to recover \$100.00 filing fee for this application from the tenant?

Background and Evidence

With regard to service of documents for this proceeding, the landlord stated she obtained the tenant's address by way of text message from the tenant. I asked her to confirm the address she used; she testified she didn't have anything to reference as the phone she was using at the time broke and has been replaced.

On December 1, 2018 the landlord uploaded into evidence the tenancy agreement, move-in condition inspection report and more than 130 photographs of the rental unit after the tenant vacated.

The tenancy agreement was entered into evidence. The tenancy began on March 1, 2018 and ended on November 30, 2018. Monthly rent in the amount of \$1,500.00 was due on the 1st of the month and the landlord currently retains a \$750.00 security deposit in trust for the tenant.

The landlord testified that after the tenant gave notice to vacate, she spoke to him in person, and sent him text messages, to try to set a time for the move-out condition inspection. The tenant would not cooperate and advised he didn't intend to sign anything. She did not provide the tenant with a written notice of final opportunity to schedule a move-out condition inspection. She testified the tenant did not give her a forwarding address in writing and she does not know where he currently resides.

The landlord's move-in condition inspection report is blank for the section meant to be completed upon move-out. The landlord testified she did not realize she was allowed to complete the condition inspection report without the tenant present.

The landlord testified she had to take one day off from work to clean the rental unit in time for the next tenant who was moving in on December 1st. She is seeking \$240.00 as compensation (8 hours x \$30 per hour). Photographs of the uncleanness of the unit were submitted into evidence, including the electric range, kitchen cupboards, floors, etc.

The landlord testified the tenant tried to hide a hole in the drywall, but she discovered it and it cost \$95.00 to repair; she submitted a hand-written receipt into evidence as well as photograph of a text message exchange with the tenant in which he admits his children caused the hole when roughhousing and suggests the landlord retain \$50.00 from his security deposit.

The landlord testified she had to clean up dog feces from the yard and submitted photographs of the feces and bags of feces. She is seeking \$20.00 to compensate her for feces removal.

Analysis

I accept the landlord's undisputed testimony that she served the tenant by registered mail. I find the landlord served the notice of proceeding, application for dispute resolution and evidence per sections 88 and 89 of the Act.

The photographs submitted by the landlord demonstrate the tenant breached section 37 (2) of the Act by failing to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. The photographs of the electric range and dog feces are particularly compelling.

I find the landlord's claim for \$355.00 to compensate her for cleaning and repairing damage to be credible and reasonable given the photographic evidence.

The landlord did not complete a move-out condition inspection report, which is contrary to section 35 of the Act and sections 18 – 20 of the Regulation.

Section 36(2) of the Act states (emphasis added):

Unless the tenant has abandoned the rental unit, **the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished** if the landlord

- (a) does not comply with section 35 (2) [2 opportunities for inspection],
- (b) having complied with section 35 (2), does not participate on either occasion, or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Residential Tenancy Policy Guideline 17. Security Deposit and Set off states the following (emphasis added):

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, **the arbitrator will order the return of double the deposit**...if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act

Given the provisions of the Act and the Policy Guideline, I find the tenant is entitled to double the value of his security deposit, or \$1,500.00, because the landlord did not complete a move-out condition inspection report as required by section 35 of the Act and sections 18 – 20 of the Regulation.

I accept the landlord's testimony that she did not receive the tenant's forwarding address in writing and does not have his forwarding address. As a result, I am not issuing a formal monetary order in favour of the tenant.

Conclusion

As a result of the tenant's failure to comply with section 37(2), the landlord is entitled to compensation in the amount of \$355.00 and I award her the cost of the filing fee for this application.

I order, pursuant to sections 7, 38(4)(b) and 67 of the Act, the landlord may retain \$455.00 of the tenant's security deposit.

I order that, should the landlord receive the tenant's forwarding address in writing within one year of the end the tenancy, she must pay him the sum of \$1,045.00, which is double the value of his security deposit, minus \$445.00.

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 22, 2019

Residential Tenancy Branch