



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S FFL

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security and pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee for this application from the tenants 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. The parties each testified that they are in receipt of the other's materials. 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 and pet damage deposit for this tenancy?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The parties agreed on the following facts. This tenancy began in February 2017 and ended on August 31, 2018. A security deposit of \$600.00 and pet damage deposit of \$600.00 were paid at the start of the tenancy and is currently held by the landlord. The parties did not participate in preparing a condition inspection report at either the start or the end of the tenancy.

While the landlord submitted a condition inspection report into documentary evidence they testified that it was prepared without the tenants. The landlord seeks the amount of \$207.53 for damage to the rental suite.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security and pet damage 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, I accept the evidence that this tenancy ended on August 31, 2018. The landlord filed their application for dispute resolution on September 11, 2018 within the 15 days provided under the *Act*.

The landlord testified that the rental unit had damage that required cleaning and repairs. However, in the absence of a proper condition inspection report prepared by the parties at the start of the tenancy I find there is insufficient evidence of the damage attributable to this tenancy.

Furthermore, the parties gave evidence that no condition inspection report was prepared with the parties at any time during this tenancy. The landlord testified that the copy of the condition inspection report submitted into evidence was completed without the tenants' participation and they did not offer the tenants at least 2 opportunities as set out in the *Act*.

Section 36 of the *Act* provides that the right of a landlord to claim against a security and pet damage deposit is extinguished if they do not comply with the requirements of section 35 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

Based on the undisputed evidence before me, I find that the landlord failed to prepare a condition inspection with the tenants as required and have extinguished their right to claim against the security and pet damage deposit for this tenancy. I find that in the absence of a proper report there is insufficient evidence that the damages now claimed by the landlord are attributable to the tenancy.

The landlord's application is dismissed in its entirety without leave to reapply.

I accept the tenants' evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to an \$1,200.00 Monetary Order, the return of the security and pet damage deposit for this tenancy. No interest is payable over this period.

Conclusion

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

I issue a Monetary Order in the tenants' favour in the amount of \$1,200.00 against the landlord. The tenants are provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: March 22, 2019

Residential Tenancy Branch