



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROMPTON REAL ESTATE SERVICES
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that she was the property manager for the landlord company named in this application and that she had permission to represent it as an agent at this hearing. This hearing lasted approximately 16 minutes.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

The tenant said that he did not serve his evidence package to the landlord. The landlord said that she did not receive it. I notified both parties that I could not consider the tenant's evidence because it was not served to the landlord, as required.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to retain the tenant's deposits in partial satisfaction of the monetary award?

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

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2017 and ended on October 2, 2018. Monthly rent in the amount of \$1,275.00 was payable on the first day of each month. A security deposit of \$637.50 and a pet damage deposit of \$637.50 were paid by the tenant and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. The tenant provided a written forwarding address to the landlord in a letter and the move-out condition inspection report, both on October 2, 2018. The landlord did not have any written permission to keep any part of the tenants' deposits. The landlord's application to keep both deposits was filed on October 10, 2018.

The landlord seeks \$3,310.13 to replace the laminate flooring inside the rental unit, after the tenant vacated. She provided a quote for the above amount. She said that the work had been done but she did not know when and she did not produce a receipt for the amount or show how it was paid. She stated the receipt was with the landlord company's head office. She claimed that the amount would have been paid by cheque about one month after the tenant vacated.

The landlord explained that the landlord did an annual inspection of the rental unit in August 2018, produced a report, and noted water damage to the floor, which smelled like pet urine. She said that there was no accurate floor match for the damaged areas, so she could not just replace certain parts of it, only the entire flooring. She said that the flooring was brand new when the tenant moved in, there was widespread damage, and that a new tenant was obtained on February 1, 2019.

The tenant agreed that his pet caused some damage to the flooring. He said that he would be willing to allow the landlord to keep both his security and pet damage deposits totalling \$1,275.00, to pay for the damage but he was not willing to pay more. He stated that even though the flooring was brand new, not the entire flooring was damaged. He claimed that it was not his fault that the landlord could not find a flooring match and had to replace the entire floor.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I order the landlord to retain the tenant's entire security deposit of \$637.50 and pet damage deposit of \$637.50, totaling \$1,275.00, in full satisfaction of the flooring damage. I dismiss the remainder of the landlord's application for \$2,035.13.

The landlord did not provide a receipt for the above cost, despite having ample time to do so, from the time she filed this application on October 10, 2018, and this hearing date on April 26, 2019, which is over six months. She only provided a quote. She did not know how the money was paid or when the work was done, guessing that it was paid by cheque one month after the tenant vacated.

Further, the landlord agreed that the damage to the flooring was not all over the entire laminate flooring. It was only in certain parts. The fact that the landlord chose flooring that did not have a match to replace only the damaged parts, is out of the tenant's control. Replacing the entire flooring, because there is no match, is not the tenant's responsibility when he did not damage the entire flooring.

As the landlord was only successful based on what the tenant agreed to pay, I find that the landlord is not entitled to recover the \$100.00 application filing fee from the tenant.

Conclusion

I order the landlord to retain the tenant's entire security deposit of \$637.50 and pet damage deposit of \$637.50, totaling \$1,275.00, in full satisfaction of the monetary award.

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

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: April 29, 2019

Residential Tenancy Branch