



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 Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties 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 testified that he served the tenant with his application for dispute resolution via registered mail in December of 2018 but could not recall on what date. The tenant testified that she received the landlord's application for dispute resolution via registered mail on December 20, 2018. I find that the tenant was served with the landlord's application for dispute resolution on December 20, 2018 in accordance with section 89 of the *Act*.

Preliminary Issue- Amendment

The landlord testified that he made an amendment to his application for dispute resolution to clarify the correct name of the tenant but did not serve this amendment on the tenant. As the amendment was not served on the tenant in accordance with section 89 of the *Act*, I dismiss it.

The tenant testified to the correct spelling of her last name. In accordance with section 64 of the *Act*, I amend the landlord's application to state the correct spelling of the tenant's last name.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on June 15, 2014 and ended on November 1, 2018. Monthly rent in the amount of \$1,700.00 was payable on the first day of each month. A security deposit of \$850.00 was paid by the tenant to the landlord. The landlord did not return the security deposit to the tenant. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The subject rental property is comprised of an upper and lower suite. The landlord rented the entire house to the tenant who sub-leased the lower suite to another tenant.

Both parties agree that the landlord did not provide the tenant with two opportunities to complete a move in or move out condition inspection report. Both parties agree that a move in and move out condition inspection report was not completed.

The tenant testified that she provided the landlord with her forwarding address in writing via registered mail on or around November 14, 2018. The landlord testified that he received the tenant's forwarding address on December 5, 2018 via registered mail. The landlord filed for dispute resolution on December 20, 2018.

The landlord testified that the tenant agreed to leave the propane tank at the subject rental property full when she moved out and that she failed to do so. The landlord testified that it cost \$150.00 to fill the propane tank. The tenant agreed that she owed the landlord \$150.00 for propane. The tenancy agreement states that the propane tank is to be left full at the end of the tenancy.

The landlord testified that the tenant agreed to pay \$80.00 per year for the propane tank rental but that she did not pay this fee for the four years she resided at the subject rental property. The landlord is claiming \$320.00 for the propane tank rental. The tenancy agreement states "propane tank \$80.00 per year". The tenant testified that while she originally agreed to pay this amount when she entered into the tenancy the landlord did not provide her with a bill for the propane tank rental for the duration of the tenancy and so she did not believe she should have to pay this fee. The landlord testified that he did not provide the tenant with a bill for the propane tank rental during the tenancy. The landlord testified that he paid the propane rental fee.

The landlord testified to the following facts. The carpet in the master bedroom of the upper suite smelled like urine when the tenant moved out and needed to be replaced. The carpet was at the subject rental property when he purchased it and was a minimum of seven to eight years old. The landlord testified that he received a quote for the carpet replacement in the amount of \$700.00 and is seeking that amount from the tenant. A quote was not entered into evidence. The landlord testified that he did not replace the carpet in the master bedroom because he sold the subject rental property in an "as is" condition for below market value. The landlord testified that the condition of the carpet resulted in a lower selling price. The landlord did not provide any documentation to substantiate this claim.

The tenant testified that she used a carpet cleaner to clean the carpet in the master bedroom of the upper suite and that it did not smell of urine when she moved out.

The landlord testified that the carpet in the second bedroom of the upper suite and the carpet in the lower suite was stained after the tenant moved out and required professional cleaning. The landlord entered into evidence photographs of a stained carpet. The landlord testified that it would have cost him \$150.00 to have had the carpets professionally cleaned and is seeking that amount from the tenant. The landlord testified that he did not have the carpets professionally cleaned because he sold the subject rental property in an "as is" condition for below market value. The landlord testified that the condition of the carpets resulted in a lower selling price. The

landlord did not provide any documentation to substantiate this claim. The landlord testified that the carpets were at least 7-8 years old.

The tenant testified that the carpets in the lower suite were not stained when she moved into the subject rental property but were stained when she moved out. The tenant testified that since the landlord did actually get the carpets cleaned she should not have to pay for what it would have cost to clean the carpets.

Analysis

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find that the tenancy agreement clearly states that the propane tank is to be left full. As the tenant acknowledged that she owes the landlord \$150.00 for the propane, I find that the landlord is entitled to recover \$150.00 from the tenant for propane.

I find that the tenancy agreement clearly states that the cost of the propane tank rental is \$80.00 per month and the tenant is responsible for this cost. While the landlord did not provide the tenant with a bill for the tank rental, I find that the landlord is entitled to recover \$320.00 for the cost of the propane tank rental as it is a loss he incurred that the tenant agreed to bare.

I find that the landlord has failed to prove the quantification of his loss in regard to all of the carpets in the subject rental property. The landlord did not enter into evidence any receipts or quotes to substantiate his claim. I also find that since the landlord did not have the carpets replaced or cleaned, he is not entitled to recover a loss he did not incur. I find that the landlord failed to provide any evidence to prove that the sale price

of the subject rental property was lower as a result of the condition of the carpets. I also note that the life expectancy of carpet is 10 years as set out in Policy Guideline 40. The carpets were either at the end of their life expectancy or past it.

Security Deposit

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(a) and 38(b) of the *Act*.

As the landlord was successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain \$570.00 from the tenant's security deposit. I find that the landlord is obligated to return \$280.00 of the tenant's security deposit to the tenant.

Conclusion

The landlord is entitled to retain \$570.00 from the tenant's security deposit.

I issue a Monetary Order to the tenant in the amount of \$280.00.

The tenant is provided with this 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: April 03, 2019

Residential Tenancy Branch