



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDCL MNDL-S

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and was given a full opportunity to be heard, present affirmed testimony, make submissions and to call witnesses. The tenant did not attend this hearing which lasted approximately 15 minutes.

The landlord testified that they sent their application of December 13, 2018, their amendment correcting the applicant's name, and evidentiary materials on the tenant by registered mail sent on December 19, 2018. The landlord provided a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the tenant was deemed served with the landlord's materials in accordance with sections 88, 89 and 90 of the Act on December 24, 2018, five days after mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?
Is the landlord entitled to retain the security deposit for this tenancy?
Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

This fixed-term tenancy began on July 1, 2017 and ended on June 30, 2018. The monthly rent was \$3,000.00 payable on the first of each month. A security deposit of \$1,500.00 and pet damage deposit of \$1,500.00 were collected at the start of the tenancy. The tenant provided the landlord with their forwarding address sometime in July, 2018. The landlord has returned the pet damage deposit to the tenant but retains the full amount of the security deposit. No condition inspection report was prepared at any time for this tenancy.

The landlord submits that the rental unit required considerable cleaning and repairs due to the tenancy and as a result they were not able to rent out the suite for July 1, 2018. The landlord said that they were able to find a new occupant for August 1, 2018. The landlord seeks a monetary award in the amount of \$3,950.00 consisting of the cost of repairs and loss of rental income for the weeks that the suite could not be rented out. The landlord submitted photographs and receipts into evidence.

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. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

I accept the evidence of the landlord that this tenancy ended on June 30, 2018, and the tenant had provided the landlord with a forwarding address sometime during the month of July 2018. The landlord filed their initial application under the file number on the first page of this decision on July 12, 2018. That application was dismissed with leave to reapply. The landlord subsequently filed the present application on December 13, 2018. As such, I find that the landlord had filed their initial application to retain the

security deposit for this tenancy within the 15 days of the tenant's forwarding address being provided as required under the *Act*.

However, the landlord said that no condition inspection report was prepared at any time during this tenancy. The landlord places the onus on preparing a report on the tenant and says that they did not complete the inspection form provided. The *Act* clearly states that an inspection must be conducted together and a report completed and signed in accordance with the regulations. The landlord must provide the tenant with at least 2 opportunities to conduct an inspection together. I find that the landlord did not fulfill their requirements under the *Act* as they testified that they simply gave the tenant an inspection form to be completed without the landlord's participation. I find that the landlord has failed to complete a condition inspection report or offer the tenant opportunities as required under the *Act*.

Section 24(2) provides that a landlord who does not comply with the requirements of the *Act* to offer a tenant at least 2 opportunities for an inspection extinguishes their right to the security deposit. Accordingly, I find that the landlord had extinguished their right to claim against the security deposit for this tenancy.

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.

While the landlord submits that the state of the rental unit was such that cleaning and repairs were required, in the absence of a proper condition inspection report completed at the start of the tenancy, I find there is insufficient evidence that the damage is attributable to the tenant. I find the photographs to be of limited value as they simply show areas of the rental suite without further explanation or information. The correspondence between the parties submitted into evidence show that the tenant believed the rental suite to have pre-existing issues.

While I accept that the landlord performed some work on the rental unit, I do not find that this work was necessary to rectify damage caused by the tenant. Similarly, I find

that the landlord has not established that the rental unit could not be rented out immediately after the tenancy and that they incurred any income losses. I find that there is insufficient evidence to establish that the damages and loss claimed by the landlord arise as a result of the tenant's actions or negligence. As the landlord has not met their evidentiary onus, the application is dismissed.

The landlord is ordered to return the full amount of the security deposit for this tenancy, \$1,500.00, to the tenant immediately.

Conclusion

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

I issue a Monetary Order in the tenant's favour in the amount of \$1,500.00 against the landlord. The tenant is provided with a Monetary Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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 9, 2019

Residential Tenancy Branch