



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFT MNSD FFL MNDL-S

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the Residential Tenancy Act (the “Act”).

The landlord applied for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit pursuant to section 38; and
- To recover the filing fee from the tenants pursuant to section 72.

The tenants applied for:

- A return of the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the landlord 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 confirmed receipt of the other’s materials. Based on the testimonies I find that each party was served with the other’s 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 either party entitled to the security deposit for this tenancy?

Is either party entitled to recover the filing fee?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy originally began in June 2017 when the tenants moved into the rental unit. The landlord purchased the property and assumed the tenancy on April 2018. The tenants paid a security deposit of \$675.00 at the start of the tenancy and it is still held by the landlord. The tenancy ended in January 2019. The tenants provided a forwarding address to the landlord in writing on February 2, 2019. No move-in condition inspection was prepared. The parties participated in a move-out inspection together though the tenant failed to sign the condition inspection report.

The tenants submit that they have not given written authorization that the landlord may retain any portion of the security deposit. The tenant testified that any damage that the landlord identifies in the rental suite predates the tenancy.

The landlord submits that the rental suite required cleaning and repairs at the end of the tenancy. The landlord said that the damage exceeded the expected wear and tear from a simple occupancy. The landlord submitted into evidence their invoices, receipts and estimates for work performed and supplies purchased. The landlord said that the total cost of work and materials was \$599.05.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receiving a forwarding address in writing. If that does not occur, the landlord must pay a monetary award pursuant to section 38(6) of the *Act* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit.

In the present case the parties agree that the tenant provided a forwarding address on February 2, 2019. The landlord filed their application for dispute resolution on February 14, 2019. As such, I find that the landlord was within the 15 days provided under the *Act* to file an application to retain the security deposit.

The parties agree that no move-in condition inspection report was prepared at the start of the tenancy. Section 24(2) provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 23 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

Based on the evidence before me, while I find that the landlord has filed an application for authorization to retain the security deposit within 15 days of receiving the tenant's forwarding address, I find that the landlord has extinguished their right to claim against the security deposit by failing to complete a condition inspection report in accordance with the Act. I accept the tenant's evidence that they have not given authorization that the landlord may retain any portion of the security deposit.

Under these circumstances and in accordance with section 38 of the *Act*, I find that the tenant is entitled to a \$675.00 Monetary Order, the value of the deposit paid for this tenancy. No interest is payable over this period.

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.

In the absence of a proper condition inspection report prepared by the parties at the start of the tenancy I find that there is insufficient evidence in support of the landlord's monetary claim. I find the photographs and invoices submitted by the landlord to be insufficient to demonstrate on a balance of probabilities that the repairs are a result of the tenants' breach. I find that there is insufficient evidence in support of the landlord's claim for the cost of replacing keys and FOBs for the rental unit. As the landlord has not met their evidentiary burden I dismiss the landlord's application.

As neither party was wholly successful in their application I decline to issue an order allowing either party to recover their filing fee.

Conclusion

The landlords' application is dismissed without leave to reapply.

I issue a monetary award in the tenant's favour in the amount of \$675.00. The tenants are 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: May 30, 2019

Residential Tenancy Branch