



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDL-S FFT MNSD

Introduction

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

- 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;
- a monetary order for damage to the rental unit pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

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

- a monetary order for return of all or a portion of the tenant's security deposit in pursuant to section 38;
- a monetary order for an amount equal to double the security deposit as compensation for violation of the *Act* pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Preliminary Matter: Joinder

This hearing was scheduled for the hearing of the landlords' application. The tenant filed his own application which was scheduled for a future hearing date. The file numbers of both files are stated on the first page of this decision.

Residential Tenancy Branch Rules of Procedure Rule 2.10 states that hearings may be joined and heard at the same hearing so that the dispute resolution process will be fair, efficient and consistent. In this matter, both applications relate to the same rental unit, the same parties and the same issue of the disposition of the security deposit. Further, both parties consented to the joining of these applications. Based on the forgoing, I joined both hearings and heard both at the same time.

Issue(s) to be Decided

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the landlord entitled to a monetary order for damage to the rental unit pursuant to section 67?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

Is the landlord entitled to a monetary order for return of all or a portion of the tenant's security deposit in pursuant to section 38?

Is the landlord entitled to a monetary order for an amount equal to double the security deposit as compensation for violation of the *Act* pursuant to section 67?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The tenancy started on April 1, 2018. The rent was rent of \$800.00 per month with a \$400.00 security deposit which the landlord still holds. The rental unit was furnished by the landlords. The landlords admitted that a condition inspection report was not completed on move in.

The original tenant passed away and the administrator of the decedent's estate filed an application for return of the security deposit as the successor and/or representative of the deceased tenant. Hereinafter the administrator of the deceased tenant's estate is referred to as the 'tenant'.

The tenant and the landlord discussed the tenancy in early January 2019 and the landlord stated that the rent had been paid for January 2019. Although neither party prepared a written notice to end the tenancy, both the landlord and the tenant understood that tenancy would end on January 31, 2019.

The tenant went to the rental unit in January to clean the rental unit. The tenant partially cleaned the rental unit. The landlords testified that the tenant disconnected the refrigerator from the electricity which caused food to rot. The tenant testified that he may have disconnected the refrigerator but he was not sure.

The tenant testified that he tried to return to the rental unit to complete the cleaning but an outside gate was locked and the tenant could not enter the property. The landlord testified that the tenant could have entered the property from a different entrance which was not locked or the tenant could have called and requested access and the landlords would have opened the gate for him.

The landlords testified that they became very concerned about the unsanitary conditions in the rental unit. The landlords testified that the rental unit was very dirty and it constituted a health hazard. The landlords testified that the refrigerator had a foul odor after it was unplugged. The landlords provided multiple photographs showing the rental unit was in a dirty condition.

The landlords testified that they spent six hours cleaning the rental unit. The landlords requested compensation at the rate of \$50.00 per hour. The landlords also requested the following: reimbursement of \$10.00 for cleaning products; \$100.0 to replace a kitchen table damaged by rotting food; \$56.00 for dump costs to dispose of items left in the rental unit; \$50.00 for missing motion lights; \$40.00 for missing linens and pillows; and \$10.00 for a missing toilet plunger.

The tenants returned to the rental unit on the evening of January 31, 2019 to pickup up the rest of the belongings and complete the condition inspection report on move out, but the landlord would not co-operate with the completion of the condition inspection report. The landlord testified that the tenant should have been there by 1:00 p.m. on January 31, 2019.

Analysis

The landlord and the tenant have each made applications regarding the disposition of the security deposit. I will address each claim separately.

Landlord's Claim To Deduct Damages From the Security Deposit

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities.

Section 32 of the *Act* states that:

...

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

The landlords testified that the rental unit was in an unclean and unsanitary condition in January 2019. The landlords further argued that rotting food was causing damage to the rental unit. Further, the landlords further argued that the damage to the rental unit was aggravated by the tenant's disconnection of electricity to the refrigerator which caused

frozen food to thaw and rot. Pursuant to section 32, the tenant had an obligation to maintain the rental unit in a reasonably clean and sanitary condition. I find that the tenant has failed to do so.

I find that, as result of the tenant's violation of section 32 the landlords have been damaged. I find that six hours of cleaning services to clean the rental unit is reasonable given the condition of the rental unit. However, I find that a rate of \$50.00 per hour is 'award the landlord \$120.00 (6 hours at \$20.00 per hour) for cleaning services.

I find the landlords' expense of \$10.00 for cleaning expenses is reasonable so I grant that request.

I am satisfied by the landlords' testimony that the kitchen table was damaged by the tenant's rotting food and I find \$100.00 is a reasonable amount for a replacement table.

I am satisfied that the landlords' expense of \$56.00 for dump fees is reasonable and I grant this request.

Based upon the parties' testimony, I am satisfied that the landlords' motion lights, linen, pillows and toilet plunger were removed by the tenant when he cleaned the unit. I find the amount claimed of \$100.00 for all of these items to be reasonable and I grant that request.

Since the landlords have been generally successful in their claim, I grant the landlords' request for reimbursement of the filing fee. However, as discussed below, the landlords' request for reimbursement of the filing fee is offset by the tenant's request for return of his filing fees.

Tenant's Claim for Compensation of Double the Security Deposit

The tenant has made an application for monetary compensation in the amount of double the security deposit. Section 38(2) of the Act states that a landlord's right to retain a security deposit is extinguished if the landlord fails to complete a condition inspection report on move in as required by section 24(1) of the Act or the landlord fails to complete a condition inspection report on move out as required by section 36(1) of the Act. Section 38(5) and (6) of the Act states that when the landlord's right to claim against the security deposit is extinguished, the landlord may not make a claim against

it and must pay the tenant double the amount of the security deposit if the deposit is retained at the end of the tenancy. This is further clarified in Residential Tenancy Branch Policy Guideline PG-17 which says, in part C-3:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit ... if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

In this case, I find that the landlords did not complete either a condition inspection report on move in as required by section 24(1) of the *Act* or a condition inspection report on move out as required by section 36(1) of the *Act*. As such, find that the landlords' right to retain the tenant's security deposit was extinguished. Accordingly, section 38(6) requires that the tenant's security deposit of \$400.00 be doubled to \$800.00.

Therefore, I find the tenant is entitled to a monetary award of \$800.00.

Since the tenant has been successful in his claim, I grant the tenant's request for reimbursement of the filing fee. However, since the landlords and the tenant have both been awarded the reimbursement of their filing fees, the awards are offsetting and neither party shall receive an award of reimbursement filing fees.

The claims of the landlords and the tenant are offsetting and result in a net award of \$414.00 to the tenant as set forth below.

Item	Amount
Compensation to landlord for cleaning services	-\$120.00
Compensation to landlord for cleaning supplies	-\$10.00
Compensation to landlord for replacement of table	-\$100.00
Compensation to landlord for dump expenses	-\$56.00
Compensation to landlord for missing items	-\$100.00
Compensation to tenant for double security deposit	\$800.00
Total compensation to tenant	\$414.00

Conclusion

I grant the tenant a monetary order in the amount of **\$414.00**. If the landlords fail to comply with this order, the tenant may file the order in the Provincial Court to be 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 22, 2019

Residential Tenancy Branch