



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDCL-S MNDL-S MNRL-S

Introduction

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

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

Both parties were represented at 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. The tenant was represented by their agent NG (the "tenant").

As both parties were represented service was confirmed. The tenant confirmed receipt of the landlord's application and evidence. The tenant stated they had not served any evidence of their own. Based on the testimony I find that the tenant was served with the landlord's application and evidence 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 the landlord entitled to retain the security deposit for this tenancy?

Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

The parties agreed that this tenancy began in September 2018. The monthly rent was \$3,250.00 payable by the 1st of each month. A security deposit of \$1,625.00 was paid at the start of the tenancy and is still held by the landlord. The landlord said that the tenancy ended

sometime in December, 2018. The parties testified that the tenant has not provided a forwarding address to the landlord as of the date of the hearing.

The landlord claims that the tenant failed to pay the rent from December 2018 onwards. The tenant disputes the landlord's evidence and states that they paid all rent owed but the landlord has failed to provide a receipt for the payments.

The landlord seeks a monetary award of \$11,350.00 consisting of unpaid rent for December 2018, January and February 2019 in the amount of \$9,750.00, loss of revenue and travel costs of \$1,000.00 and cost of replacement of a door and glass for \$600.00. The landlord did not provide documentary evidence in support of their monetary claim. While the landlord testified that receipts exist they did not submit them into evidence. The landlord claims that the tenant caused damage to the rental unit but provided no documentary evidence in support of their submissions.

The documentary evidence of the landlord consists solely of a tenancy agreement signed by the parties and a move-in condition inspection report dated September 10, 2018.

Analysis

The onus to prove their application on a balance of probabilities lies with the applicant. In accordance with section 67 of the Act, in order for a party to establish the basis for a monetary claim they must show the existence of damage or loss, that it stemmed directly from a violation of the tenancy agreement or a contravention of the Act by the other party and the monetary value of any loss claimed.

I find that the landlord has not established their monetary claim on a balance of probabilities. The landlord's testimony that the tenant failed to pay rent and caused damage is not substantiated in any documentary materials and is disputed by the tenant. While the landlord makes reference to other documents they failed to submit those for this hearing. I find that the landlord's disputed testimony is insufficient to establish on a balance of probabilities their claim.

Furthermore, I note that despite the landlord giving evidence that the tenancy ended in December, 2018, they claim for unpaid rent for January and February, 2019, after the date the tenancy has ended. I do not find the landlord's submissions to be reasonable or internally consistent on this point.

I find that there is insufficient evidence that there has been any damage or loss, that it stems from the action or negligence of the tenant and that the amount claimed by the landlord is accurate. As the landlord has failed to establish their claim on a balance of probabilities this portion of the application is dismissed.

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.

I accept the evidence of the parties that no forwarding address has been provided by the tenant. I find that as the tenant has not yet provided a forwarding address in writing to the landlord, the landlord's obligation under the Act to return the tenant's security deposit or apply for authorization to retain the deposit has not started. If the tenant provides a forwarding address to the landlord in writing the landlord will then have 15 days to apply for dispute resolution or return the tenant's security deposit. I dismiss this portion of the landlord's application with leave to reapply.

I find that the landlord is not entitled to recover their filing fee for this application.

Conclusion

The portion of the landlord's application seeking authorization to retain the security deposit for this tenancy is dismissed with leave to reapply.

The balance 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: May 10, 2019

Residential Tenancy Branch