



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT
 MNDL-S, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”). The matter was set for a conference call.

The Tenants’ Application for Dispute Resolution was made on January 23, 2019. The Tenants applied for the return of their security deposit and the return of their filing fee. The Landlord’s Application for Dispute Resolution was made on February 6, 2019. The Landlord applied for a monetary order for damages to the rental unit, permission to retain the security deposit and to recover their filing fee.

The Landlord and one of the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Is the Tenant entitled to the return of her security deposit?

- Is the Tenant entitled to recover the filing fee for this application?
- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

Both parties agreed that the tenancy began on December 15, 2017, as a month to month tenancy. Rent in the amount of \$2,000.00 was to be paid by the first day of each month, and that the Tenants had paid the Landlord a \$1,000.00 security deposit and a \$500.00 pet damage deposit (the deposits). The Tenant testified that she and all other occupants had moved out of the rental unit as of May 13, 2018. The Landlord testified that the Tenants had moved out as of June 4, 2018.

Both parties agreed that there had been a previous hearing with the Residential Tenancy Branch (RTB) regarding this tenancy, that took place on November 29, 2018, the file number for that hearing is recorded on the style of cause page of this decision. The Tenant testified that during that hearing the Landlord was found to have extinguished her right to make a claim against the deposits for this tenancy and that that arbitrator ordered the Tenants to send their forwarding address to the Landlord by registered mail and that the Landlord was given 15 days, after received their address to return the deposits for this tenancy to the Tenants.

The Tenant testified that they sent the Landlord their forwarding address, by registered mail, as ordered, on December 3, 2018, and that at no time had the Landlord been given written permission to keep any part of their deposits.

The Landlords testified that she received the Tenants' forwarding address on December 8, 2019, and that she chose not to return the deposits, even though she had been ordered. When this Arbitrator ask the Landlord why she had not complied with the previous order, the Landlord testified that she had received advice that she could make a claim against the deposits. This Arbitrator asked the Landlord if she had told, the person whom she spoke to about her previous hearing and the order to return the deposits, the Landlord did not answer this question. When this Arbitrator asked the Landlord, why she to waited 60 days to file her claim again the deposits, the Landlord did not answer this question.

Both parties agreed that the Landlords had not returned the deposits to the Tenant as of the date of this hearing. The Tenants are requesting the return of double the deposits, due to the Landlord's refusal to comply with the *Act* and the order.

Both parties agreed that the Landlord had not completed a written move-in or move-out inspection for this tenancy.

The Landlord testified that the Tenants returned the rental unit to her damaged and uncleaned. The Landlord is claiming for the recovery of her costs to repair damage to the rental unit caused by the Tenants during this tenancy in the amount of \$4,876.25; consisting of \$107.00 in waste removal, \$690.00 in cleaning costs, \$551.25 for new blinds, and \$3,528.00 to have the full house repainted. The Landlord submitted five invoices, nine pictures and four videos of the rental unit into documentary evidence.

The Landlord testified that she there were several holes in the walls at the end of the tenancy that need to be repaired and that due to the patchwork the walls all of the walls in the rental unit need to be repainted. When asked why the full wall needed to be repainted due to patchwork the Landlord testified that the paint used to cover the repaired holes did not match the old paint on the walls, so she had to have the full house repainted.

The Tenant testified that there was only normal wear and tear to the walls of the rental unit and that the rental unit did not require a full repaint. The Tenant also testified that if the Landlord chose to change the colour of the interior paint, its not the Tenant's responsibility to pay for that.

The Landlord testified that the Tenant left a lot of personal property in the rental unit and returned the rental unit to her, uncleaned at the end of the tenancy. The Landlord is seeking to recover her cost to have the Tenant's personal property disposed of and to have the rental unit cleaned.

The Tenant testified that she returned the rental unit to the Landlord at the same condition and level of cleanliness that she had received at the beginning of the tenancy.

The Landlord testified that the Tenants had destroyed the window blinds in the bedroom, kitchen and basement during the tenancy. The Landlord testified that the

blinds were new at the beginning of the tenancy and that the damaged blinds had to be replaced at the end of this tenancy.

The Tenant testified that the window blinds were returned to the Landlord in the same condition that she received them in at the beginning of her tenancy and that the Tenants had not caused any damage to the window blinds.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

I have reviewed the decision of the previous hearing between these parties and, I find that the Landlord has already been found to have extinguished her right to make a claim against the deposits for this tenancy. It was also recorded in the decision from that hearing that the Arbitrator had ordered the Landlord to return the deposits for this tenancy to the Tenants, upon receiving the Tenants' forwarding address, pursuant to section 38 of the Act.

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to either file an Application for Dispute Resolution to claim against the deposits or repay the security deposit and pet damage deposit to the tenant.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), 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.

As the Landlord has already been found to have extinguished her right to make a claim against the deposits, I find that the only remain option left to the Landlord, upon receiving the Tenants' forwarding address was to return the deposits in full as ordered.

I find that this tenancy ended on May 13, 2018, the date the Tenant moved out of the rental unit. I also find that the Tenants sent their forward address, by registered mail, to the Landlord on December 3, 2018, and that pursuant to section 90 of the Act, the Landlord was deemed to have received that mail on December 8, 2019. Accordingly, the Landlord had until December 23, 2018, to comply with section 38(1) of the *Act* and the previous order, by repaying the deposits in full to the Tenants.

However, the Landlord not only completely disregarded the previous decision and order issued by this office, but she also waited over 60 days before she filed an application, in defiance of that previous order, to make a claim against deposits for this tenancy.

I find that the Landlord's decision to not return the security deposit as ordered and in accordance with the *Act* to be a blatant disregard for the authority of this office. I cautioned the Landlord during this hearing regarding the possibility of administrative penalties for the failure to comply with a decision or order of this office, pursuant to section 87.3 of the *Act*.

I find that the Landlord breached section 38 (1) of the *Act* by not returning the Tenants' deposits as ordered within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

- 38 (6)** If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act*, the Tenants have successfully proven that they are entitled to the return of double the deposits. I find for the Tenants,

in the amount of \$3,000.00, granting a monetary order for the return of double the security deposit and pet damage deposit.

Regarding the Landlord's claim for \$4,876.25 in damages caused to the rental unit during the tenancy, throughout the hearing the parties to this dispute provided conflicting verbal testimony regarding the condition of the rental unit at the beginning and end of this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

An Arbitrator would normally look to the move-in/move-out inspection report (the "inspection report") as the official document that represents the condition of the rental unit at the beginning and the end of a tenancy; as it is required that this document is completed in the presence of both parties and seen as a reliable account of the condition of the rental unit.

I accept the testimony of both parties that the written move-in inspection and the written move out inspection were not completed for this tenancy. I find that the Landlord was in breach of sections 23 and 35 of the *Act* when she did not complete these inspections as required.

In the absence of a reliable move-in/move-out inspection report to represents the condition of the rental unit at the beginning and the end of this tenancy, I must rely on the additional documentary evidence submitted by the Landlord to prove her claim. The additional evidence submitted by the Landlord is nine pictures, and four videos were taken of the rental unit. I have reviewed the photographic and video evidence submitted by the Landlord, and I noted that the pictures are dated July 21, 2018, over a month after the Landlord claims the Tenants had vacated the rental unit and that there is no date or time stamp on the videos submitted. Due to the fact that the pictures were taken so long after the tenancy had ended and there was no information provided by the Landlord as to when the videos were taken, I find that the picture and video evidence to be an unreliable account of the condition of the rental unit at the end of this tenancy.

Overall, I find that the Landlord has submitted insufficient evidence to support her claim for \$4,876.25 in damages caused to the rental unit during the tenancy. Therefore, I dismiss the Landlord's claim in its entirety, without leave to reapply.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Due to the Landlord's breach of the *Act* and the Landlord's disregard of an order issued from this office, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for her application.

Conclusion

I find for the Tenants pursuant to sections 38 and 72 of the *Act*. I grant the Tenants a **Monetary Order** in the amount of **\$3,100.00**. The Tenants are 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: June 3, 2019

Residential Tenancy Branch