



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BASTION DEVELOPMENT and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

FFL MNDCL MNDL-S MNRL

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 deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord").

As both parties were present service was confirmed. The tenant confirmed receipt of the landlord's application and evidence and said they had not served any materials. Based on the testimonies I find that the tenant was served with the 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 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 periodic tenancy ended on April 15, 2019. The monthly rent was \$2,009.00 payable by the first of each month. A security deposit of \$850.00 was collected and is still held by the landlord.

A move-out condition inspection report was prepared by the parties. The parties say the tenant signed and provided a forwarding address on April 23, 2019. The landlord submits that the rental suite required some cleaning after the tenancy ended and the cost of the work done is \$400.00. The landlord submitted a copy of the condition inspection report into evidence.

The landlord said that there is an arrear of \$2,141.00 as at the date of the hearing arising from the tenant's failure to pay the rent for April, 2019, NSF charges and late fees applicable. The landlord submitted into documentary evidence the tenant ledger showing the outstanding balance.

The tenant gave some testimony about their failure to pay the full amount of rent as they chose to use the funds for other expenses. The tenant submits that they did not have the opportunity to clean the rental unit at the end of the tenancy and while they signed the move-out inspection they did not agree to any deductions from the security deposit.

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.

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 present matter the tenancy ended on April 15, 2019 and the tenant provided a forwarding address in writing on April 23, 2019. The landlord filed their application to retain the security deposit on May 6, 2019. As such, I find that the landlord was within the timeline granted under the Act to file an application to retain the security deposit.

I accept the evidence of the landlord that the rental unit required some cleaning after the tenancy ended. I accept the evidence that the cost of cleaning is \$400.00. Accordingly, I issue a monetary award in that amount.

I accept the evidence of the parties that there is a rental arrear in the amount of \$2,141.00 as at the date of the hearing. I find that there is sufficient evidence by way of the documentary materials submitted by the landlord and the testimony of the tenant and landlord. Accordingly, I find that the landlord is entitled to a monetary award in the amount of \$2,141.00.

I find the tenant's submissions to be irrelevant to the matter at hand and of no assistance in making a determination on the present application. The tenant's familial and economic circumstances are irrelevant to their obligation to pay rent when it is due. I find the tenant's submissions to be generally irrelevant, unsupported in any documentary materials, have little credibility and not be persuasive.

As the landlord was successful in their application I find that the landlord is entitled to recover the filing fee for this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary award in the landlord's favour in the amount of \$1,791.00 against the tenant in the following terms:

Item	Amount
Rental Arrears	\$2,141.00

Damages and Loss	\$400.00
Filing Fee	\$100.00
Less Security Deposit	-\$850.00
TOTAL	\$1,791.00

The landlord is provided with the Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with the Order, the 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: August 13, 2019

Residential Tenancy Branch