



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TWENTY ONE HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL; MNSD, FFT

Introduction

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

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38;
- authorization to recover the filing fee for its application, pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- authorization to obtain a return of their security deposit, pursuant to section 38;
- authorization to recover the filing fee for their application, pursuant to section 72.

The "male tenant" did not attend this hearing, which lasted approximately 57 minutes. The landlord's two agents, landlord GR ("landlord's agent") and "landlord AM," the female tenant ("tenant") and the tenant's English language translator attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's two agents confirmed that they were both the building managers for the landlord company named in this application and that they both had permission to speak on its behalf (collectively "landlord"). The tenant confirmed that she had permission to represent the male tenant (collectively "tenants") and that her translator had permission to assist her at this hearing.

The hearing began at 1:30 p.m. with me and the landlord's two agents present. The tenant called in late at 1:33 p.m. The tenant's translator joined the hearing late at 1:43 p.m. I informed the tenant about what occurred in her absence before she called into the hearing. The hearing ended at 2:27 p.m.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

Issues to be Decided

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

Is the landlord entitled to retain the tenants' security deposit?

Are the tenants entitled to obtain a return of their security deposit?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2017 and ended on April 29, 2019. Monthly rent in the amount of \$1,550.00 was payable on the first day of each month. A security deposit of \$775.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. The tenants provided a written forwarding address to the landlord on April 29, 2019, by way of the move-out condition inspection report. The landlord did not have written permission to keep any amount from the tenants' security deposit. The landlord's application to retain the tenants' deposit was filed on May 10, 2019. The rental unit is a 350 to 400 square foot condominium that was brand new when the tenants moved in.

The tenants originally applied for a return of \$500.00 from their security deposit of \$775.00. At the hearing, the tenant agreed to pay the landlord \$550.00 and sought a return of \$225.00 from the tenants' security deposit plus the \$100.00 application filing fee.

The landlord seeks a monetary order of \$1,850.35 plus the \$100.00 application filing fee.

The landlord seeks \$896.00 for a counter repair, due to a stain that the landlord's agent said the tenants caused by leaving something on the brand new counter to rust and sink in. He claimed that the work had not been done yet, new tenants were living in the unit now, but the work would be done once the landlord obtained the money to pay for it. He explained that the repair involved shaving 3/2 of an inch off the top of the counter and buffing it smooth after. He said that the counter was a manufactured stone so it was more expensive, as a replacement was about \$1,800.00. The landlord provided photographs and a quote which does not include the rental unit or street number. The landlord did not provide a receipt showing when or how the payment was made but the landlord's agent said that he could provide a cheque copy later.

The tenant agreed that she caused the counter damage but stated that the size of the stain was not large and the amount of the repair was too much, compared to the small size of the damage. During the hearing, the tenant agreed to pay \$100.00 towards this damage, stating that this was a more reasonable amount.

The landlord seeks \$300.00 to clean the rental unit. The landlord's agent claimed that the tenants did not clean the rental unit, including the walls, the tile in the bathroom, the stove with grease on top, and the top of the refrigerator. The landlord provided photographs and an invoice for the cost. The landlord's agent said the cheque was paid on the same day as the invoice but the landlord did not provide a receipt. The tenant stated that she tried to clean the rental unit to the best of her ability when she moved out and she offered \$200.00 as a more reasonable amount.

The landlord seeks \$154.35 to clean a bed mattress stain that the tenants caused. The landlord provided photographs and an invoice showing the above amount was paid. The tenant agreed to pay \$50.00, stating that this was a more reasonable amount.

The landlord seeks \$500.00 for painting the walls in the rental unit. The landlord provided photographs and an invoice. The landlord's agent claimed that he did not know when it was paid but he could provide the cheque later. He said that the tenants caused damage beyond reasonable wear and tear, with stains and large gouges in the walls. The tenant agreed that she caused some damage but it was mainly reasonable wear and tear. She said that for the small size of her unit and based on her own experience, the cost should be closer to \$200.00, so she agreed to pay this amount.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$100.00 of the \$896.00 claimed for the counter repair. The tenants agreed to pay this amount during the hearing. I find that this is a reasonable amount. I find that the damage caused by the tenants was mainly reasonable wear and tear. I also find that the landlord's quote does not show the rental unit number or the street address of the property to show that the estimate was for the tenant's rental unit, as opposed to another rental unit.

I award the landlord \$200.00 of the \$300.00 claimed to clean the rental unit. The tenants agreed to pay this amount, agreeing that they did not clean all the areas. I find that this is a reasonable amount. I also note that no receipt or other documentary evidence was provided to confirm the landlord's payment of \$300.00.

I award the landlord the entire \$154.35 to clean the mattress stain. The landlord provided an invoice and receipt for this amount. The tenants agreed that they caused this damage and I do not find the tenant's offer of \$50.00 to be a reasonable amount.

I award the landlord \$200.00 of the \$500.00 claimed to paint the rental unit. The tenants agreed to pay this amount during the hearing. I find that this is a reasonable amount. I find that the damage caused by the tenants was mainly reasonable wear and tear. I also note that no receipt or other documentary evidence was provided to confirm the landlord's payment of \$500.00.

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after

the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenancy ended on April 29, 2019. The tenants provided the landlord with a written forwarding address on the same date. The landlord did not return the security deposit to the tenants. I find that the landlord filed an application for dispute resolution to claim against the security deposit on May 10, 2019, which is within 15 days of the end of tenancy date of April 29, 2019. Therefore, I find that the tenants are not entitled to double the value of their security deposit of \$775.00, only the regular return.

Over the period of this tenancy, no interest is payable on the tenants' security deposit. I order the landlord to retain \$654.35 from the tenants' security deposit of \$775.00, in full satisfaction of its monetary award.

I order the landlord to return the remaining \$120.65 from the security deposit to the tenants within 15 days of receiving this decision. The tenants are provided with a monetary order for \$120.65.

As both parties were only partially successful in their applications, I find that they are not entitled to recover their \$100.00 filing fees.

Conclusion

I order the landlord to retain \$654.35 from the tenants' security deposit of \$775.00 in full satisfaction of its monetary award.

The remainder of the landlord's application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$120.65 against the landlord. 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.

The remainder of the tenants' 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: August 19, 2019

Residential Tenancy Branch