



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlords attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

The landlords testified that the tenant was served the notice of dispute resolution package by registered mail on May 13, 2019. The landlords did not provide the Canada Post tracking number. Based on the undisputed testimony of the landlords, I find that the tenant was deemed served with this package on May 18, 2019, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

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

The landlords provided the following undisputed testimony. This tenancy began on April 1, 2018 and ended on May 2, 2019. Monthly rent in the amount of \$2,250.00 was payable on the first day of each month. A security deposit of \$1,000.00 was paid by the tenant to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlords testified that both parties jointly completed and signed a move in condition inspection report on April 26, 2018. The landlords testified that both parties jointly completed and signed a move out condition inspection report on May 1, 2019. The move in condition inspection report states that the tenant agrees with the contents of the report. The move in and move out condition inspection reports were entered into evidence.

The landlords testified that the forwarding address provided by the tenants on the move out condition inspection report was not correct. The landlords testified that the tenant texted them her correct forwarding address some time in the beginning of May 2019. The landlords filed their application for dispute resolution on May 13, 2019.

The landlords testified that the tenant did not clean the subject rental property when she moved out and left it in a filthy condition. The move in and move out condition inspection reports state that the subject rental property was dirtier on move out than in was on move in. The landlords entered into evidence photographs of stained and dirty walls and carpets. The landlords entered into evidence a signed letter from their real estate agent which states that the subject rental property was not left in a clean state.

The landlords testified that the first cleaner they hired started cleaning but decided the subject rental property was too dirty for her to continue. The landlords entered into evidence text messages between the first cleaner and themselves which state same and inform the landlord's that they owe the cleaner \$110.00 for her services. The landlords testified that they paid the second cleaner \$500.00 to complete the cleaning work. A receipt for same was entered into evidence. The landlords are seeking \$610.00 from the tenant for the cost of cleaning the subject rental property.

The landlords testified that the master bedroom in the subject rental property had one stain on it when the tenant moved in and had three more stains when the tenant moved in. The move in condition inspection report states that the master bedroom carpet had stains and the move out condition inspection report states that the master bedroom carpet had additional stains.

The landlords testified that the carpet was likely original to the subject rental property which was built in the 1950's and that it was definitely over 10 years old. The landlords entered into evidence a quote for the replacement of the master bedroom carpet in the amount of \$1,285.88.

The landlords testified that while their damages are over \$1,000.00 they are only seeking to retain the tenant's security deposit and are not seeking a Monetary Order over and above that amount.

Analysis

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the photographic evidence of the landlords, the landlords' testimony and the condition inspection reports, I find that the subject rental property required significant cleaning. I find that the tenant is responsible for the \$610.00 paid by the landlords to clean the subject rental property.

Policy Guideline #40 states that the useful life for carpet is 10 years (120 months). The landlords testified that the carpet in the master bedroom was up to 60 years old and definitely over 10 years old. Therefore, at the time the tenant moved out, there was no

useful life left on the carpet and the landlords are not entitled to recover the cost of installing new carpets from the tenant.

As the landlords were successful in their application I find that they are entitled to recover the \$100.00 filing fee, pursuant to section 72 of the *Act*.

Section 38 of the *Act* states that 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.

The landlords testified that the tenant provided her forwarding address via text message. While texting does not meet the service requirements of section 88 of the *Act*, I find that the landlords were sufficiently served with the tenant's forwarding address, pursuant to section 71 of the *Act*, because they confirmed receipt of it.

The landlords filed their application for dispute resolution on May 13, 2019, within 15 days of the end of the tenancy. I find that the landlords made an application for dispute resolution claiming against the security deposit in accordance with section 38 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlords are entitled to retain \$710.00 from the tenant's security deposit. I Order the landlords to return the remainder of the tenant's security deposit to her, in the amount of \$290.00.

Conclusion

The landlords are entitled to retain \$710.00 from the tenant's security deposit.

I issue a Monetary Order to the tenant in the amount of \$290.00.

The tenant is provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: August 20, 2019

Residential Tenancy Branch