



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S

Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authority to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38 ; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

Is the tenant entitled to the return of all or a portion of the security deposit pursuant to section 38?

Background and Evidence

The tenants testified that have been tenants at this rental unit since 2011. They testified that they had an ongoing tenancy arrangement wherein the tenants would pay for maintenance expenses from the property for services such as pest control, mold abatement and repairs. The tenants would then deduct those expenses from their monthly rent.

The tenants testified that this practice continued with this landlord after the landlord purchased the property in 2016. The parties signed a new tenancy agreement commencing on May 5, 2016. The written tenancy agreement stated that the tenants would pay monthly rent of \$5,200.00 each month. In addition, the tenants paid a \$2,500.0 security deposit which the landlord testified that she still holds.

The parties both testified that the tenants deducted rental unit expenses from each rent payment. The landlord testified that she did not understand until the tenancy ended that the deductions made by the tenants were improper.

The tenants produced text messages sent between the parties on January 25, 2019 wherein the landlord agreed to let the tenant pay the January 2019 rent after the tenants deducted expenses for January 2019. The landlord testified that she did not authorize the rent deductions and the January 2019 text messages only relate to January 2019.

The tenants testified that that the landlord never complained about the rent deductions until after the tenancy ended.

The landlord also claims that she recently discovered that the January 2018 was not paid. The tenants testified that they gave the landlord a cheque for the January 2018 rent in January 2018. They do not presently know whether the landlord deposited that cheque.

The landlord is claiming \$24,750.44 for unpaid rent.

Analysis

The landlord's delay in pursuing monetary compensation raises the issue of estoppel.

Estoppel is a legal principle wherein a party can waive their right to assert a legal right they might otherwise have. Estoppel arises when:

- the parties have a shared understanding;
- one party conducts itself in reliance on that understanding; and
- that party would suffer a detriment if the other party is now permitted to act inconsistent with that understanding.

In this case, although the landlord claims that the tenants have regularly improperly deducted expenses from their rent throughout the tenancy, the landlord has let this situation persist for three years before issuing this application for dispute resolution.

Based upon the ongoing practice of the tenants deducting expenses from the monthly rent, I find that the parties shared an understanding that the tenants were permitted deduct expenses related to the rental unit from their monthly rent. Furthermore, I find that this understanding is confirmed by the text messages sent between the parties on January 25, 2019 wherein the landlord agreed to let the tenant pay the January 2019 rent after the tenants deducted expenses for January 2019.

Furthermore, I find that the tenants relied on this practice and the tenants would suffer a detriment if the landlord is now permitted to act inconsistent with that understanding. If the landlord had objected to these rent deductions earlier, the tenants could have applied for dispute resolution to determine the rent owed or moved out of the rental unit without incurring additional liability.

For the above-stated reasons, I find that the landlord is estopped from now claiming, three years later, that tenants have improperly deducted expenses from the rent.

In regards to the landlord's claim for rent in January 2018, I find that the landlord has not provided sufficient evidence to establish that the January 2018 rent was not paid. The landlord did not provide a rent ledger documenting the nonpayment of the rent. The tenants, on the other hand, testified that they delivered a rent cheque to the landlord for the January 2018 rent. I find that the landlord has failed to prove her claim on the balance of probabilities that the January 2018 rent was not paid. Accordingly, I dismiss the landlord's claim for the payment of the January 2018 rent.

For the forgoing reasons, I dismiss the landlord's application for monetary compensation for breach of section 67 of the *Act*.

Since the landlord has not prevailed in this matter, I dismiss the landlord's application for reimbursement of the filing fee pursuant to section 72(1).

Furthermore, I find that the landlord holds a security deposit in the amount of \$2,500.00. Since the landlord's application to retain the security deposit has been dismissed, I order that the entire security be returned to the tenants pursuant to section 38 of the *Act*. Accordingly, I grant the tenants a monetary order for \$2,500.00.

Conclusion

I dismiss the landlord's application.

I grant the tenants a monetary order in the amount of **\$2,500.00**. If the landlord fails to comply with this order, the tenants may file the order in the Provincial Court to be 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 27, 2019

Residential Tenancy Branch