Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   FFL MNDL-S

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 deposits 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 tenant represented themselves with assistance.

As both parties were present service of documents was confirmed. The tenant confirmed receipt of the landlord's application and evidence. The landlord confirmed receipt of the tenant's evidence. While the landlord said that they did not receive the tenant's evidence within the timeline provided in the Rules of Procedure I find that its inclusion does not unfairly prejudice the landlord or breach the principles of natural justice. I find that each party was served with the respective 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 began in July 2016 and ended on May 15, 2019 when the tenant vacated the rental unit. A security deposit of $487.50 was paid by the tenant and is still held by the landlord.

The parties prepared a move-out condition inspection report on May 17, 2019 where the tenant provided a forwarding address in writing. The move out inspection report records several areas of damage necessitating repairs. The signed report provides that:

> LANDLORD WILL DO REPAIRS & SEND TENANT BILL. IF TENANT AGREES SHE WILL ACCEPT COST. IF NOT THE ISSUE IN QUESTION WILL BE EXPALINED & OPEN FOR DISPUTE RESOLUTION.

The landlord submits that the cost of repairs and work performed is $885.69 and seeks a monetary award in that amount. The landlord submitted into evidence copies of photographs showing the issues and invoices and receipts for the work performed.

The tenant agrees with the amount of $60.12 but disputes the balance of the amount sought by the landlord. The tenant submits that they were not permitted an opportunity to perform repairs themselves to minimize the amount of repair costs. The tenant questions the scope of the landlord's repairs and says that the repair costs sought are exaggerated or unnecessary. The tenant also makes an application for a monetary award in their written submissions despite not filing an application for dispute resolution.

Analysis

Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit within 15 days of the end of a tenancy or upon receiving a forwarding address in writing.

In the present case the tenancy ended on May 15, 2019 and the tenant provided a forwarding address on May 17, 2019. The landlord filed their application for dispute resolution on May 30, 2019, within the 15 days provided under the Act.

Section 67 of the *Act* establishes that an Arbitrator may determine and issue an order for damages and loss arising from a party breaching the Act, regulations or tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the

damage or loss bears the burden of proof. A claimant also has the duty to act reasonably to mitigate their losses.

The parties participated in a move-out inspection and signed a condition inspection report. In accordance with Residential Tenancy Regulation 21 a condition inspection report is evidence of the state of repair and condition of the rental unit at the time of reporting, unless there is a preponderance of evidence to the contrary.

I find that the landlord has met their evidentiary burden on a balance of probabilities. The amount claimed by the landlord are supported by documentary evidence and all pertain to deficiencies identified in the condition inspection report. I find the evidence to be sufficient to show that the landlord incurred losses as a result of the state of the rental unit and that these losses are attributable to the tenant.

I do not find the tenant's submissions to be convincing or persuasive. The tenant's written submissions contradict the condition inspection report signed by the parties and is not supported in documentary evidence. Their submission includes unsupported materials pertaining to irrelevant issues and an attempt to seek a monetary award despite not filing an application. I find the tenant's position to not be supported in the evidence.

I accept the evidence of the landlord that the total amount of the monetary losses is $885.69. Accordingly, I issue a monetary award in the landlord's favour in that amount.

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.

As the landlord's application was successful the landlord may recover their filing fee from the tenant.

Conclusion

I issue a monetary award in the landlord's favour in the amount of $498.19 which allows the landlord to recover their losses, retain the security deposit for this tenancy and recover the filing fee.

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: September 12, 2019

_____
Residential Tenancy Branch