



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFT MNDCT MNSD

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to recover the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the landlord 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 landlord was assisted by an interpreter and a family member.

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies 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 tenant entitled to a monetary award as claimed?

Is the tenant entitled to a return of all or part of the security deposit for this tenancy?

Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

The parties agree that this periodic tenancy began in March, 2017 and ended March 31, 2019. A security deposit of \$400.00 was paid at the start of the tenancy and is still held by the landlord.

The tenant submits that they provided a forwarding address verbally to the landlord on March 31, 2019 which they believe the landlord wrote down. The landlord disputes that

they were ever provided a forwarding address in writing or verbally. The tenant said that the address for service of the present dispute resolution application is not their forwarding address.

The tenant claims an amount of \$51.43 for work done to the rental unit. The tenant submits that the repairs were requested by the landlord. The landlord disputes that there was an agreement between the parties for repairs.

Analysis

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

I find there is insufficient evidence that a forwarding address has been provided by the tenant to the landlord. The landlord disputes having been provided with any address and the tenant's submission is that they did not provide a forwarding address in writing but simply told the landlord verbally. I find that the tenant has not yet provided a forwarding address in writing to the landlord. Therefore, the landlord's obligation under the *Act* to return the tenant's security deposit has not started. Once the tenant provides a forwarding address to the landlord in writing, then the landlord must act within 15 days to apply for dispute resolution or return the tenant's security deposit.

As the running of time has not started I dismiss this portion of the tenant's application with leave to reapply.

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.

The tenant submits that there was an agreement between the parties for the tenant to perform repairs. The tenant seeks the cost of repairs. The landlord disputes that there was ever such an agreement.

I find that the tenant has not established their claim on a balance of probabilities. The tenant has provided no evidence that there was an agreement between the parties and the tenant states in their own sworn affidavit that they “voluntarily conducted the gutter repair”. I find that there was no agreement between the parties that would give rise to the tenant’s monetary claim and accordingly dismiss this portion of the tenant’s application.

As the tenant’s application was unsuccessful I decline to issue an award for the filing fee.

Conclusion

The portion of the tenant’s application seeking a return of the security deposit is dismissed with leave to reapply.

The balance of the tenant’s 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: September 26, 2019

Residential Tenancy Branch