



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for her application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 34 minutes.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

The tenant confirmed that he uploaded the same evidence submitted by the landlord to the online RTB website, which I received. The landlord claimed that she did not receive any evidence from the tenant. I notified both parties that I could not consider the tenant's uploaded evidence at this hearing, as it was not served to the landlord, as required. However, this information was already provided in the landlord's evidence package, which the tenant said that he received.

Issues to be Decided

Is the landlord entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's deposits?

Is the landlord entitled to recover the filing fee for her application?

Background and Evidence

While I have turned my mind to the landlord's 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 the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2018 and ended on August 31, 2019. Monthly rent in the amount of \$1,600.00 was payable on the first day of each month. A security deposit of \$800.00 and a pet damage deposit of \$800.00 were paid by the tenant and the landlord returned \$287.26 from the deposits to the tenant and retained the remainder. A written tenancy agreement was signed by both parties. A move-in condition inspection report was not completed for this tenancy, but a move-out condition inspection report was completed. The tenant provided a written forwarding address to the landlord on July 31, 2019, by way of a letter. The landlord had permission from the tenant to keep \$512.36 from the tenant's deposits for general cleaning, carpet cleaning, and painting the front entry door. The landlord's application to retain the tenant's deposits was filed on September 12, 2019.

The landlord seeks a monetary order of \$400.00 plus the \$100.00 application filing fee. The landlord seeks \$400.00 for a loss of rent from September 1 to 7, 2019. She said that because of the above cleaning and painting that had to be done, the unit was not ready for re-rental until September 7, 2019. She stated that the tenant failed to complete the above work, as noted on the list of items given to the tenant on August 29 to complete by August 31, so she had to do it. She maintained that because the tenant left on the Saturday of the labour day long weekend, she was unable to get people to complete the above work until September 3, 4 and 6. She said that she was unable to rent the unit to new tenants until October 1, 2019. She confirmed that she did not provide proof of any advertisements or efforts to re-rent the unit. She claimed that the rent loss was $\frac{1}{4}$ of the monthly rent of \$1,600.00 because it was for one week.

The tenant disputes the landlord's claim for a loss of rent. He said that he was given a list of items on August 29, 2019 and the landlord sent him a text message on August 30, 2019, indicating that she was having the carpet cleaning done. He claimed that he agreed to pay for the cleaning and painting, even though he did not agree with the general cleaning. He explained that if he was ordered to pay a loss of rent to the landlord, which he disagrees with, it should be prorated at \$213.34, which is calculated at \$1,600.00 divided by 30 days in September 2019, multiplied by 4 days until September 4, when the landlord said the additional cleaning was done. He confirmed that the painting of the front entry door should not have detracted potential tenants from renting the unit. The landlord claimed that it did, since the entire door had to be removed to paint it.

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 tenant 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.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for \$400.00, without leave to reapply.

I dismiss the landlord's claim for a one-week rental loss of \$400.00 from September 1 to 7, 2019. I find that the landlord failed to provide sufficient documentary evidence of the additional delay she said occurred when attempting to find people to repair and clean the unit. I find that the landlord failed to provide testimonial or documentary evidence including copies of rent advertisements, to show when she advertised the unit for re-rental, what the amount of rent was, what details were given, or how long the unit was advertised for. The landlord also failed to provide documentary or testimonial evidence to indicate how many inquiries were made for re-rental, how many showings were done,

and when they were done. I find that the landlord failed to show how she mitigated her losses in her efforts to re-rent the unit.

Section 38 of the *Act* requires the landlord to either return the tenant's deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and 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 deposits. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenancy ended on August 31, 2019. The tenant provided the landlord with a written forwarding address on July 31, 2019, by way of a letter. The landlord did not return the full deposits to the tenant. I find that the landlord filed an application for dispute resolution to claim against the deposits on September 12, 2019, which is within 15 days of the later end of tenancy date of August 31, 2019. Therefore, I find that the tenant is not entitled to double the value of his deposits of \$1,600.00.

Over the period of this tenancy, no interest is payable on the tenant's deposits. I order the landlord to retain \$512.36 from the tenant's deposits of \$1,600.00, in full satisfaction of her monetary award, based on both parties' agreement during the hearing.

I order the landlord to return the remaining \$1,087.64 from the deposits to the tenant within 15 days of receiving this decision. Although the tenant did not file an application for the return of his deposits, I am required to deal with its return on the landlord's application to retain the deposits, as per Residential Tenancy Policy Guideline 17. The tenant is provided with a monetary order for \$1,087.64.

As the landlord was unsuccessful in this application, and only successful based on what the tenant agreed to pay, I find that she is not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

I order the landlord to retain \$512.36 from the tenant's deposits of \$1,600.00 in full satisfaction of the monetary award.

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

I issue a monetary order in the tenant's favour in the amount of \$1,087.64 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.

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: October 24, 2019

Residential Tenancy Branch