



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDCL MNDL-S MNRL FFT MNSD

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants applied for:

- A return of their security deposit 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.

As both parties were present service was confirmed. The parties each testified that they had been served with the respective materials. Based on the testimonies I find that each party was served with the 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 either party entitled to the security deposit for this tenancy?

Is either party entitled to recover the filing fee from the other?

Background and Evidence

The parties agree on the following facts. This periodic tenancy began in December 2018 and ended April 30, 2019. Monthly rent was \$1,750.00 payable on the first of each month. A security deposit of \$875.00 was paid at the start of the tenancy and is still held by the landlord. The tenants are also responsible for paying 70% of the utilities for the rental building. No condition inspection report was prepared at any time for this tenancy.

The tenants submit that no written authorization was provided that the landlord may retain any portion of the security deposit for this tenancy and seek a return of the full deposit.

The tenant testified that they had served the landlord with a forwarding address in writing on or about July 1, 2019. The tenant submits that they served the address in person. No sworn Proof of Service or documentary evidence was submitted. The landlord disputes that they were ever provided a forwarding address.

The landlord claims a monetary award in the amount of \$5,113.40. The landlord seeks the amount of \$121.15 for carpet cleaning and \$449.25 for utility arrears. The landlord also seeks an award of \$975.00, the equivalent of half a month's rent as they submit that the rental suite could not be occupied for two weeks after the tenancy ended due to the condition of the suite. The landlord also seeks an award of \$3,568.02 for replacement of the carpets. The landlord submitted into written evidence invoices, estimates and bills in support of their monetary award.

The tenants agree with the portion of the landlord's claim for carpet cleaning and utility arrears in the amounts of \$121.15 and \$449.25. The tenants dispute the balance of the landlord's claim.

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.

There is insufficient evidence that the tenants provided the landlord with a forwarding address in writing. The tenants submit they provided the landlord with a forwarding address on or about July 1, 2019 but provided little details or documentary evidence in support. The landlord disputes that they have ever been provided with a forwarding address. I find that there is insufficient evidence to find that the tenant has provided a forwarding address to the landlord in accordance with the *Act*. Therefore, I find that the landlord's obligation under the *Act* to return the tenant's security deposit has not started.

Accordingly, I dismiss the tenant's application in its entirety and the portion of the landlord's application seeking authorization to retain the security deposit with leave to reapply.

At the hearing the tenants confirmed that the addresses for service of their application are their forwarding addresses. I find that the landlord has now been served with the tenants' forwarding address as of the date of the hearing, November 4, 2019 and they have 15 days from this date to either return the security deposit or file an application for authorization to retain the deposit.

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.

As the tenants have testified that they agree with the portions of the landlord's claim for carpet cleaning and utility arrears, I issue a monetary award in the amount of \$570.40 in the landlord's favour.

I find that there is insufficient evidence in support of the balance of the landlord's claim. In the absence of a proper condition inspection report prepared in accordance with the *Act* at the start of the tenancy, I find there is insufficient evidence that the tenants are responsible for the condition of the suite. I find the photographs submitted by the landlord to be of little assistance as they merely show some portions of the suite the landlord believes required work but do not establish that any damage is attributable to the tenants. Furthermore, many of the photographs are irrelevant to the matter at hand showing the suite during the tenancy. The landlord failed to prepare a proper condition

inspection report and cannot now claim the damage to the suite is caused by the tenants.

Additionally, I find the landlord's claim for replacement of the carpets in the rental suite to be wholly out of proportion with the evidence submitted. While there is some discoloration shown in the photographs, I find that it is not reasonable to then replace the carpet throughout the suite and hold the tenants responsible for this expense. I find that the landlord has not established that any of the damage to the rental unit is attributable to the tenants, nor have they shown that the amount claimed is a reasonable monetary amount for the damage claimed.

I further find that the landlord has failed to establish that the loss of rental income for May 2019 is caused by the tenants. The parties both testified that the tenants vacated the rental unit in accordance with the agreed upon timeline. The parties gave no evidence that the tenants overheld or prevented a new tenancy from taking place. I find the landlord's claim that the rental unit required cleaning due to the tenants has not been established on a balance of probabilities.

I dismiss the portion of the landlord's application seeking a monetary award for carpet replacement and loss of rental income.

As the landlord was successful in their application in part they may recover the filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$670.40 of the tenants' security deposit in full satisfaction of the monetary award issued in the landlord's favour. The security deposit for this tenancy is reduced by that amount to \$204.60.

Conclusion

The tenants' application is dismissed in its entirety with leave to reapply.

The portion of the landlord's application seeking authorization to retain the security deposit is dismissed with leave to reapply.

The security deposit for this tenancy is reduced by \$670.40, the amount of the monetary award in the landlord's favour, to \$204.60.

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: November 4, 2019

Residential Tenancy Branch