



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 222 ASH STREET PROPERTIES INC.
and [tenant name suppressed to protect privacy]

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 award for damages and loss pursuant to section 67;
- Authorization to retain the security and pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee from the tenants 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 corporate landlord was represented by its agent.

As both parties were present service was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find 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 deposits for this tenancy?

Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

This tenancy began in February 2019 and ended August 1, 2019. The monthly rent was \$1,400.00 payable on the first of each month. A security deposit of \$700.00 and pet damage deposit of \$700.00 were paid and still retained by the landlord. The parties prepared a move-in and move-out condition inspection report and the reports were submitted into documentary evidence.

The tenants gave notice to the landlord to end the tenancy first by text message on July 10, 2019 and then in writing on July 20, 2019. The tenants vacated the rental unit on August 1, 2019 having paid rent in full through July 31, 2019. The landlord said that they mitigated their rental income losses by finding a new occupant for the rental suite for August 20, 2019. The landlord seeks a monetary award in the amount of \$903.00 the per diem amount of rent for 20 days.

The tenant submits that the landlord accepted that the tenancy was ending and they should be barred from seeking an award for damages when they participated in a move-out inspection, consenting to the end of the tenancy. The tenant also submits that they were not provided with a copy of the move-out inspection until it was included in the evidence package and therefore the landlord has extinguished their right to claim against the deposits for this tenancy.

The landlord seeks the amount of \$94.50 for carpet cleaning. The landlord acknowledges that the move out condition inspection report states that there are no issues with the carpets but it is cleaned after each tenancy as standard procedure.

The parties agreed at the hearing that the landlord is entitled to a monetary award in the amount of \$48.72 for unpaid utilities and \$100.00 for garbage disposal.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security and pet damage deposit or file for dispute resolution for authorization to retain the deposits within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In the present case the tenancy ended on August 1, 2019 and the landlord filed their application for dispute resolution on August 15, 2019 within the timeline provided under the Act.

I do not find the tenants' submission that they were not provided with a move-out inspection report until it was included in their evidence package to be supported in the evidence or to be persuasive.

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 parties have agreed on the portions of the landlord's application seeking a monetary award in the amount of \$48.72 for unpaid utilities and \$100.00 for garbage disposal I issue a monetary order in those amounts.

Section 45 of the *Act* explains that a tenant may end a tenancy by giving the landlord notice on a date not earlier than one month after the date the landlord receives the notice. In the present case the tenant gave notice of their intention to end the tenancy on July 10, 2019, therefore the effective date of their notice was August 31, 2019. I find that the tenants were obligated to pay the monthly rent in the amount of \$1,400.00 on August 1, 2019. I accept the evidence of the parties that the tenants failed to pay the full rent on that date.

I do not find the tenant's submission that there was a mutual agreement to end the tenancy as evidenced by the landlord's completion of the move-out inspection report to be persuasive or in accordance with the provisions of the Act. The landlord conducting themselves in accordance with the requirements of the Act does not bar them from making a claim for losses that arise due to the tenants' breach.

I accept the landlord's evidence that they took reasonable steps to find a new occupant and mitigated their rental income losses by commencing a new tenancy for August 20, 2019. I accept the landlord's evidence that the amount of rental income loss is calculated to be \$903.00. Accordingly, I issue a monetary award in that amount.

The landlord seeks a monetary award for carpet cleaning. However, the copy of the condition inspection report submitted into evidence by the parties indicates that there were no issues with the carpets or the floors at the time of the inspection.

Residential Tenancy Regulation 21 provides that a condition inspection report completed in accordance with the Act is evidence of the state of repair and condition of the rental unit.

I find the landlord's testimony that additional cleaning was required due to the presence of pets to be insufficient to determine that any losses arising from cleaning is attributable to the tenancy. The landlord testified that carpet cleaning occurs as a matter of procedure. Therefore, I find that the cost of carpet cleaning is not a loss arising from the tenants' breach but simply a cost of business for the landlord. I dismiss this portion of the landlord's claim.

As the landlord was partially successful in their claim they are entitled to recover the filing fee for their application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$1,151.72 of the tenant's security and pet damage deposit in full satisfaction of the monetary award issued in the landlord's favour.

Conclusion

The landlord is authorized to make a deduction of \$1,151.72 from the deposits for this tenancy under the following terms:

Item	Amount
Rental Losses	\$903.00
Utility Bills	\$48.72
Garbage Disposal	\$100.00
Filing Fee	\$100.00
Less Security and Pet Damage Deposit	-\$1,400.00
TOTAL	\$248.28

The balance of the deposits remaining are to be returned to the tenants.

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: December 12, 2019

Residential Tenancy Branch