



Dispute Resolution Services

Page: 1

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 deposit for this tenancy 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 landlord was represented by their agent (the "landlord"). The tenant AS (the "tenant") confirmed they represented both named respondents.

As both parties were present service was confirmed. The tenant confirmed receipt of the landlord's application and evidence and testified they had not provided any materials. Based on the testimonies I find the tenant was served with the landlord's 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 tenants?

Background and Evidence

This periodic tenancy began in November 2017 and ended in August 2019. A security deposit of \$1,250.00 was paid at the start of the tenancy. The landlord has returned \$550.00 of the deposit and retains \$600.00.

The parties participated in a move-in and move-out inspection of the rental suite. The move-out inspection report is dated August 7, 2019 and signed by both parties. The report records some damage and need for cleaning at the end of the tenancy. The tenant said they disagreed with the assessment of damage and did not give consent that any portion of the deposit could be withheld.

The landlord submits that the rental suite required some cleaning and work to be done, as recorded on the signed condition inspection report. The landlord testified that the total amount of the work was \$500.00. The landlord has submitted into evidence photographs of the suite showing its condition and an invoice from a third-party cleaning company for \$500.00 cleaning services.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit 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 tenant provided a forwarding address in writing on the condition inspection report dated August 7, 2019 and the landlord filed their application for dispute resolution on August 21, 2019, within the 15 days provided under the *Act*.

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.

I accept the evidence of the landlord that the rental unit had some damage and need for cleaning. I find that in accordance with Residential Tenancy Regulation 21 the condition inspection report is evidence of the state of repair and condition of the rental suite. While the tenant said they disagree with the evidence of the landlord they provided no documentary evidence in support of their position. I find that the landlord's evidence including; their testimony, photographs, invoice and condition inspection report completed in accordance with the Act, to be sufficient to demonstrate that there was a loss attributable to the tenancy.

I accept the evidence of the landlord that the monetary amount of the loss for cleaning was \$500.00. Accordingly, I issue a monetary award in the landlord's favour in that amount.

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

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the \$600.00 amount of the tenants' security deposit currently held in full satisfaction of the monetary award issued in the landlord's favour.

Conclusion

The landlord is authorized to retain \$600.00 of the tenant's security deposit.

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 16, 2019

Residential Tenancy Branch