



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 deposits 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 tenants were assisted by a family member.

As both parties were present service was confirmed. The parties each confirmed they were served with the respective materials. Based on the testimonies I find that the parties were each served in accordance with sections 88 and 89 of the Act with the respective materials.

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 September 2018. The monthly rent was \$1,500.00 payable on the first of each month. A security deposit of \$750.00 was collected and is

still held by the landlord. No condition inspection report was prepared at any time for this tenancy.

The tenancy ended on August 31, 2019 in accordance with a 2 Month Notice to End Tenancy for Landlord's Use dated June 22, 2019. The 2 Month Notice provides that the rental unit will be occupied by the landlord or a close family member.

The landlord submits that the rental property was left in a state of disrepair and that there was considerable cost to perform repairs to the water system and maintenance of the lawn. The landlord submitted into evidence copies of correspondence with the tenants, photographs and reports and invoices for work on the property. The landlord seeks a monetary award in the amount of \$11,215.64 for their losses.

The landlord seeks a monetary award in the amount of \$10,500.00 for lost rent. The landlord testified that while the tenancy ended in accordance with the 2 Month Notice they had issued, they were unaware that the landlord was required to reside in the rental unit and are suffering a loss of rental income.

The landlord submitted into evidence copies of correspondence between the parties. The landlord says that the tenant authorized the landlord's retention of the deposit for this tenancy by stating, "Whatever you want love. We already agreed on me wanting to leave your old broken home so is your memory okay?" the tenant responds to the landlord's request for confirmation that they may retain the deposit by writing, "If you can't figure it out for yourself I don't know what to tell you."

The tenants submit that they never gave a verbal or written response of "yes" to the question of whether the landlord may retain the deposit in their lengthy correspondence with the landlord.

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. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

The landlord points to the written correspondence between the parties and says that the tenant gives written permission to retain the security deposit. The tenants submit that as no clear answer of “yes, the landlord may retain the deposit” is given, then there must be a finding that no authorization was provided.

I find that I prefer the submissions of the landlord on this point. I find the tenant’s argument, that they did not say the exact words, to be childish and without merit.

While the tenants do not state outright that the landlord may retain the deposit, it is evident from the context of the conversation that the tenants are relinquishing their right to the deposit for this tenancy. The tenants state throughout the text conversation that they are conceding to the landlord. While much of the tenant’s conversation focuses on petty bickering and insulting the landlord it is evident that they are authorizing the landlord to retain the deposit for this tenancy.

I find that the landlord received written authorization from the tenants that they may retain the security deposit for this tenancy and they are therefore entitled to retain the full amount of \$750.00.

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.

In the absence of a proper condition inspection report prepared in accordance with the *Act*, I find that there is insufficient evidence that the state of the rental property is wholly attributable to the tenants. I find that photographs and correspondence to be insufficient to establish on a balance of probabilities that the tenants are responsible for level of the well water or condition of the yard. The *Act* requires the parties to prepare a condition inspection report at the outset of the tenancy specifically to avoid such ambiguities. The landlord failed to prepare a report and I find that the materials now submitted to be

insufficient to establish that any losses are due to a breach by the tenants. Accordingly, I dismiss this portion of the landlord's application.

The landlord claims a monetary award for lost rent. I find that the landlord has failed to demonstrate how they incurred any losses or that they are attributable to the tenants. The landlord issued a 2 Month Notice and the tenancy ended accordingly. No evidence was submitted that the tenants overheld the rental unit. The landlord testified that they chose to issue the 2 Month Notice after considering other options including a 1 Month Notice to End Tenancy for Cause. The landlord chose to issue a 2 Month Notice and their family member occupied the rental unit accordingly. I do not find that there has been any violation on the part of the tenants that would give rise to a monetary award for rental income losses. I dismiss this portion of the landlord's application.

As the landlord was not wholly successful in their application I decline to issue an order allowing them to recover their filing fee.

Conclusion

The landlord is authorized to retain the full security deposit for this tenancy.

The balance of the landlord'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: January 9, 2020

Residential Tenancy Branch