



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, the tenant and the tenant's social worker attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that her social worker was present to give her emotional support. The social worker did not testify at this hearing. This hearing lasted approximately 23 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 stated that she did not serve her evidence to the landlord. The landlord said that he did not receive any evidence from the tenant. I notified both parties that I could not consider the tenant's evidence at the hearing or in my decision because it was not served to the landlord as required.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee for this 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 month-to-month tenancy began on August 19, 2017 and ended on August 31, 2019. Monthly rent in the amount of \$1,000.00 was payable on the first day of each month. A security deposit of \$500.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. A move-in condition inspection report was not completed for this tenancy. A move-out condition inspection report was completed by the landlord only, a few days after the tenant moved out, without the tenant present. The tenant provided a written forwarding address to the landlord by way of her social worker making a phone call to the landlord on September 2, 2019. The landlord did not have any written permission to keep the tenant's security deposit. The landlord's application to retain the tenant's security deposit was filed on September 15, 2019.

The landlord seeks to retain the tenant's security deposit against his monetary claim for damages of \$394.73, plus recovery of the \$100.00 application filing fee.

The landlord stated that the tenant damaged the custom blinds at the rental unit, which cost \$315.00. He said that the tenant told him that she would fix the blinds, but she failed to do so. He explained that the tenant failed to remove her mattress and box spring from the rental unit, so he has to dispose of it. He maintained that the tenant also damaged the walls at the rental unit. He confirmed that he forwarded the receipts for his costs to the tenant.

The tenant disputes the landlord's application. She said that a little part of the blinds was damaged in her children's room, the landlord asked to retain \$100.00 from her security deposit to fix it, and she offered the landlord \$50.00. The tenant claimed that she was still willing to pay the landlord \$50.00 to fix the blinds.

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 make the following findings.

I award the landlord \$50.00 of the \$394.73 sought for the damages at the rental unit. The tenant agreed to pay this amount during the hearing for the blinds issue. I find that this is a reasonable amount for the blinds. The landlord did not conduct a move-in condition inspection report to show the condition of the blinds when the tenant moved in.

I find that the landlord did not sufficiently prove the remainder of his damages claim. The landlord did not reference or go through any of his receipts or invoices at the hearing. The landlord only provided one receipt and one invoice, for partial costs, not the entire amount claimed in this application. I find that the landlord did not explain the damages and repairs in detail, he did not indicate the monetary amount for each damage or repair, except for the blinds amount, without indicating the type of blinds damage caused by the tenant. He did not go through any monetary order worksheet at the hearing. As the applicant, it is the landlord's burden of proof, on a balance of probabilities, to prove his claim.

The landlord continues to hold the tenant's security deposit of \$500.00. Over the period of this tenancy, no interest is payable on the tenant's security deposit. As I awarded the landlord \$50.00 for the blinds damage, I allow the landlord to retain this amount from the

tenant's security deposit, leaving a balance of \$450.00 owed to the tenant. I issue a monetary order to the tenant for \$450.00.

I find that the tenant is not entitled to double the value of her security deposit, as she did not provide her forwarding address in writing to the landlord, only verbally. The landlord applied within 15 days of receipt of this address, to claim against the security deposit.

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

Conclusion

I order the landlord to retain \$50.00 from the tenant's security deposit of \$500.00.

I issue a monetary order in the tenant's favour in the amount of \$450.00 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.

The remainder 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 16, 2020

Residential Tenancy Branch