



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bastion Westpoint Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDL-S FFL

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.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served each tenant with the notice of application and evidence by registered mail sent to the forwarding address provided by the tenants on November 24, 2019. The landlord submitted two valid Canada Post tracking numbers as evidence of service. Based on the evidence I find that each tenant is deemed served with the landlord's materials on November 29, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

During the hearing the landlord amended their application by reducing the amount of the monetary claim to \$1,300.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlord's Application to decrease the landlord's monetary claim from \$1,400.00 to \$1,300.00 as making a recalculation can be anticipated and does not prejudice the tenants.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?
Is the landlord entitled to retain the deposit for this tenancy?
Is the landlord entitled to recover their filing fee from the tenants?

Background and Evidence

This fixed-term tenancy began in September 2019. Monthly rent was \$2,800.00 payable by the first of each month. A security deposit of \$1,400.00 was collected at the start of the tenancy and is still held by the landlord. The tenancy ended in November 2019.

A condition inspection report was prepared at both the start and the end of the tenancy. The tenants did not participate in the move-out inspection despite being providing multiple opportunities by the landlord. A move out inspection was originally scheduled for November 1, 2019 but the tenants were not prepared to participate. The parties rescheduled for 9:30am on November 5, 2019 but the tenants did not attend at the appointed time. The landlord issued a Notice of Final Opportunity for Inspection on that date scheduling an inspection for November 8, 2019 at 8:30am. The tenants failed to attend at that time.

The landlord completed the move-out inspection in the absence of the tenants and noted that the rental unit required considerable cleaning, repairs and work to be brought back into its pre-tenancy condition. The landlord submitted into evidence the condition inspection report noting the damage to the suite as well as written submissions and invoices itemizing the work done.

The tenants subsequently contacted the landlord to do another move-out inspection on November 13, 2019. The landlord attended at that time and met with the tenants. The landlord identified the deficiencies in the rental unit requiring cleaning and work. The tenants did not agree with the landlord's assessment of damage and refused to sign the condition inspection report. The tenants did provide a forwarding address in writing at that time.

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 tenants provided a forwarding address in writing on the condition inspection report on November 13, 2019 and the landlord filed their application on November 15, 2019. Therefore, I find that the landlord was within the timeline 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 find that the landlord has provided sufficient evidence including the condition inspection report, other documentary materials and testimony to meet their evidentiary burden on a balance of probabilities. I accept that the rental unit was left in a state of disarray requiring the landlord to incur expenses for cleaning, maintenance and repairs. I find that the condition inspection report prepared at the end of the tenancy in accordance with the Act and regulations is evidence of the state of repair of the rental unit. I find little evidence to contradict the condition inspection report. I further find that landlord has provided sufficient evidence of the cost of work done to establish their monetary claim. Accordingly, I issue a monetary award in the landlord's favour in the amount of \$1,300.00 for damages and loss.

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

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

Conclusion

I issue a monetary award in the landlord's favour in the amount of \$1,400.00. The landlord is authorized to retain the full security deposit for this tenancy in satisfaction of this monetary award.

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: April 9, 2020

Residential Tenancy Branch