



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 and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 18 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord intended to call his wife as a witness, so she was excluded from the outset of the hearing. During the hearing, I asked the landlord if he wanted to recall his wife as a witness to provide testimony and he declined to do so, saying she would provide the same information that he already did.

The landlord testified that he served the tenant with the landlord's application for dispute resolution hearing package on November 22, 2019 by way of registered mail. The landlord provided a Canada Post tracking number verbally during the hearing. He stated that the mail was sent to the tenant's forwarding address which was provided by her in the move-out condition inspection report on November 2, 2019. The landlord provided a copy of this report. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on November 27, 2019, five days after its registered mailing.

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 deposits?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, 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.

The landlord testified regarding the following facts. This tenancy began on October 15, 2016 and ended on October 30, 2019. Monthly rent in the amount of \$1,300.00 was payable on the first day of each month. A security deposit of \$650.00 and a pet damage deposit of \$650.00 were paid by the tenant and the landlord continues to retain both deposits in full. Both parties signed a written tenancy agreement and a copy was provided for this hearing. Move-in and move-out condition inspection reports were completed for this tenancy and copies were provided for this hearing. A written forwarding address was provided by the tenant to the landlord on November 2, 2019, by way of the move-out condition inspection report. No written permission was provided by the tenant to the landlord to keep any amount from the deposits. The landlord's application to retain the deposits was filed on November 13, 2019.

The landlord seeks to retain the tenant's entire security and pet damage deposits totaling \$1,300.00 plus the \$100.00 filing fee paid for this application.

The landlord said that there were missing closet doors, shelving, a refrigerator in the basement, and wardrobes. He claimed that a neighbour saw the tenant take the shelving and wardrobes. He explained that the tenant told him that she did not know where the missing items went. He confirmed that the tenant put drywall putty on the walls of the house and claimed that the wall damages were wear and tear. He stated that the tenant did not clean the carpet, despite it being new when she moved in. He said that the tenant's cats destroyed the carpet on the stairways.

The landlord testified that the tenant had ducks, who left feathers and feces all over the backyard. He confirmed that the tenant also had geese and rabbits in the backyard. The landlord maintained that the tenant removed trees that were not allowed to be removed and there was poor upkeep of the backyard. He said that his father fixed and repainted the walls and his parents cleaned the rental unit. He stated the house was put up for sale, so no other repairs or cleaning were done, as the landlord suffered a financial loss in the sale price, due to the dirty condition of the rental unit. He testified that the tenant's deposits would only cover the missing items and the carpet issues, not any other damages.

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.

I dismiss the landlord's claim for \$1,300.00 without leave to reapply. The landlord did not provide a breakdown of damages during the hearing. The landlord did not indicate how much it cost for the repair of the walls, the painting of the walls, or the cleaning of the rental unit. The landlord did not replace any missing items or make any other repairs, since he sold the rental unit. The landlord did not indicate how much of a loss was suffered due to the damages, when the rental unit sold, nor did he go through any documents showing same. The landlord did not review any documentary evidence during the hearing.

As the landlord was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenant's security and pet damage deposits, totalling \$1,300.00. No interest is payable on the deposits during the period of this tenancy. As per Residential Tenancy Policy Guideline 17, since the landlord applied to retain the deposits, I am also required to deal with its return to the tenant even though she did not file an application. Accordingly, I order the landlord to return the tenant's deposits totalling \$1,300.00, to the tenants within 15 days of receiving this decision.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I order the landlord to return the tenant's entire security and pet damage deposits totalling \$1,300.00, to the tenant within 15 days of receiving this decision.

I issue a monetary order in the tenant's favour in the amount of \$1,300.00 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.

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 03, 2020

Residential Tenancy Branch