



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 filed under the *Residential Tenancy Act*, (the "*Act*"), for a monetary order for damage caused by the tenant, their pets or guests to the unit, for permission to retain the security deposit and pet damage deposit for this tenancy, and to recover the cost of filing the application. The matter was set for a conference call.

The Property Manager (the "Landlord") attended the hearing and was affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that the documents were served to the Tenant by registered mail sent on December 26, 2019, a Canada Post tracking number was provided as evidence of service. Section 90 of the *Act* determines that documents served in this manner are deemed to have been served five days later. I find that the Tenant has been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damage caused by the tenant, their pets or guests to the unit?
- Is the Landlord entitled to retain the security deposit and pet damage deposit for this tenancy?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began on January 16, 2016, as a one-year fixed-term tenancy and that the tenancy had been renewed twice since it began. Rent in the amount of \$1,612.00 was to be paid by the first day of each month, and the Landlord had been given a \$775.00 security deposit at the outset of the tenancy. The Landlord provided a copy of the August 2018 tenancy agreement into documentary evidence.

The Landlord testified that this tenancy ended on January 15, 2020, as per a decision rendered from a previous hearing with the Residential Tenancy Branch, file number recorded on the style of cause page of this decision. The Landlord provided a copy of that decision into documentary evidence.

The Landlord testified that the Tenant had called them on September 15, 2019, to report that the toilet and sinks in the rental unit were backed up and in need of emergency repair. The Landlord testified that they sent a plumber to the rental unit that same day to complete the repairs but that there was no plumbing issue found other than some hair in the drain. The Landlord submitted two plumbing invoices into documentary evidence.

The Landlord testified that the Tenant's incorrect claim for a needed emergency repair had caused them extra in an emergency call out for a plumber and that they believe that the Tenant should cover the cost of the emergency call. The Landlord submitted a copy of the property management's Alarm activity report into documentary evidence. Additionally, the Landlord testified that the Tenant is responsible for the full plumbing bill as the repair that was completed was normal maintenance that the Tenant was responsible for during their tenancy.

It was noted during the hearing that the two plumbing invoices submitted into documentary evidence by the Landlord were for work completed on September 21 and 27, 2019. When asked to explain, the Landlord testified that "the dates on the invoices were wrong."

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed the application and the decision issued as a result of the previous hearing between these parties. I noted that the previous hearing addresses a claim by the Landlord for the recovery of their costs for plumbing repairs to the rental unit. I find that although the plumbing repairs the landlord is claiming for in these proceedings had been mentioned in this previous decision, I find that the previous decision granted permission for the Landlord to reapply for the recovery of the two invoices claimed for in these proceedings.

The Landlord is claiming that the Tenant filed an emergency repair request that was not a real emergency and that the resulting regular repair was merely normal maintenance that the Tenant was responsible for during their tenancy. The Landlord is claiming to recover their losses of \$681.45 for an emergency call out for plumbing services completed during this tenancy.

I have reviewed the Landlord oral testimony with that of their documentary evidence, and I find that testimony provided by the Landlord during these proceedings to be inconsistent with that of their documentary evidence. I reference the Landlord's testimony that the Tenant reported an emergency plumbing problem at the rental unit on September 15, 2019. However, the "Alarm Activity Report" submitted into evidence by the Landlord recorded the plumbing problem as being reported on September 21, 2019. I also noted that the service dates listed on the plumbing invoices are for work completed on September 21, 2019, and September 27, 2019.

Additionally, the Landlord was questioned during this hearing regarding this date discrepancy and that the Landlord insisted that the date of September 15, 2019 was the correct date of the event that the Landlord is claiming for in these proceedings. Stating that the invoices were "wrong," and that the call from the Tenant for the plumbing issue and the repair work for that call had all happened on September 15, 2019.

Overall, I find that the testimony provided by the Landlord in these proceedings is not supported by the documentary evidence the Landlord submitted. In the presence of completely conflicting testimony to that of the claimant's own evidence, I find that I must dismiss the Landlord's claim in its entirety and without leave to reapply.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was not successful in their application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for their application.

As it has been determined that the Landlord is not entitled to the recovery of their plumbing cost, I must also dismiss the Landlord's claim to retain the security deposit for this tenancy. I order the Landlord to return the security deposit that they are holding, in the amount of \$775.00, for this tenancy to the Tenant within 15 days of the date of this decision.

If the Landlord fails to return the security deposit to the Tenant as ordered, the Tenant may file for a hearing with this office to recover their security deposit for this tenancy. The Tenant is also granted leave to apply for the doubling provision pursuant to Section 38(6b) of the Act if an application to recover their security deposit is required.

Conclusion

The Landlord's application is dismissed without leave to reapply.

I order the Landlord to return the Tenant's security deposits to the Tenant within 15 days of the date of this decision.

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: May 26, 2020

Residential Tenancy Branch