



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 was convened as a result of the Landlords' Application for Dispute Resolution, made on February 24, 2020 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss;
- to retain the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on July 6, 2020 as a teleconference hearing. J.A appeared on behalf of the Landlords and provided affirmed testimony. No one appeared for the Tenants. The conference call line remained open and was monitored for 15 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that J.A. and I were the only persons who had called into this teleconference.

The Landlord testified that she served the Tenants with the Application package and documentary evidence on March 8, 2020 by Registered Mail. The Landlord provided the tracking information during the hearing in support. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 5 days later. As such, I find that the Tenants are deemed to have received the Landlords' Application and documentary evidence on March 13, 2020.

The Landlord was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Landlords entitled to a monetary order for damage or loss, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to retain the security deposit, pursuant to Section 38 of the *Act*?
3. Are the Landlords entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord testified that the tenancy began on October 1, 2015. The Landlord stated that near the end of the tenancy, the Tenants were required to pay rent in the amount of \$1,215.99 each month. The Landlord stated that the Tenants paid a security deposit in the amount of \$550.00. The Landlord stated that the Tenants provided the Landlords with their forwarding address on February 6, 2020 before the tenancy ended on February 16, 2020.

The Landlord stated that the parties came together on February 23, 2020 to conduct a move out inspection of the rental unit. The Landlord stated that the rental unit had some damage and required a lot of cleaning before it could be re-rented. The Landlord stated that the parties agreed that the Landlords could retain \$450.00 of the Tenants' security deposit. The Landlords provided the Tenants with a cheque in the amount of \$100.00 for the remaining balance of the Tenants deposit. The Landlords provided a copy of the condition inspection report in support which is signed by both parties. The Landlords also provided photographic evidence in support of the rental unit needing further cleaning.

The Landlord stated that the Tenants later indicated that they were not accepting of the deduction from their security deposit, which prompted the Landlords to submitting an Application to retain the \$450.00 as well as the return of the filing fee.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 38 (4) of the *Act* states that a landlord may retain an amount from a security deposit or a pet damage deposit if;

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

In this case, I accept that the parties came together on February 23, 2020 to complete a condition inspection of the rental unit. I am satisfied based on the condition inspection report provided by the Landlords, that the Tenants agreed in writing, to a \$450.00 deduction from their security deposit. I find that the Tenants signed the condition inspection report agreeing to the deduction. As such, I find that the Landlords are entitled to retaining the \$450.00 from the Tenants' security deposit. During the hearing, the Landlord stated that the Landlords returned the remaining \$100.00 to the Tenants via cheque on February 23, 2020.

In light of the above, I find that the Landlords' Application to retain a portion of the Tenants' security deposit was not necessary. As such, I find that the Landlords are not entitled to the return of the filing fee.

Conclusion

The Landlords are entitled to retaining the \$450.00 of the Tenants' security deposit, which was agreed upon by the parties in writing at the end of the tenancy.

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: July 06, 2020

Residential Tenancy Branch