



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, MNDCL-S, FFL, MNSDS-DR**

Introduction

This hearing dealt with applications from both the landlords and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlords applied for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the deposits for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants applied for:

- A return of the deposit for this tenancy pursuant to section 38.

The tenants 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 landlord appeared and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they sent a copy of their application and evidence to each of the named respondents by registered mail sent on April 27, 2020. The landlord provided two valid Canada Post tracking numbers as evidence of service. Based on the evidence I find that the tenants are deemed served with the landlords’ materials on May 2, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is either party entitled to the deposit for this tenancy?

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to recover their filing fee from the tenants?

Background and Evidence

This fixed-term tenancy began on August 15, 2019. The monthly rent was \$1,200.00 payable by the first of each month. A security deposit of \$600.00 was paid at the start of the tenancy and is still held by the landlords. No condition inspection report was prepared at any time for this tenancy.

The tenancy ended in March, 2020. The tenants provided a forwarding address by a letter dated April 6, 2020. The landlord filed an application for authorization to retain the deposit on April 14, 2020. The parties agreed to a deduction of \$30.00 from the deposit for repairs to a wall in the rental unit. The tenants did not agree to any other deductions and seek a return of the balance of the security deposit of \$570.00.

The landlord submits that the rental unit required considerable cleaning and repairs and that the total cost of the work necessitated by the tenancy is \$195.00. The landlord submitted into evidence photographs of the suite and a statement regarding how they estimated the cost of work.

Analysis

The tenants did not attend the hearing which was scheduled by conference call at 1:30pm on August 20, 2020. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Consequently, as the tenants failed to attend the hearing and pursue their application, I dismiss the tenant's application in its entirety without leave to reapply.

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.

The parties agreed in writing to a deduction of \$30.00 from the security deposit. I therefore issue a monetary award in the landlords' favour for that amount.

While the parties did not prepare a proper condition inspection report in accordance with the *Act* and regulations, I find that the photographic evidence submitted by the landlords and their testimony to be sufficient to establish that they incurred costs due to the condition of the suite attributable to the tenant. I find that there is a preponderance of evidence in support of the landlord's position that they suffered losses in the amount of \$195.00 for cleaning, maintenance and work to the suite. Accordingly, I issue a monetary award in the landlords' favour in that amount.

As the landlords were successful in their application they are entitled to recover their filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$325.00 of the tenant's security deposit in satisfaction of the monetary award issued in the landlord's favour. The landlord must return the balance of the deposit to the tenants as required under the *Act*.

Conclusion

The landlord is authorized to retain \$325.00 of the security deposit for this tenancy. The deposit is reduced by that amount to \$275.00.

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: August 20, 2020

Residential Tenancy Branch