



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S**

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; and
- Authorization to retain the security deposit for this tenancy pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service of documents was confirmed. The parties each testified that they received the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

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?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began on April 1, 2019 and ended on June 29, 2020. A security deposit of \$850.00 was paid and is still held by the landlord. The parties prepared a condition inspection report at both the start and the end of the tenancy. A copy of the report was submitted into evidence by the parties.

The landlord submits that as a result of this tenancy there were additional scuff marks on the walls, a loose toilet paper holder and towel rod requiring repairs. The landlord submitted into evidence photographs of the walls as evidence of the damage. The landlord also submitted a quotation for the work they say they intend to undertake.

The tenants dispute that they caused damage beyond what would reasonably be expected from occupancy. The tenants point to the condition inspection report completed by the parties and say that scuff marks, scratches and visible deficiencies were noted at the start of the tenancy.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

I accept the evidence of the parties that this tenancy ended June 29, 2020 and find that the landlord filed their application for authorization to retain the security deposit on July 6, 2020. Therefore, I find that the landlord was within the statutory time limit to file their application.

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 agree that a condition inspection report was completed at both the start and end of the tenancy. The landlord testified that their family members, acting as agents attended the move out inspection on their behalf.

Residential Tenancy Regulation 21 provides that:

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I note that the copy of the condition inspection report submitted into evidence provides numerous hand-written comments about the condition of the suite at the beginning of the tenancy. The report notes “scuff marks”, “peeling trim”, “scratches”, “holes + nail”, “indents” and “cracking on floor boards”. Based on the inspection report it is evident that there were pre-existing issues that the parties noted at the start of the tenancy.

The copy of the condition inspection submitted notes very little additional or new issues at the end of the tenancy. The report mentions a “small nail hole” in the bedroom but does not list additional markings or deficiencies on the walls of the rental unit. The report makes no mention of a toilet paper holder or towel rod. If there was damage to the rental unit it would be reasonable to expect that the landlord’s agent would have made some notation on the condition inspection report. Instead the report signed by the parties makes no indication that there are damages to the rental unit for which the tenant is responsible.

While the landlord has provided some photographs of the condition of the suite at the end of the tenancy, I find these to be insufficient to establish that any issues arise as a result of the tenancy and were not pre-existing as noted in the condition inspection report. Furthermore, I find that much of the issues the landlord submits as requiring repair work are minor and barely noticeable in the evidence submitted. I find the submissions of the landlord to fall far short of a preponderance of evidence that would contradict the condition inspection report prepared and signed by the parties.

I find that both individually and cumulatively the landlord has not met their evidentiary burden to show that there are any issues with the rental unit, that they are attributable to the tenants or that they have suffered any damages or loss. Consequently, I dismiss the landlord’s application in its entirety.

The landlord is ordered to return the full amount of the security deposit of \$850.00 to the tenants.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

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: October 27, 2020

Residential Tenancy Branch