



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 an Application for Dispute Resolution filed by the Landlord under the *Residential Tenancy Act* (the “Act”) for a monetary order for damages and permission to retain the security deposit. The matter was set for a conference call.

The Landlord’s Agent (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 sent by registered mail on July 18, 2020, 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 had 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 monetary order for damage?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Landlord testified that the tenancy began on October 21, 2019, that rent in the amount of \$1,650.00 was to be paid by the first day of each month, and the Landlord had been given a \$750.00 security deposit at the outset of the tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that this tenancy ended on April 30, 2020, and that when they attended the rental unit on the last day of this tenancy, they had noted that there was water damage to the floor of the rental unit.

The Landlord testified that their insurance covered the cost to have the water damage repaired but that they are out of pocket the \$2,500.00 deductible. The Landlord is requesting to recover the deductible from the Tenant and is requesting permission to keep the security deposit for this tenancy. The Landlord submitted four pictures of the floor and invoice for the repairs and proof of payment of the insurance deductible into documentary evidence.

Analysis

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

The Landlord is requesting the recovery of their insurance deductible of \$2,500.00 for the repair of damaged floors in the rental unit. Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to

the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

First, I must determine if the Tenant breached the *Act* during the tenancy. In this case, the Landlord has claimed that the Tenant caused water damage to the floor of the rental unit.

An Arbitrator normally looks to the move-in/move-out inspection report (the “inspection report”) as the official document that represents the condition of the rental unit at the beginning and the end of a tenancy; as it is required that this document is completed in the presence of both parties and is seen as a reliable account of the condition of the rental unit. Section 23 of the *Act* states the following:

Condition inspection: start of tenancy or new pet

23 (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

(2) *The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if*

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

(4) *The landlord must complete a condition inspection report in accordance with the regulations.*

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

I accept the Landlord's testimony that the inspection report had not been completed for this tenancy, in accordance with the *Act*. In the absence of a reliable move-in/move-out inspection report, I must rely on the remaining documentary evidence regarding the condition of the rental unit at the beginning and the end of the tenancy to confirm the Landlord's claim.

After reviewing the Landlord's documentary evidence, I find that there is insufficient evidence to prove, to my satisfaction, that the water damage the Landlord is claiming for was caused by this Tenant.

Overall, I find there is a complete absence of any evidence to prove the condition of the floors in the rental unit at the beginning of this tenancy. In the absence of evidence to show the condition of the rental unit at the beginning of this tenancy, I find that I am unable to reasonably determine what if any of the damage the Landlord is claiming for had happened during this tenancy.

As the burden is on the Landlord, as the applicant to these proceedings, to establish their claim, I find that there is insufficient evidence before me to show that the Tenant had caused the damage the Landlord is claiming for in these proceedings. Consequently, I dismiss the Landlord's claim for the recovery of an insurance deductible charged to repair a water damaged floor in the rental unit in its entirety.

As the Landlord has failed in their claim against the Tenant's security deposit, I find that the Landlord is not entitled to retain the security deposit for this tenancy. I order the Landlord to return the security deposit that they are holding for this tenancy to the Tenant within 15 days of receiving 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.

Additionally, 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 has not been successful in this application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this application.

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 receiving 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: November 12, 2020

Residential Tenancy Branch