



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Middlegate Developments
Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL, 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;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

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. The corporate landlord was represented by its agents.

As both parties were present service of documents was confirmed. The parties each testified that they were served with the respective materials and based on the testimonies I find them each duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing a typographic error in identifying the name of the respondent was identified and corrected. The style of cause for the decision includes the correction.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

Is the landlord entitled to recover their filing fee from the tenant?

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.

The periodic tenancy originally began in February 2017 when the tenant moved into the rental suite. There was a previous tenancy agreement between the landlord and two other occupants of the rental suite. The other occupants were subsequently removed leaving the respondent as the sole tenant on the tenancy agreement.

A security deposit of \$692.00 was collected at the start of the tenancy and is still held by the landlord. A condition inspection report was prepared between the landlord and earlier occupants at the start of the tenancy. The landlord submitted a copy of a condition inspection report into evidence and they testified that it was not signed by the tenant as the tenant disagreed with the assessment of damages. The tenant disputes that there was a proper move out inspection performed saying that while they were present at the end of the tenancy, the form they were provided was not the report submitted into evidence but a blank piece of paper.

The landlord said that the rental unit required some cleaning and work to be done at the end of the tenancy. The landlord submitted invoices for the work totaling \$339.20 for carpet and drape cleaning and general cleaning of the suite.

Analysis

I accept the evidence of the parties that the tenant assumed this tenancy by being added to an existing tenancy agreement and subsequently by remaining on the agreement after the other occupants were removed from the agreement.

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.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. Section 36 of the *Act* also provides that the landlord extinguishes their right to claim against a security deposit if they do not prepare a condition inspection report in accordance with the *Act* and regulations.

I find that the landlord prepared a condition inspection report in accordance with the *Act* and regulations when the initial occupancy began and at the end of the tenancy. I find the tenant's submission that the inspection report submitted into evidence was not prepared at the time of move-out to have little support. A photograph of a landlord making notes on a different piece of paper does not imply that the report was not also prepared. I find the landlord's explanation that the move-out condition inspection report was prepared in the presence of the tenant and simply not signed due to their inability to agree on the damages to be more believable and in line with the materials.

I accept the evidence of the landlord supported in the inspection report and photographs that the rental unit required some work to be done. While the tenant submitted numerous photographs of the suite, they are not of the areas of that the landlord claims required cleaning, specifically the carpets and drapes. I find the evidence of the tenant insufficient to refute the condition of the suite noted in the condition inspection report.

I accept the evidence of the landlord that the total cost of the work to the rental unit, as evidenced by the invoices and their testimony, was \$339.20 and issue a monetary award in that amount accordingly.

As the landlord was successful in their application they are also entitled to recover the filing fee.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$439.20 from the tenant's security deposit of \$692.00 in full satisfaction of the monetary award issued in the landlord's favour

Conclusion

The landlord is authorized to retain \$439.20 from the security deposit for this tenancy. The balance of \$252.80 is to be returned to the tenant at their forwarding address in accordance with the *Act*.

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: December 22, 2020

Residential Tenancy Branch