



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 by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the rental unit or property; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

During the course of the hearing the landlord testified that evidence from the tenant was received the day before the hearing in a binder. The tenant did not dispute that and the landlord did not oppose inclusion of the tenant's evidence. No other issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issues to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed-term tenancy began on July 15, 2019 and expired on July 14, 2020. The tenancy agreement was with a partner of the tenant, who moved out in January, 2020, and the landlord and remaining tenant entered into a new tenancy agreement. The tenant moved out on October 15, 2020.

Rent in the amount of \$1,950.00 per month was payable on the 14th day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant's partner in the amount of \$1,000.00, which is still held in

trust by the landlord, and no pet damage deposit was collected. The tenant said that the security deposit transferred to the new tenancy agreement. A copy of the tenancy agreement has been provided for this hearing, but is not readable. The rental unit is a basement suite, and the landlord resides in the upper level of the home.

The parties did not complete a move-in condition inspection report, however at the end of the tenancy the tenant told the landlord that she would return to do a final walk-through but didn't show up. The landlord did not give a second opportunity to schedule a move-out condition inspection, however the landlord inspected and the rental unit was left in good condition.

The landlord further testified that on October 20, 2020 the landlord received the tenant's forwarding address in writing. The tenant asked for return of the security deposit and said she expected \$2,000.00, but has not served the landlord with an Application for Dispute Resolution claiming the security deposit.

In 2017 the landlord found some water leaking into the basement, and built a trench directing it away.

When the tenant's partner was living there, he repaired stairs which caused a blockage in a water pipe to direct water away from the house. The water went into the basement causing flooding. The water was fine until the tenant repaired the stairs. Photographs have been provided for this hearing. It cost the landlord more than \$10,000.00 for the repair, however the landlord claims only \$1,000.00 from the tenants because that's not the only reason water went into the basement; cracks existed on a wall in the basement which the landlord didn't fix in 2017.

The landlord advised the tenants about it, and gave the tenants a refund of \$900.00 because they were not able to stay in the bigger bedroom and only had 1 bedroom to use.

The tenant testified that at the time that the tenant and her partner moved in the tenant was pregnant, and noticed that the stairs to the rental suite were unstable, so the tenant's partner glued them, and perhaps leveled them to make them more stable, with the landlord's permission. The baby was born on December 29, 2019 and the flood occurred in the master bedroom, so the tenants moved into the baby's bedroom. It wasn't big enough for both adults so the tenant's partner slept on the couch in the living room. Another flood occurred in the laundry room and the tenants moved upstairs to a small bedroom, being unable to live downstairs.

The tenant and partner separated and the tenant's partner vacated the rental unit in February, 2020 and the landlord and tenant agreed that the tenant could stay. The tenant

vacated on October 14, 2020 and testified that she was present for the move-out condition, but no hard-copy of a report was completed. On October 19, 2020 the tenant mailed a letter to the landlord which contained the tenant's forwarding address. The tenant has not made an Application for Dispute Resolution claiming the security deposit.

Analysis

Firstly, the *Residential Tenancy Act* places the onus on the landlord to ensure that move-in and move-out condition inspection reports are completed, and the regulations go into detail of how that is to happen. The *Act* also states that if a landlord fails to ensure that the reports are completed in accordance with the regulations, the landlord's right to claim against the security deposit for damages is extinguished. In this case, the reports have not been done in accordance with the regulations, and therefore I find that the landlord's right to claim against the security deposit for damages is extinguished.

The landlord retains the right to make a claim for damages, however in order to be successful, the landlord must be able to demonstrate that the damage was caused by the tenants and the cost of remediation. In this case, the landlord testified that the water was fine until the tenant's ex-partner repaired the stairs, but also testified that that was not the only reason water went into the basement and that cracks existed on the wall in the basement, which was not fixed in 2017, prior to this tenancy, when the landlord found water leaking into the basement at that time. Therefore, I find that the landlord has failed to establish that any flooding or damage was caused by the tenant and the landlord's application for monetary compensation for damages is dismissed.

The *Residential Tenancy Act* specifies that a landlord must return a security deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an Application for Dispute Resolution claiming against the security deposit within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount. Having found that the landlord's right to claim against the security deposit for damages is extinguished, and the landlord makes no other claim against the security deposit, the landlord had no other choice but to return the security deposit.

I refer to Residential Tenancy Policy Guideline #17 – Security Deposit and Set off, which states, in part (underlining added):

“C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION

“1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord’s application to retain all or part of the security deposit; or
- a tenant’s application for the return of the deposit.

unless the tenant’s right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.”

“3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- if the landlord has claimed against the deposit for damage to the rental unit and the landlord’s right to make such a claim has been extinguished under the Act.

In this case, the landlord has claimed against the security deposit for damage to the rental unit and the landlord’s right to make such a claim has been extinguished. Therefore, I order the landlord to repay the tenant double the security deposit, or \$2,000.00.

Since the landlord has not been successful with the application, the landlord is not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the landlord’s application is hereby dismissed in its entirety without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,000.00.

This order is final and binding and may be enforced.

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 08, 2020

Residential Tenancy Branch