



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LL: MNDL-S, FFL
 TT: MNSDS-DR

Introduction

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

The landlord applied for:

- A monetary award for damages and loss pursuant to section 67; a
- Authorization to retain the security deposit for this tenancy; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenants applied for:

- A return of 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.

The tenant testified that they served the landlord with their hearing package by regular mail. The landlord disputed having been served with the materials. The tenant provided no documentary evidence of service.

The landlord testified that they served the tenant with their materials and the tenant confirmed receipt. Based on the testimonies I find the tenant duly served with the landlord’s materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is either party entitled to the security deposit for this tenancy?
Is the landlord entitled to a monetary award as claimed?
Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

This periodic tenancy began in February 2017 and ended in August 2020. A security deposit of \$475.00 was paid at the start of the tenancy and is still held by the landlord. The parties prepared a condition inspection report at both the start and end of the tenancy and a copy was submitted into documentary evidence.

The tenant testified that they signed the move out condition inspection report at the end of the tenancy giving written authorization that the landlord may retain \$475.00 of the deposit for this tenancy. The copy of the condition inspection report clearly indicates the amount to be deducted and is signed by the parties. At the hearing the tenant said they now disagree with the deduction they authorized as they believe they did not intentionally cause damage to the suite.

The landlord submits that as a result of the condition of the suite they incurred some costs for maintenance and repairs. In addition to the condition inspection report detailing the state of the rental unit the landlord submitted some photographs of the suite and an invoice from a painting company showing a charge of \$892.50 for drywall repair and painting of the suite. The landlord said that despite their actual losses being greater than the amount sought in their application, they are only seeking a monetary award of \$800.00 based on the initial estimate informed to the tenant. The landlord clarified that the \$800.00 they seek is inclusive of the security deposit for this tenancy of \$475.00.

Analysis

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary award:

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

(a) by leaving a copy with the person;

- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

Sending a copy by ordinary mail, as the tenant submits, is not an acceptable method of service under the *Act*. In any event I find that the tenant has provided no documentary evidence in support of their claim of service, gave vague testimony with little details of the circumstances of service and the landlord disputes that they have been served with any materials. Based on the paucity of evidence on the part of the tenant I am not satisfied that the landlord was served in accordance with the *Act* or at all and consequently dismiss the tenant's application.

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. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

The undisputed evidence before me is that the tenant gave written authorization to the landlord that they may retain the \$475.00 security deposit for this tenancy. I do not find the tenant's explanation that they provided their signature on the condition inspection report in the column stating "I agree to the following deductions from my security and/or pet damage deposit" where the amount of \$475.00 was recorded, but did not intend to authorize a deduction to be at all believable.

I find that the landlord was given written authorization that they may retain \$475.00 of the security deposit for this tenancy and were therefore entitled to withhold that amount.

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.

I accept the evidence of the landlord by way of the move-out condition inspection report, photographs and testimony that the rental unit had some damage requiring work to be done. Based on the evidence, I find that the damage is attributable to the tenancy and goes beyond the expected wear and tear from ordinary occupancy. I further accept that the landlord incurred costs to repair the issues and that the amount of their losses is \$892.50. Accordingly, I issue a monetary award in that amount in the landlord's favour.

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

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$425.00, allowing the landlord to recover their losses and filing fee while retaining the security deposit for this tenancy. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 18, 2020

Residential Tenancy Branch