



Dispute Resolution Services

Page: 1

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 order for unpaid rent, loss and damages 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 was confirmed. The parties each testified that they were in receipt of the materials and based on the testimonies I find each party duly served 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 security 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 September 1, 2015 and ended in August 31, 2020. The landlord collected a security deposit of \$650.00 and pet damage deposit of \$650.00

which they still hold. No condition inspection report was prepared at any time for this tenancy. The tenant has not provided written authorization that the landlord may retain any portion of the deposits.

The parties gave some evidence about inspecting the rental unit, conducting what they referred to as “pre-inspections” and taking photographs of the suite. The landlord submits that the rental unit required repairs and maintenance which they attribute to the tenancy. The landlord submitted some photographs and invoices in support of their claim for a monetary award.

Analysis

Section 24 of the *Act* provides that the right of a landlord to claim against a security and pet damage deposit is extinguished if they do not complete a copy of a condition inspection report in accordance with the regulations. Section 20 of the Regulations provides the items that must be contained in a condition inspection report.

I accept the undisputed evidence of the parties that no condition inspection report was prepared for this tenancy. While the landlord gave some evidence regarding walk throughs, photographs and discussions, I find these to not be a substitute for preparing a proper condition inspection report in accordance with the *Act* and regulations. I find that the addendum page of the tenancy agreement is insufficient to be considered a proper condition inspection report as it simply requires a blanket statement from the tenant confirming their satisfaction with the rental unit and giving a list of tasks to be completed at the end of the tenancy. The landlord is in the business of accepting payment for providing housing and ought to be aware of the requirements of the *Act* and the consequences when they choose to breach the *Act*. In the absence of a proper condition inspection report prepared by the parties in accordance with the *Act* I find the landlord has extinguished their right to retain the security and pet damage deposit for this tenancy.

Pursuant to section 38 of the *Act* a landlord who has extinguished their right to claim against a deposit by failing to prepare a condition inspection report must return the tenant’s security deposit in full within 15 days after the later of the end of a tenancy or upon receipt of the tenant’s forwarding address in writing. If the fail to do so, in accordance with section 38(6)(b) of the *Act*, the landlord must pay an amount equivalent to double the value of the security and pet damage deposit. Therefore, I find the tenant is entitled to a monetary award in the amount of \$2,600.00, double the value of the security and pet damage deposit for this tenancy.

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.

In the absence of a proper condition inspection report prepared by the parties at the start of the tenancy I find there is insufficient evidence in support of the landlord's claim for damages. I find the photographs and invoices submitted to be insufficient to establish that the damages the landlord now claims are attributable to the tenancy. I find the landlord's evidence to be insufficient to meet their onus of proof and dismiss their application accordingly.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply. I issue a monetary order in the tenant's favour in the amount of \$2,600.00. The landlord must be served with this Order as soon as possible. Should the landlord 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 21, 2020

Residential Tenancy Branch