



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damage to the unit - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord confirms that the numbered company named as Landlord on the tenancy agreement is owned by the Landlord. Given this confirmation I accept that the Landlord is properly named on the application.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on August 1, 2018 and ended August 31, 2020. At the outset of the tenancy the Landlord collected \$1,050.00 as a security deposit. The Parties mutually conducted a move-in inspection with a report completed and copied to the Tenant. The Parties mutually conducted a

move-out inspection on August 31, 2020. The Landlord received the Tenant's forwarding address on August 31, 2020.

The Landlord states that at the move-out inspection the Landlord created a copy of the completed move-out report and gave it to the Tenant for signature. The Landlord states that the Tenant refused to sign it and left the copy with the Landlord. The Landlord states that it did not thereafter send the Tenant its copy until it was provided with the application for dispute resolution. The Landlord states that on September 9, 2020 it both made its application and paid the fee. The Landlord states that the application was sent by registered mail on September 23, 2020.

The Tenant states that the Landlord's evidence is not true and that after the mutual inspection with the Landlord and another agent, the Tenant was verbally informed that the unit was in acceptable condition and no damages were noted. The Tenant states that no report was given to her at the time by either the Landlord or the agent and that when the Tenant asked the Landlord for a copy the Landlord refused. The Tenant provides a copy of text messages dated August 31, 2020 between the Tenant and the Landlord's agent that was also present for the move-out inspection.

The Landlord states that it only received the Tenant's evidence on January 2, 2020. The Landlord confirms that it read the contents but states that it only had one day to do so. The Tenant states that the Landlord would only communicate by text or email and refused to accept documents from the Tenant of any kind during the tenancy. The Tenant states that on December 31, 2020 the Landlord's agent was informed that the Tenant had evidence to serve and that the agent refused to accept personal service, so the Tenant posted the materials in a plastic bag on the Landlord's door.

The Landlord states that the Tenant left 8 kitchen tiles damaged and claims \$71.04 for the costs of materials and \$200.00 as the cost for labour to replace the damaged tiles. The Landlord provides an invoice dated September 1, 2020 for this cost. The Landlord

states that the tiles were on hand and that the material costs are for glue and grout. The Landlord states that the tiles were new at move-in.

The Tenant states that it is unaware of any damage to the tiles. The Tenant states that new tenants moved into the unit on September 1, 2020 and that the Landlord only informed her of the damage on September 2, 2020.

Analysis

Section 36(2)(c) of the Act provides that the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. Section 18(1)(b) of the Regulations provides that the landlord must give the tenant a copy of the signed condition inspection report of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of the date the condition inspection is completed, and the date the landlord receives the tenant's forwarding address in writing.

Although the Landlord received the Tenant's text evidence in relation to the move-out inspection late, given the Landlord's acknowledgement of having read the texts and as the Landlord gave no evidence of any prejudice to the Landlord as a result of the late receipt of the evidence I will consider this evidence. Although the Parties gave two different accounts of the move-out inspection, I found the Tenant's version to be more persuasive particularly in light of the text evidence. I also note that the agent sending these texts was not present at the hearing to give evidence. For this reason I prefer the Tenant's evidence and find on a balance of probabilities that the Landlord did not provide the Tenant with a written inspection report at the time of the move-out inspection and did verbally inform the Tenant at the time that there were no damages to the unit. Based on the Landlord's evidence that the move-out report was not sent to the Tenant until it served the Tenant with its application I also find that the Landlord did not

provide the Tenant with a copy of the move-out report within 15 days of August 15, 2020 and that the Landlord's right to claim against the security deposit was therefore extinguished at move-out.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord's right to claim against the security deposit was extinguished at move-out the Landlord was required to return the full security deposit to the Tenant within 15 days after August 31, 2020. The Landlord was still able to make its application claiming damages to the unit. Given the undisputed evidence that the Landlord did not return any amount of the security deposit to the Tenant I find that the Landlord must now pay the Tenant **\$2,100.00** as double the security deposit.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. As it has been found that no move-out inspection report was prepared on the date of the move-out inspection, given the Tenant's preferred evidence that the Tenant was informed at the time of the inspection that there were no damages and considering the undisputed evidence of a new tenancy starting the next day with the Tenant being informed of the damages a day later, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused the damage to the tiles. I therefore dismiss the claim for repair costs. As the Landlord's claim for costs has not been successful, I decline to award recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety.

Conclusion

The application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$2,100.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: January 08, 2021

Residential Tenancy Branch