



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL, MNSD, FFT

Introduction

This hearing was convened in response to an application by the Landlord and an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on October 14, 2020 for:

1. A Monetary Order for unpaid rent or utilities - Section 67;
2. A Monetary Order for damages to the unit - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on October 19, 2020 for:

1. An Order for the return of the security deposit - section 38; 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. Landlord KB confirms that it is named as a party to the proceedings.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their filing fees?

Background and Evidence

The following are agreed facts: There is no written tenancy agreement. The tenancy of the upper unit of a house also containing a lower suite started on September 1, 2010 and ended on September 30, 2020. At the outset of the tenancy the Landlord collected \$550.00 as a security deposit. The Landlord received the Tenant's forwarding address on September 30, 2020. No move-in inspection report was completed.

The Landlord states that the Tenant was informed of the move-out inspection but walked away. The Tenant states that a move-out inspection was performed but that the Landlord did not complete or provide a report of that inspection to the Tenant.

The Landlord states that from the outset of the tenancy the Tenant was required to pay 50% of the cost of hydro and water utilities and that at the end of May 2020 after the lower tenant moved out of the lower suite, the Tenant agreed to pay 100% of the utilities. The Landlord claims \$158.87 for the hydro costs from July 25 to September 24, 2020 and \$260.44 for the water costs from June 10 to September 29, 2020. The Tenant states that there was never any agreement to pay more than 50% of the utilities and that when the Landlord started to work on the house at some point prior to 2018 the Parties agreed that the Tenant would only pay 25% of the utilities. The Tenant does not dispute the Landlord's entitlement to \$39.72 for hydro and \$65.11 for the water.

The Landlord states that the Tenant left the unit with damages to the unit with estimated repair or replacement costs as follows:

- \$150.00 for a missing sliding door screen approximately 8 to 10 years old and either new during or before of the start of the tenancy;
- \$50.00 to reattach a bedroom closet door;
- \$700.00 as labour to repair kitchen linoleum that was at least 20 years old and damaged by a burn mark and lifting;
- \$500.00 for the costs of unknown materials;
- \$100.00 as the cost to replace a bathroom faucet of unknown age;

- \$100.00 for the cost of painting a bedroom closet, last painted more than 10 years ago; and
- \$250.00 for the costs to clean a 15 or 20-year-old carpet left stained.

The Landlord states that none of the above repairs have been completed and none of the costs claimed have been incurred. The Landlord provides handwritten notations of estimated costs.

The Tenant claims return of double the security deposit for not having received the return of the security deposit within 15 days of the end of the tenancy or receipt of the forwarding address.

Analysis

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 made its application within 15 days of the end of the tenancy and the receipt of the forwarding address, I find that the Tenant is not entitled to return of double the security deposit. The Tenant however remains entitled to return of the security deposit as set out below.

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. Given the lack of any supporting evidence of an agreement by the Tenant to pay 100% of the utilities and considering the Tenant's evidence of no such agreement I find on a balance of probabilities that the Landlord has not substantiated that the Tenant owes 100% of the utilities claimed above. Given the Tenant's agreement that it owes a portion of the utilities I find that the Landlord has substantiated

an entitlement to those undisputed amounts of **\$39.72** for hydro and **\$65.11** for the water.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. As the Landlord provided no evidence that any costs were incurred to replace the screen door, reattach the closet door and obtain unknown materials, I find that the Landlord has not substantiated the costs claimed and I dismiss these claims.

Residential Tenancy Guideline #40 provides that the useful life of indoor paint is 4 years, the useful life of tile flooring is 10 years, the useful life of carpet is 10 years, and the useful life of a faucet is 15 years. Given the Landlord's evidence of the age of the indoor paint, the carpet, the linoleum and the faucet I find that these items no longer had any useful life to then by the end of the tenancy and that any maintenance or repair costs therefore remain with the Landlord. I also consider that no costs were incurred for these claims. For these reasons I dismiss these claims.

As both the Landlord and Tenant applications met with some success, I find that each are entitled to recovery of their \$100.00 filing fees and I set these off against each other with nothing owed to either for the filing fee.

Deducting the Landlord's total entitlement of **\$104.83** from the security deposit plus zero interest of **\$550.00** leaves **\$445.17** to be returned to the Tenant forthwith.

Conclusion

I Order the Landlord to retain **\$104.83** from the security deposit plus interest of **\$550.00** in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$445.17**. 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 21, 2021

Residential Tenancy Branch