



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S

Introduction

On September 24, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to apply the security deposit and pet damage deposit towards this debt pursuant to Section 67 of the *Act*.

The Landlord attended the hearing; however, the Tenant did not make an appearance at any time during the 36-minute teleconference call. All in attendance provided a solemn affirmation.

The Landlord advised that the Notice of Hearing and evidence package was served to the Tenant by registered mail on September 29, 2020 (the registered mail tracking number is noted on the first page of this Decision). The registered mail tracking history indicated that this package was delivered on October 1, 2020. Based on this undisputed testimony, I am satisfied that the Tenant has been served the Notice of Hearing and evidence package. As such, this evidence was accepted and will be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?

- Is the Landlord entitled to apply the security deposit and pet damage deposit towards this debt?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on August 1, 2019 and ended when the Tenant gave up vacant possession of the rental unit on August 31, 2020. Rent was established at \$1,850.00 per month and was due on the first day of each month. A security deposit of \$925.00 and a pet damage deposit of \$475.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He confirmed that he did not conduct a move-in or move-out inspection report. He stated that the Tenant provided him with her forwarding address in writing on September 18, 2020. He deducted \$749.00 from the security and pet damage deposits and as there were actually two Tenants as part of this tenancy, he returned a total of \$651.00 to them. He electronically transferred \$325.50 to each of them on October 1, 2020. He did not have any written consent from the Tenants to deduct any amount from their deposits.

The Landlord advised that he was seeking compensation in the amount of **\$399.50** because the Tenant's pet soiled the carpet and the stain was not cleaned at the end of the tenancy. In addition, he stated that the rental unit was not left in a re-rentable state. He hired a cleaner to address these issues and he submitted the invoice to support this claim. He stated that three bags of animal fur were vacuumed up, that inside the oven and the surface were dirty, that the inside of the fridge and the back required cleaning, and that the drains were plugged with hair. He referenced pictures submitted as documentary evidence to support these claims.

He advised that he was seeking compensation in the amount of **\$150.00** because the Tenant was required to pay this fee to the strata to use the elevator for moving out. He confirmed that this was in the strata bylaws that he provided to the Tenant by email on August 4, 2019. He provided an excerpt of the applicable strata bylaws to support this position.

Finally, he advised that he was seeking compensation in the amount of **\$199.50** because the Tenant made a significant amount of nail holes in the walls, that she left three scratches on the walls, and that there were holes in the window screen. He referenced pictures submitted as documentary evidence to support this claim.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulations* (the "*Regulations*") outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenant has a preponderance of evidence to the contrary.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenant must repair any damage to the rental unit that is caused by their negligence.

The undisputed evidence before me is that neither a move-in nor a move-out inspection report was completed, contrary to the *Act*. As such, I find that the Landlord extinguished his right to claim against the security deposit and pet damage deposit.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking

an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, I am satisfied that the Landlord had the Tenant's forwarding address in writing on September 18, 2020. As the tenancy ended on August 31, 2020, I find that September 18, 2020 is the date which initiated the 15-day time limit for the Landlord to deal with the deposits. The consistent evidence before me is that the Landlord made this Application to claim against the deposits on September 24, 2020 and returned the balance of their deposits on October 1, 2020. While the Landlord complied with the requirements of the *Act* by applying within the legislated timeframe, given that the Landlord extinguished his right to claim against the deposits, the doubling provisions should apply. However, as the extinguishment pertains to damage of the rental unit, and as his claim for the move-out fee is not considered damage in my view, I am satisfied that the doubling provisions do not apply to the security deposit and pet damage deposit.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

When reviewing the totality of the evidence before me, while the Landlord did not have a move-in or move-out inspection report to support his claims, Section 21 of the *Regulations* allows me to consider a preponderance of evidence to the contrary. Based on the Landlord's undisputed evidence, I am satisfied that the Landlord has corroborated his claims for damage. As such, I grant the Landlord a monetary award in the amount of **\$749.00** to satisfy these claims.

As the Landlord was successful in this Application, I permit the Landlord to retain the balance of the deposit that he has not returned.

Conclusion

As the Landlord was successful in this Application, the Landlord is permitted to retain the balance of the deposit that he is in possession of.

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: January 14, 2021

Residential Tenancy Branch