



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL-S, FFL; MNSDS-DR, FFT

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- authorization to obtain a return of her security deposit, pursuant to section 38;
- authorization to recover the filing fee for her application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 36 minutes.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

The tenant's application was originally scheduled as a direct request proceeding, which is a non-participatory hearing. The direct request proceeding is based on the tenant's paper application only, not any submissions from the landlord. An "interim decision," dated September 29, 2020, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

The tenant was required to serve the landlord with a copy of the interim decision, the notice of reconvened hearing and all other required documents. The landlord confirmed receipt of the above documents from the tenant. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the above required documents.

The landlord confirmed receipt of the tenant's original application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to correct the spelling of the landlord's surname. The tenant consented to this amendment during the hearing and the landlord did not raise any objection.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage to the rental unit?

Is the landlord entitled to retain the tenant's security deposit?

Is the tenant entitled to the return of her security deposit?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 30, 2019 and ended on August 31, 2020. Monthly rent in the amount of \$800.00 was payable on the first day of each month. A security deposit of \$400.00 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was not signed but a verbal agreement was reached. Move-in and move-out condition inspection reports were not completed for this tenancy. A forwarding address was received by the landlord from the tenant, by way of a letter, dated July 28, 2020. The landlord did not have written permission to keep any amount from the tenant's security

deposit. The landlord filed his application to retain the tenant's security deposit on November 19, 2020.

The tenant claimed that she served the landlord with her forwarding address letter in person on July 28, 2020. The landlord confirmed receipt of the letter but could not recall the date.

The landlord seeks a monetary order for unpaid rent, damages of \$1,153.82, plus the \$100.00 application filing fee. The tenant disputes the landlord's entire application.

The landlord did not indicate what amount he was seeking for unpaid rent during the hearing. He claimed that the tenant failed to pay rent, even though she was getting government relief during the covid-19 pandemic.

The landlord seeks \$150.00 for hiring cleaners for the rental unit. The landlord provided a handwritten letter, claiming that he did not get a receipt, and he did not provide a bank statement even though he said he had proof that he paid cash. The tenant stated that there was no business name or phone number for the person on the letter provided by the landlord, to confirm who did the cleaning and whether it was a friend of the landlord. She maintained that there was no address on the letter to show where the cleaning was done, nor was there a bill or invoice for the cleaning.

The landlord seeks \$126.00 for carpet cleaning, stating that the tenant did not professionally clean the carpet, as was done when she moved into the unit. He claimed that the tenant lived in the rental unit for a year and had two dogs. He maintained that he had to hire a cleaner to clean the carpet and paid \$126.00 for it, for which he provided a debit payment document, dated September 2, 2020. The tenant stated that she rented a steam cleaner from a store, paid for it, and steam cleaned the carpet herself on August 30, 2020, before she moved out. She said that she does not recall how much she paid because she did not keep the receipt. The landlord disputed the tenant's cleaning, stating that he went into the rental unit on the day she moved out, and the carpet was not wet, so she did not use a steam machine to clean it.

The landlord seeks damages for replacing the flooring at the rental unit. He did not indicate what amounts he was seeking during the hearing. He said that he could not find his receipts. He claimed that the tenant's two dogs ripped up the carpet, damaged it, and stained it beyond repair, so it had to be replaced. The tenant disputes this claim, stating that the carpet was in bad shape when she moved in, there were stains, and it was ripped up. She said that she used area rugs to cover the carpet, so her dogs did

not destroy the carpet because it was covered. She claimed that there was no move-in condition inspection report to prove the bad condition of the carpet when she moved in.

The tenant seeks the return of her security deposit of \$400.00 and the \$100.00 filing fee. She claimed that the landlord did not return her deposit within 15 days, as required by the *Act*. The landlord disputes the tenant's application.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the respondent in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Landlord's Application

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for unpaid rent and damages of \$1,153.82 without leave to reapply.

The landlord did not indicate what amounts he was seeking for unpaid rent from the tenant, during the hearing. In his application, the landlord indicated he was seeking \$600.00 for April and May 2020 rent. I repeatedly asked the landlord during the hearing to provide a specific amount for all of his monetary claims, but he did not have all of his paperwork in front of him during the hearing. However, the tenant was not able to respond to this claim during the hearing because there was no information provided by the landlord. I find that the landlord failed all 4 parts of the above test. The landlord's claim for unpaid rent is dismissed without leave to reapply.

The landlord's claim for \$150.00 to clean the rental unit is dismissed without leave to reapply. I find that the landlord did not provide sufficient documentary proof for this claim. The handwritten letter provided by the landlord did not contain a contact number

for the person who did the cleaning, in order for the tenant to verify the cost. There was no address indicated in the letter, to show if the cleaning was actually done at the rental unit. The letter does not state that the landlord actually paid \$150.00 for the service or how or when this payment was done. The landlord did not provide a move-out condition inspection report or photographs to show the condition of the rental unit when the tenant vacated. The landlord claimed that he had photographs on his phone, but he did not submit them for this hearing because he did not know they were required.

The landlord's claim for \$126.00 for carpet cleaning is dismissed without leave to reapply. I find that the landlord did not provide sufficient documentary proof for this claim. The receipt does not contain the contact number of the company that did the cleaning, in order for the tenant to verify the cost. There was no address indicated in the receipt, to show if the cleaning was actually done at the rental unit. There is no invoice to show a breakdown of the work done, the cleaning equipment used, how long it took to clean, or the rate per person or per machine. The landlord did not provide a move-out condition inspection report or photographs to show the condition of the carpet in the rental unit when the tenant vacated. The landlord claimed that he had photographs on his phone, but he did not submit them for this hearing because he did not know they were required. I accept the tenant's affirmed testimony that she rented a machine and steam cleaned the carpet prior to vacating the rental unit, in accordance with Residential Tenancy Policy Guideline 1.

The landlord's claim to replace the flooring is dismissed without leave to reapply. In his application, the landlord indicated he was seeking \$840.26 to replace the flooring and \$37.56 for the poly underlay for the flooring. However, the landlord did not indicate what amounts he was seeking for these costs, as he could not find his receipts during the hearing. I repeatedly asked the landlord during the hearing to provide a specific amount for all of his monetary claims, but he did not have all of his paperwork in front of him during the hearing. I find that the landlord did not provide sufficient documentary proof for this claim. He provided two receipts, which does not specifically state exactly what flooring was purchased and whether it was carpet, as before. The landlord did not review these receipts during the hearing, as he could not find them. He did not provide any invoices to show who installed the flooring, when it was done, how it was done, how long it took, and what kind of flooring was installed. The landlord did not provide a move-out condition inspection report or photographs to show the condition of the carpet or the new flooring installed in the rental unit when the tenant vacated. The landlord claimed that he had photographs on his phone, but he did not submit them for this hearing because he did not know they were required.

Since the landlord was unsuccessful in his application, I find that he is not entitled to recover the \$100.00 application filing fee from the tenant.

Tenant's Application

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on a balance of probabilities. The tenancy ended on August 31, 2020. The tenant provided a written forwarding address to the landlord on July 28, 2020, by way of a letter, which the landlord received. I accept the tenant's affirmed testimony that this letter was provided to the landlord on July 28, 2020, even though the landlord could not recall the exact date. A copy of the letter was provided for this hearing. The tenant did not give the landlord written permission to retain any amount from her security deposit. The landlord did not return the deposit to the tenant. The landlord filed his application on November 19, 2020, more than 15 days after the later date of August 31, 2020, the end of the tenancy.

No interest is payable on the tenant's security deposit during the period of this tenancy. I find that the tenant is entitled to receive double the value of her security deposit of \$400.00, totalling \$800.00, from the landlord. Although the tenant did not apply for double the amount of the deposit in her application, she did not waive her right to it, so I am required to consider this provision, as per Residential Tenancy Policy Guideline 17.

Since the tenant was successful in her application, I find that she is entitled to recover the \$100.00 application filing fee from the landlord.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$900.00 against the landlord. 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: January 21, 2021

Residential Tenancy Branch