



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, MNSD, MNDCT**

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “*Act*”) for:

- A return of all or a portion of the security deposit pursuant to section 38;
- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

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 received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a return of all or a portion of the security deposit for this tenancy?

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the filing fee from the landlord?

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 ended in October 2019. There was security deposit of \$750.00 paid at the start of the tenancy and still held by the landlord. The parties prepared a condition inspection report at both the start and end of the tenancy. A copy of the condition inspection report was submitted into evidence.

The move-out inspection report signed by the parties on October 5, 2020 provides that the tenant authorized a deduction of \$750.00 from the deposit for this tenancy.

The tenant submits that while they signed the report, they believe the amount to be deducted was not provided in the document at the time of signing. The tenant testified that the figure of \$750.00 was provided after they had signed the condition inspection report by the landlord without their consent and there was never an agreement on the amount to be deducted. The tenant submits that they were expecting the landlord to provide a full accounting of the damages to the rental unit and they would come to an agreement about the amount of the deduction.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

The documentary evidence before me shows that the parties completed a condition inspection report wherein the tenant has provided their signature authorizing the landlord to retain \$750.00, the full amount of the deposit, for this tenancy.

While the tenant submits that they simply signed a blank condition inspection report without an amount of deduction specified, I find little evidence in support of their position and that it is not consistent with how a reasonable individual would act. I find little evidence that the report was blank when signed and find it unlikely that a tenant would sign a document stating "I agree to the following deductions" without first determining the amount of deductions. If the parties had not yet agreed to the amount of deduction then it would be reasonable to expect that the tenant would not have signed the document providing consent to any amount later chosen by the landlord. I do not find the tenant's submission that they signed a form agreeing to a deduction without having come to an agreement about the amount of deduction to have any air of reality.

Based on the evidence, I find that the tenant provided their written consent agreeing to a deduction of \$750.00 from the security deposit. Therefore, I find the landlord was authorized to make that deduction and there is no basis for an award to the tenant to recover any portion of their deposit. Accordingly, I dismiss this portion of the tenant's claim.

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.

The tenant seeks the cost of serving the landlord with their application and evidence. I find that these are not costs incurred due to a breach on the part of the landlord but merely the expected cost of filing and pursuing an application. Consequently, I dismiss this portion of the tenant's application.

As the tenant was unsuccessful in their application they are not entitled to recover their filing fee.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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 22, 2021

Residential Tenancy Branch