



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LL: MNDL-S FFT
 TT: MNSDS-DR FFT

Introduction

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

The landlords applied for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants applied for:

- A return of all or a portion of the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the landlords 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*.

Rule 2.10 of the Residential Tenancy Branch Rules of Procedure grants me the authority to join applications for dispute resolution and hear them at the same hearing. I was originally scheduled to only hear the landlord’s application but as the parties consented to the matters being combined and as I find that the applications pertain to

the same issue of the security deposit and the same facts would be considered I ordered that the matters be combined.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?
Is either party entitled to the security deposit for this tenancy?
Is either party entitled to recover the filing fee from the other?

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 claims and my findings around each are set out below.

This fixed-term tenancy began in April 2020. The monthly rent was \$3,280.00 payable on the first of each month. A security deposit of \$1,640.00 was collected at the start of the tenancy and is still held by the landlord. The parties prepared a move-in condition inspection report at the start of the tenancy. A copy of the condition inspection report was submitted into evidence.

The parties agree that no move-out condition inspection report was prepared at the end of the tenancy. The parties say that the tenants travel plans changed and they were unable to attend on September 30th as had been agreed earlier. The landlord testified that a move-out inspection was to take place on the 30th. The tenants say that they believed this was the time to return the rental unit keys and were not given a proper notice of a move-out inspection. The landlord submitted into evidence copies of correspondence between the parties where they discuss the date the tenancy will end.

The landlord submits that when they performed the inspection of the suite in the absence of the tenants they found it to be in poor condition requiring cleaning, repairs and work. The landlord submitted several photographs in support of their position. The landlord submits that they incurred costs for work done to the rental unit and seek a monetary award in the amount of \$2,828.50. The landlord also submits that they have incurred a fine from the strata corporation for the building due to the tenant defecating in the elevator for the building on February 15, 2020. The landlord submitted invoices and receipts as well as correspondence from the strata management company to support their claim.

The parties agree that the tenants provided a forwarding address to the landlord on October 12, 2020. The tenants submit that they have not given written authorization that the landlord may retain any portion of the deposit for this tenancy.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the evidence of the parties that this tenancy ended on October 1, 2020 and no move-out condition inspection report was prepared by the parties. Based on the copies of the correspondence between the parties I find that there was an agreement to perform a move-out inspection on September 30, 2020. While a time is not specified, the messages are clear in the intention of the parties to meet at the rental unit to end the tenancy on that date. I accept the evidence that this date was the second opportunity provided by the landlord after a date of September 21, 2020 was proposed in an earlier message.

I am satisfied, based on the evidence that the landlord provided the tenants 2 opportunities to attend an inspection and complete a condition inspection report in accordance with the *Act*. I find that the tenants did not attend the move-out inspection and consequently, pursuant to section 36 of the *Act*, extinguished their right to a return of the security deposit. While I am sympathetic to the circumstances that prevented the tenant from attending due to changes in the airline schedules, the tenant could have appointed an agent or representative to attend on their behalf.

Based on the undisputed evidence before me, I find that the tenants have extinguished their right to claim against the security deposit by failing to attend on either of the 2 opportunities provided by the landlord for an inspection. Consequently, I dismiss the tenants' application in its entirety without leave to reapply.

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.

I am satisfied with the evidence of the landlord that there was damage to the rental unit requiring considerable cleaning and expenditures. I find the photographs, testimony of the landlord, correspondence issued at the time and the receipts and invoices to cumulatively be a preponderance of evidence demonstrating the poor condition of the suite and the requirement for work to be done. I find that the invoices and receipts submitted by the landlord are for work and repairs that are proportional to the damage shown in the photographic evidence. I further accept that the landlord incurred strata fines as a result of the tenant's breaching strata property rules by soiling the common use elevator for the property. Based on the totality of the evidence I am satisfied that the landlord has incurred damages in the amount of \$2,828.50 as a result of the tenants and issue a monetary award in that amount accordingly.

As the landlords were successful in their application, they are entitled to recovery of the \$100.00 filing fee.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

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

I issue a monetary order in the landlords' favour in the amount of \$1,288.50, allowing the landlords to retain the security deposit for this tenancy and recover their monetary losses and filing fees from the tenants. The tenants must be served with this Order as soon as possible. Should the tenants 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: February 5, 2021

Residential Tenancy Branch