



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

LL: MNDL-S, FFL
TT: MNSDS-DR, FFT

Introduction

This hearing dealt with applications from both the landlords 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 monetary award returning their 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*.

Issue(s) to be Decided

Is either party entitled to the security deposit for this tenancy?

Is either party entitled to recover their 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 claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began on June 1, 2018. A security deposit of \$875.00 was collected at the start of the tenancy and is still held by the landlords. The tenancy ended on October 31, 2020.

The parties prepared a condition inspection report at both the start and end of the tenancy. A copy of the report was submitted into evidence. The report notes that the walls were newly painted at the start of the tenancy. The parties performed a move-out inspection on October 28, 2020 but were unable to agree on the condition of the rental unit at the end of the tenancy and the tenants did not authorize the landlords to make any deductions from their deposit.

The tenants submit that they provided a forwarding address to the landlord on November 4, 2020. The landlord field their present application for authorization to retain the security deposit on November 16, 2020.

The landlords submit that the rental unit required painting and work due to its post-tenancy condition. The landlords submitted into evidence photographs of the suite as well as invoices for paint purchased commercially. The total cost of paint supplies claimed by the landlords is \$364.15. The landlords submit that the work took approximately 50 hours and they estimate the cost of the work undertaken to be \$1,500.00. The landlords submit that they waive their right to a monetary award above the amount of the deposit.

The tenants dispute that the rental unit required work as claimed by the landlords. The tenants say that they were not provided with an opportunity to clean the rental unit prior to the move-out inspection being performed on October 28, 2020. The tenants submit that the landlord began preparing to pain the rental unit on October 18, 2020. The tenants submitted into evidence copies of text message correspondence with the landlords where the landlords state they would “like to start any painting and preparing of the suite”.

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. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit.

In the present case the parties provide that the tenants gave a forwarding address in writing on November 4, 2020 and the landlords filed their application on November 16, 2020. As such, I find the landlords were within the statutory timeline to file their application for authorization to retain the deposit.

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 find that the landlords have not established their claim on a balance of probabilities. While I accept that the landlords painted the rental unit and that they incurred costs for the work performed, I am not satisfied that the losses are attributable to the tenants. The landlord began their work prior to the tenancy ending and denying the tenants an opportunity to perform cleaning, painting or work themselves. The parties agree that the tenancy did not end until October 31, 2020 and even if the tenants had already vacated the suite they maintained possession and had the right to return and clean the suite prior to the date the tenancy ended. The landlords, by beginning their painting and work prior to the end of the tenancy, usurped the tenants' ability to perform their own work. I find that the correspondence clearly indicates that the tenants were not waiving their right to a return of the full deposit or agreeing to the cost of the work undertaken by the landlord. I find that any losses incurred by the landlords are not a result of the tenants but due to their prematurely performing work on the rental unit prior to the end of the tenancy.

Consequently, I dismiss the landlords' application. The tenants are entitled to a return of their security deposit.

As the tenants were successful in their claim they are also entitled to recover their filing fee from the landlords.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$975.00. The landlords must be served with this Order as soon as possible. Should the landlords 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: March 4, 2021

Residential Tenancy Branch