



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, MNDL-S, FFL**

Introduction

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

- A monetary award for unpaid rent, 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 tenant 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. The tenant was assisted by an advocate.

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 landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

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

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 in September 2018 and ended October 30, 2020. The rental unit is a furnished suite in a multi-unit building. The monthly rent was \$1,615.00 payable on the first of each month. A security deposit of \$850.00 was collected and is still held by the landlord.

The landlord says that they took possession of the rental unit shortly before the start of the tenancy and noted the condition of the suite without the tenant's participation. The landlord says they provided the tenant with two opportunities for a move-out inspection at the end of the tenancy but the tenant did not attend. A copy of the inspection report was submitted into evidence.

The landlord submits that they incurred costs to clean, dispose of materials and repair furniture at the end of the tenancy. The landlord also submits that they incurred costs to travel and attend at the rental unit. Some documentary evidence including photographs of the rental unit and the furniture were submitted into evidence.

The landlord further submits that in the event they are unsuccessful in their monetary claim for damages they wish to retroactively claim the amount of discounted rent they had agreed to with the tenant during the course of the tenancy.

The tenant disputes that they damaged the rental unit beyond the expected wear and tear of occupancy.

Analysis

Section 38(1) of the *Act* provides that a landlord must, within 15 days of the tenancy ending or receiving the forwarding address from the tenant, file an application for authorization to retain the deposit for this tenancy or return the deposit in full.

In the present case the parties provide that the tenancy ended on October 30, 2020 and the landlord filed their application for authorization to retain the deposit on November 14, 2020. As such, I find the landlord was within the 15 days provided to file their application to retain the deposit for this tenancy.

Section 23 of the *Act* sets out the requirement for a landlord to offer a tenant at least 2 opportunities to inspect and prepare a condition inspection report at the start of the tenancy. Section 24 provides that the right of a landlord to claim against the deposit is extinguished if the landlord does not comply in providing the tenant 2 opportunities for an inspection.

The parties gave undisputed evidence that no condition inspection report was prepared at the start of the tenancy and the landlord did not provide 2 opportunities as prescribed. Consequently, pursuant to section 24 of the *Act* I find that the landlord has extinguished their right to claim against the security deposit for this tenancy.

As noted in Residential Tenancy Policy Guideline 17 “The arbitrator will order the return of a security deposit ... whether or not the tenant has applied for dispute resolution for its return.” Accordingly, I find that the tenant is entitled to a monetary award in the amount of \$850.00 for the return of the security deposit for this tenancy.

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 insufficient evidence in support of the landlord’s claim. I find that the absence of a proper condition inspection report prepared at the start of the tenancy together with the tenant puts the documentary information submitted to be of little probative value. I find the photographs submitted by the landlord in support of their position that there was damage to the rental unit to show little if any deficiency and certainly not of a nature or degree to justify their purported expenses. I find little discoloration, rips, tears or stains in the furniture and am unable to find that the costs the landlord claims for repairs and replacement have any basis. I find the landlord’s claim for transportation costs to attend at the rental unit to simply be the cost of performing the expected duties of a landlord and not damages attributable to the tenant.

I find that the landlord’s claim for retroactively clawing back discounts or rent relief they had agreed to with the tenant during the tenancy to have no basis. I find no agreement between the parties in the copies of correspondence submitted that the landlord is permitted to retroactively claim the amount of the discounts they had offered. It is not open for a party to enter into an agreement for an amount of rent and retroactively renege on this agreement but demanding payment of additional amounts. I find this portion of the landlord’s claim to not be supported in the evidence.

Taking into account all of the evidence and submissions, I find that the landlord has failed to meet their burden to establish any portion of their claim for monetary award. Accordingly, I dismiss the landlord's application in its entirety without leave to reapply.

Conclusion

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

I issue a monetary order in the tenant's favour in the amount of \$850.00, allowing for recovery of the security deposit for this tenancy. 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: March 5, 2021

Residential Tenancy Branch