



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **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 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 parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

The tenant initially disputed that they were served with the landlord's application and materials. The tenant subsequently said they were served with the landlord's application in January 2021 by email. During the hearing the tenant testified that they were served with the landlord's evidence by email on April 22, 2021. The tenant said that they had not served the landlord with any of their evidentiary materials. Based on the testimonies I am satisfied that the tenant was duly served with the landlord's application in January 2021 in accordance with sections 88 and 89 of the Act.

I accept the submission of the parties that the landlord did not serve the tenant with their additional evidence until April 22, 2021. The tenant confirmed receipt but said they have not had an opportunity to review the materials. As the tenant was not served with the landlord's evidence at least 14 days prior to the hearing as required by Residential

Tenancy Rule of Procedure 3.14, and I find the inclusion of materials that the tenant has not had sufficient opportunity to review would be prejudicial, I exclude the landlord's documentary evidence served on April 22, 2021.

As the tenant stated that they have not served the landlord with their documentary evidence I exclude the tenant's materials.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain all or a portion of 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 March 2020 and ended on December 1, 2020. The monthly rent was \$3,800.00 payable on the first of each month. A security deposit of \$1,900.00 was paid at the start of the tenancy and is still held by the landlord.

The parties confirmed that a move-in and move-out condition inspection report was prepared together. The tenant provided a forwarding address on December 12, 2020. The tenant has not provided written authorization that the landlord may retain any portion of the deposit for this tenancy.

The parties agree that the rental unit suffered some damage due to water flooding from a sink when a tap was left running through the night. The parties also testified that the garbage bin was left overflowing by the tenant. The landlord testified that the rental unit required considerable cleaning, maintenance and repairs for issues including repairs of the bathroom fixtures and water damage, garbage disposal, touching up paint on the walls and ceiling, fixing cabinetry, doors, closets and outdoor fences, repairing electrical fixtures and general maintenance to restore the rental unit to its pre-tenancy condition.

The landlord submits that the cost of the work done was considerable, but they have reduced the amount they are claiming to \$1,400.00 in consideration of the amicable

relationship with the tenant. The landlord provided some testimony that the amount claimed represents a portion of their expenses and costs for cleaning and repairs.

The tenant disputes that they are responsible for damage to the rental unit to the degree claimed by the landlord. The tenant agrees that a faucet was left running through the night and overflowed but submits that they do not believe they are the cause of the damage to the suite.

Analysis

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 the rental unit required some cleaning, maintenance and repair work attributable to the tenancy. I find the landlord's testimony to be reasonable, detailed and consistent. I accept the landlord's description of the various deficiencies found in the rental unit at the end of the tenancy. I find the landlord's testimony to be sufficiently detailed and cogent to meet their evidentiary burden on a balance of probabilities.

I find that the tenant's testimony that there was leaking from a sink to be consistent with the landlord's version of events. While the tenant disputes that the faucet left running is the cause of the water damage to the suite I find it reasonable to conclude that damage from an overflowing sink is attributable to the occupants of a suite who had exclusive usage of the bathroom facilities for the preceding several months of the tenancy.

I accept that the rental unit incurred some damage requiring intervention and find that the damage is the result of the tenancy. The landlord testified as to some of the costs incurred due to the damage and provided a calculation of their losses. I find the amount claimed by the landlord to be reasonable, proportional to the damage the parties testified occurred in the rental unit, and consistent with the goal of restoring the rental unit to its pre-tenancy condition. I accept the landlord's submission that the total amount of the damage and loss exceeded the amount of their claim but they have

limited their application to seek a rounded lesser figure. I am satisfied with the landlord's evidence by way of their testimony that they have incurred losses of at least \$1,400.00 and issue a monetary award in that amount accordingly.

As the landlord was successful in their application they are also entitled to recover the filing fee from the tenant.

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

Conclusion

The landlord is authorized to make a deduction of \$1,500.00 from the security deposit for this tenancy. The deposit is reduced by that amount to \$400.00.

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: April 29, 2021

Residential Tenancy Branch