



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sterling Management Services
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LL: MNDL-S FFL
 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 landlord named the personal respondent JSP and applied for:

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

The tenants applied for:

- A return of all or a portion of the deposit for this tenancy pursuant to section 38; 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. The corporate landlord was represented by its agent (the “landlord”).

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.

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*.

At the outset of the hearing the tenant provided their correct name and confirmed that they are the individual who was a party to the tenancy agreement and is the named respondent in the landlord's application. The name provided by the tenant is used in the style of cause for this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is either party entitled to the 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 in 2016 and ended on September 30, 2020. A security deposit of \$600.00 was paid at the start of the tenancy and is still held by the landlord. The parties prepared a move-out condition report on September 30, 2020. The parties did not agree on the assessment of the rental unit condition and the tenant did not authorize the landlord to make any deductions from the deposit.

The landlord submits that the rental unit required some cleaning, maintenance, repairs and work to be restored to its pre-tenancy condition. The landlord submitted several photographs of the suite as well as itemized invoices for work done. The landlord submits that the total cost of the work required for the rental unit is \$2,226.40.

The tenant first provided the landlord with a forwarding address on January 7, 2021. The landlord filed their present application on January 19, 2021 seeking authorization to retain the deposit for this tenancy.

The tenant testified that they agree with the cost of \$1,100.00 for repairs to the countertop but dispute the balance of the landlord's monetary claim. The tenant submits that they cleaned and maintained the rental unit during their tenancy and there was no damage other than the expected wear and tear from occupancy.

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.

In the case at hand the parties testified that the tenant provided a forwarding address to the landlord on January 7, 2021 and the landlord filed their application for dispute resolution including authorization to retain the deposit on January 19, 2021. I find the landlord was within the 15 days provided under the *Act*.

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 testified that they agree that the countertop of the rental unit was damaged during the tenancy and that it cost the landlord \$1,100.00 for repairs. As the parties agree on the damage and the cost I issue a monetary award in the landlord's favour for this amount.

I am satisfied with the landlord's evidence including the condition inspection report completed by the parties in accordance with the Regulations, the photographs of the suite and the itemized invoices from third-party companies that the rental unit required some cleaning, repairs and work. I find the landlord's list of work done to be commensurate with the condition of the suite and reasonable expenditures required to restore the rental unit to its pre-tenancy condition.

I do not find the tenant's submission that the rental unit did not require cleaning or work to be supported in the documentary evidence or to be persuasive. I find that the photographic materials and the report completed at the end of the tenancy clearly shows the condition of the suite. While I do not doubt that the tenant did some work towards cleaning the rental unit, I find that this was not sufficient to restore the rental unit to a state where it could be rented to new occupants.

I accept the evidence of the landlord that they incurred costs of \$1,126.40 for various cleaning and repairs to the rental unit. I find that the itemized invoices demonstrate that the nature of the work performed is restricted to the purpose of restoring the rental unit. I therefore issue a monetary award in the landlord's favour for the amount of \$1,126.40.

As the landlord was successful in their application they are entitled to recover their 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 partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,726.40, allowing for recovery of the cleaning costs and filing fees and to retain the security deposit for this tenancy. The tenant must be served with this Order as soon as possible. Should the tenant 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.

The tenants' 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: May 21, 2021

Residential Tenancy Branch