



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **LL: MNDL-S, FFL MNRL, MNDL**
 TT: MNSD, FFT

Introduction

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

The landlord applied for:

- A monetary award for unpaid rent, 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 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 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*.

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 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 2013 and ended on November 30, 2020. A security deposit of \$725.00 was paid at the start of the tenancy and is still held by the landlord. No move-out condition inspection report was prepared by the parties at the end of the tenancy. The tenant provided a forwarding address in writing on November 30, 2020.

The tenant submits that they did not authorize the landlord to retain any portion of the deposit for this tenancy. The landlord filed their application for a monetary award on January 18, 2021 and a subsequent application for authorization to retain the deposit on February 5, 2021.

The landlord seeks a monetary award in the amount of \$3,486.00 for repairs to the rental unit. The landlord testified that there is no rental arrear and that the amount they are seeking is solely related to damage to the rental unit and the cost of repairs and work.

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 November 30, 2020 and the tenant provided a forwarding address in writing on that date. The landlord did not

return any portion of the security deposit for this tenancy nor did they file an application for authorization to retain the deposit within 15 days of November 30, 2020. The landlord first filed an application for a monetary award on January 18, 2021, well outside of the 15 days provided under the *Act*.

Furthermore, the parties gave evidence that no move-out condition inspection report was at the end of the tenancy. Section 36 of the *Act* provides that the right of a landlord to claim against a security deposit for damages is extinguished if they do not comply with the requirements of section 35 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

I accept the undisputed evidence that no move-out condition inspection report was prepared nor did the landlord provide the tenant with at least 2 opportunities for an inspection pursuant to the *Act*. I therefore find that the landlord has extinguished their right to claim against the security deposit for damages and dismiss the landlord's application to retain the deposit.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$1,450.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

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 landlord submits that they incurred costs for repairs to the rental unit but I find insufficient evidence in support of their application. In the absence of a proper condition inspection report prepared by the parties I do not find the landlord's testimony and handful of poor resolution photographs to be sufficient to demonstrate that there was

damage to the rental unit or that it is attributable to the tenant. If there were damage it would be reasonable to expect that this would have been noted at the end of the tenancy or that there would have been some earlier correspondence regarding the issue. I find the landlord's evidence in support of their claim to be slight, unconvincing and not sufficient to meet their evidentiary burden. Consequently, I dismiss this portion of the landlord's application.

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

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 \$1,550.00. The landlord 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.

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 27, 2021

Residential Tenancy Branch