



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL, MNSDB-DR, FFT

Introduction

This hearing was convened in response to an application by the Landlord and an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on May 18, 2021 for:

1. A Monetary Order for damages to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on May 28, 2021 for:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant states that no evidence was provided from the Landlord. The Landlord states that their evidence package was sent to the Tenant by email. The Landlord did not provide a copy of that email and confirms that the Tenant did not authorize the Landlord to use the Tenant’s email for document service. The Landlord confirms that the Tenant did not reply to the Landlord’s emails with the evidence. The Landlord states that they cannot recall if the evidence was provided to the Tenant in the Landlord’s hearing package that was sent by registered mail.

Rule 3.14 of the RTB Rules of Procedure provides that evidence that it intends to be relied on at the hearing must be received by the respondent. as the Landlord cannot recall if the evidence was provided with the hearing package sent by registered mail, as the Landlord was not authorized to send any documents to the Tenant by email, as the Landlord has no evidence that the Tenant received the email and given the Tenant's evidence that no evidence was received by the Tenant I find on a balance of probabilities that the Landlord did not provide the Tenant with a copy of the Landlord's email. As a result, I decline to consider the Landlord's supporting documentary evidence. The Landlord was given opportunity to provide oral testimony on its claims.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Is the Landlord entitled to the costs claimed?

Are the Parties entitled to recovery of their filing fees?

Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement started on February 1, 2020 and ended on April 30, 2021. During the tenancy monthly rent of \$2,300.00 was payable. At the outset of the tenancy the Landlord collected \$1,150.00 as a security deposit and \$1,150.00 as a pet deposit. At the outset of the tenancy the Parties mutually conducted a move-in inspection with a report completed. At move-out the Parties did a visual inspection however the Landlord did not complete a move-out inspection report to provide to the Tenant. The Tenant sent its forwarding address to the Landlord by registered mail on May 14, 2021. The Landlord received this forwarding address. The Landlord did not return the security or pet deposits.

The Landlord states that the Tenant left baseboards and a ledge around a patio door damaged. the Landlord states that the Tenant also left a door damaged. The Tenant states that the door damage was pre-existing and that the Parties discussed this at

move-in. The Tenant states that it does not have a copy of the move-in report and does not recall whether it was provided to him. The Landlord states that the Tenant was given a copy of the move-in report. The Tenant states that it did make repairs to the baseboards and ledge by using putty to fill the damaged areas.

The Landlord states that the Tenant left the paint on the ceiling with black spots, a nail hole on the living room wall and paint damage under the counter in the kitchen. The Landlord states that the unit was last painted around July 2018. The Landlord claims \$530.00 as costs to paint the unit. The Tenant states that no damage was left to the walls or ceiling.

The Landlord states that the Tenant left a light switch damaged and claim \$9.71 for the cost of materials. The Tenant states that the light switch was pre-existing damage.

The Landlord states that the Tenant failed to clean any part of the unit. The Landlord claims \$620.00 as the cleaning costs. The Tenant states that the unit was left clean and that any spots in the bathroom were water residue spots.

The Landlord states that the Tenant left one living room blind damaged. The Landlord claims \$225.00. The Tenant states that it did not damage the blind and that the blind was damaged with tangled and broken strings at move-in.

Analysis

Section 36(2)(c) of the Act provides that the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. Given the Landlord's evidence that no move-out condition inspection report was completed and copied to the Tenant I find that the Landlord's right to claim against the security and pet deposits was extinguished at move-out.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides that return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act. As the Landlord's right to claim against the security deposit was extinguished and as the Landlord did not return the security deposit after receipt of the Tenant's forwarding address I find that the Landlord must now pay the Tenant double the combined security and pet deposits plus zero interest of **\$4,600.00**. As the Tenant has been successful with their application, I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$4,700.00**.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. Given the Tenant's evidence that the door damage was pre-existing and as the Landlord has no supporting evidence of the state of the unit at move-in I find that the Landlord has not substantiated that the Tenant damaged the door and I dismiss this claim. Given the Tenant's evidence that the damage to the baseboards and ledge was caused by the Tenant I find that the Landlord has substantiated that the Tenant did cause damage to these areas. However given the Tenant's undisputed evidence that some repair was

made and as the Landlord's has not provided evidence of the costs for the repairs to the ledge and baseboards, I find that the Landlord has only substantiated nominal compensation of **\$100.00** for this damage.

As the Landlord provided no supporting evidence of the remaining damage or repair costs and given the Tenant's evidence that no damage was left by the Tenant, I dismiss the remaining damage claims of the Landlord. As the Landlord's application has met with minimal success, I find that the Landlord is only entitled to recovery of half the filing fee in the amount of **\$50.00** for a total entitlement of **\$150.00**. Deducting the Landlord's entitlement from the Tenant's entitlement of **\$4,700.00** leaves **\$4,550.00** owed to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$4,550.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: July 14, 2021

Residential Tenancy Branch