



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 landlords' 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 deposits 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.

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

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to retain the security and pet damage deposit for this tenancy?

Are the landlords 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 2017 and ended on February 17, 2021. The monthly rent at the end of the tenancy was \$2,150.00 payable on the first of each month. A security deposit of \$1,000.00 and pet damage deposit of \$500.00 was paid at the start of the tenancy and are still held by the landlords. The tenant provided a forwarding address to the landlords prior to the end of the tenancy.

A condition inspection report was prepared at the start and end of the tenancy. A copy of the report was submitted into evidence. The report is signed by the parties at the start of the tenancy. The tenant said they did not receive a copy of the condition inspection report completed at the start of the tenancy until the tenancy ended. The landlord testified that they believe they provided the tenant with a copy at some point during the tenancy but was uncertain of when. The landlord testified that they gave the tenant one opportunity to attend a move-out inspection and when the tenant was unable to attend on the proposed date and time completed the inspection report in the tenant's absence.

The landlords submit that the rental unit required some cleaning, work and replacement of parts. The landlords submitted some photographs of the suite and invoices for work performed. The landlords submit that the total amount of the costs incurred is \$1,000.00.

The tenant testified that they have not given written authorization allowing the landlords to retain any portion of the security or pet damage deposit for this tenancy.

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. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of double the security and pet damage deposit.

In the present case the parties testified that this tenancy ended on February 15, 2021 with the tenant overholding the rental unit for a couple of days and vacating on February 17, 2021. The landlords filed their application for dispute resolution on March 3, 2021. Accordingly, I find the landlords were within the statutory timeline to file their application.

However, the tenant submits that the landlords did not provide them with a copy of the condition inspection report at the start of the tenancy and did not offer them 2 opportunities to participate in a move-out inspection.

Section 24(c) provides that the right of a landlord to claim against a security or pet damage deposit is extinguished if they do not complete the condition inspection report and give a copy to the tenant in accordance with the regulations.

Regulation 18(a) sets out that a landlord must give a copy of the signed condition inspection report within 7 days after the inspection is completed.

It is evident from the copies of the correspondence submitted into evidence by the parties that the landlords had not provided a copy of the condition inspection report as at September 2, 2017 when the tenant writes "You said you forgot the copies of lease and condition report at the inspection. Can you forward them to me please."

While the landlord said they provided the tenant with a copy of the condition inspection report there is little documentary evidence to support their position and the tenant disputes that they were ever provided a report during the tenancy. The correspondence shows the landlord repeatedly trivializes the requirements of the *Act* and regulations by stating at various points, "you are taking the condition inspection report too seriously" and "Don't worry about the report, it is up to date. I can bring copies when I do my first inspection."

Furthermore, the parties agree that the landlord offered the tenant only one opportunity to attend a move out inspection and promptly completed a move-out condition inspection report in the absence of the tenant when they were unable to attend on the proposed date and time.

Section 36(2)(a) of the *Act* provides that the right of the landlord to claim against both a security and pet damage deposit are extinguished if they do not offer the tenant at least 2 opportunities, as prescribed, for an inspection.

Based on the undisputed evidence before me, I find that the landlords have extinguished their right to claim against the security and pet damage deposit for this tenancy.

Residential Tenancy Policy Guideline 17 provides at section C. paragraph.1:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit; or
- a tenant's application for the return of the deposit.

unless the tenant's right to the return of the deposit has been extinguished under the *Act*. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

The Guideline further states at section C paragraph 3:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- 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*;

Accordingly, as I find that the landlords have extinguished their right to claim against the security and pet damage deposits for this tenancy, pursuant to section 38(6) I issue a monetary award in the tenant's favour in the amount of \$3,000.00, double the amount of the security and pet damage 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 landlords' monetary claim. I find that the condition inspection report submitted into evidence was not completed in accordance with the Act and regulations and consequently give it little weight as to the state of repair of the rental unit. I find the photographs submitted by the landlords, their testimony and documentary materials to not demonstrate damage beyond the expected wear and tear from an ordinary occupancy. I find the landlords' submission to be insufficient to find that the tenant's conduct was so unreasonable as to give rise to the basis for a monetary award. Consequently, I dismiss this portion of the landlords' application.

As the landlords were not successful in their claim they are not entitled to recover the filing fee.

Conclusion

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

I issue a monetary order in the tenant's favour in the amount of \$3,000.00. The landlords must be served with this Order as soon as possible. Should the landlords 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: July 20, 2021

Residential Tenancy Branch