



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LL: **MNDL-S, FFL**
 TT: **MNSDS-DR, MNRT**

Introduction

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

The landlord applied for:

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

The tenant applied for:

- A monetary award for damages and loss pursuant to section 67; and
- A return of the security deposit pursuant to section 38.

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 either party entitled to a monetary award as claimed?
Is either party entitled to the security deposit for this tenancy?
Is the landlord entitled to recover their 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.

This periodic tenancy began in August 2019 and ended February 28, 2021. The monthly rent was \$1,600.00 payable on the first of each month. A security deposit of \$800.00 was collected at the start of the tenancy and is still held by the landlord. A pet damage deposit of \$800.00 was paid and has been dealt with in accordance with the Act. No condition inspection report was prepared at any time for this tenancy.

The parties agree that during the tenancy there were issues with the sewage lines and a plumber was called on one instance in April 2020. The cost of the plumber services was \$350.00. The landlord paid \$150.00 of the fees and the tenant paid \$200.00. The landlord submits that the parties agreed to divide the costs as the tenant had caused the plumbing issues by improperly disposing of things down the toilet. The tenant submits that there was no agreement between the parties and they are entitled to reimbursement of the \$200.00.

The landlord submits that the rental unit required some work to be done due to damage caused by the tenant. The landlord submitted photographs of the suite and invoices for painting work performed. The landlord submits that the total cost of the work required is \$1,365.00.

The tenant disputes that there was damage to the rental unit and testified that they have not given written authorization that the landlord may retain any portion of the security deposit.

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 present case the tenancy ended on February 28, 2021 with the tenant providing a forwarding address in writing on March 1, 2021. The landlord filed their application for dispute resolution on March 2, 2021. I therefore find that the landlord was within the statutory timeline to file their application.

Section 24 of the *Act* provides that the right of a landlord to claim against a security deposit for damage is extinguished if they do not prepare a condition inspection report in accordance with the *Act* and regulations.

I accept the undisputed evidence of the parties that no condition inspection report was prepared at any time for this tenancy and find that the landlord has extinguished their right to claim against the deposit.

Accordingly, as the landlord has extinguished their rights to claim against the security deposit for damages, I find the tenant is entitled to a monetary award for the return of the security deposit for this tenancy. I issue a monetary order in the tenant's favour in the amount of \$800.00.

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.

In the absence of a proper condition inspection report prepared at the start of the tenancy I find the photographs and submissions of the landlord to be insufficient to determine that any damage to the rental unit is attributable to the tenancy. I am unconvinced by the handful of materials now submitted, or the testimony of the landlord, that the rental unit was damaged by the tenant requiring repairs as claimed. I therefore find that the landlord has not met their evidentiary onus and dismiss their application.

I find little evidence in support of the portion of the tenant's application seeking a monetary award for the cost of plumbing services. Based on the documentary evidence of the tenant it is evident that the parties had agreed to divide the costs of plumbing at the time and there was no subsequent mention made of the tenant expecting reimbursement. While the tenant submits that they felt coerced into covering the costs of plumbing at the time, I find little evidence in support of their position. Based on the materials before me I find that there was an agreement between the parties to divide the costs of plumbing in April 2020 and there is no basis for the tenant to now seek reimbursement. Accordingly, I dismiss this portion of the tenant's application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$800.00, allowing for the recovery of the security deposit for this tenancy. 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.

The balance of the tenant's application and the landlord's application is dismissed 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: July 19, 2021

Residential Tenancy Branch