



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and recover the cost of the filing fee.

The landlord’s agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord’s agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on March 31, 2021, a Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The landlord’s agent appeared gave testimony and was provided the opportunity to present their evidence and in written and documentary form, and to make submissions at the hearing. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on April 1, 2019. Rent in the amount of \$1,450.00 was payable on the first of each month. The tenant paid a security deposit of \$725.00. The tenancy ended on January 31, 2021. The co-tenant BD, in the tenancy agreement was not named in this dispute. Filed in evidence is a copy of the tenancy agreement.

The landlord's agent testified that at the end of the tenancy the tenant's agreed in the move-out condition inspection report that they owed unpaid rent, cleaning cost and damages in the amount of \$2,602.50 and that the security deposit would be applied to the amount owed leaving a balance due of \$1,817.50. Filed in evidence is a copy of the move-out condition inspection report (the "Report").

The landlord's agent stated that at the time the tenant's agreed that they would both be responsible for half of the amount owed. The agent stated that the female co-tenant paid her portion owed; however, the male tenant has not paid anything toward their portion of the amount owed. The landlord seeks a monetary order in the amount of \$938.73, plus the cost of the filing fee.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Evidentiary weight of a condition inspection report

Section 21 of the Residential Tenancy Regulation state, in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I accept the undisputed testimony of the landlord's agent that the tenants agreed in the Report that they owed the amount of \$2,602.20. This is supported by the Report which also shows the tenants agreed that the landlord could keep the security deposit of \$725.00, leaving a balanced due of \$1,877.50.

I accept the undisputed testimony of the landlord's agent that they have received half from the co-tenant BD and that the tenant did not pay their portion. I find the landlord is entitled to recover from the tenant the balance due of **\$938.73**.

I find the landlord has established a total monetary claim in the amount of **\$1,038.73** comprise of the above amount and the \$100.00 file fee. This order may be enforced in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order in the above noted amount.

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: August 27, 2021

Residential Tenancy Branch