



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Skyline Living
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNDCL-S, MNRL-S, FFL

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for damages to the unit - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. 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 provided an evidence package to the Residential Tenancy Branch (the “RTB”) on the day of the hearing. The Landlord has not received that package.

Rule 3.15 of the Rules of Procedure provide that a respondent’s evidence must be received by the applicant and the RTB not less than seven days before the hearing. Given the late submission of evidence and considering the Landlord does not have that evidence I decline to consider the Tenant’s evidence package. The Tenant was given opportunity to provide oral evidence.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy, under written agreement, started on June 30, 2020 and the Tenant moved out on February 27, 2021. Rent of \$1,703.00, that included a parking charge of \$45.00, was payable on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$829.00 and a pet deposit of \$829.00. The Landlord received the Tenant's forwarding address on February 28, 2021. The Landlord made its application for dispute resolution on June 9, 2021. The Parties mutually conducted a move-in inspection on June 24, 2021 with a completed report. The Landlord made no offers for a move-out inspection and conducted the inspection alone.

The Parties agree that the Tenant owes the Landlord unpaid rent of \$11,119.00.

The Parties agree that the Tenant was late with a rent payment and that three rent payments were returned NSF. The Landlord claims \$90.00 for three NSF fees and \$25.00 for a late fee. The tenancy agreement provides for a late rent fee of \$25.00 and an NSF fee comprised of a late rent fee of \$25.00 plus the amounts charged to the Landlord for the NSF item. The Landlord provided no evidence of bank fees charged to the Landlord for the NSF rent payments.

The Landlord states that the Tenant left the unit unclean. The Landlord claims \$80.00 as cleaning costs. The Landlord provides a copy of the inspection reports, photos of the unit and an invoice. The Tenant states that the unit was left professionally cleaned.

The Landlord states that it had made an earlier application to retain the security deposit and confirms that it withdrew that application at the hearing.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean. Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. As the Landlord did not offer the Tenant an opportunity to conduct a move-out inspection, I consider that the Landlord's evidence of the move-out inspection report to be of no weight. Given that Landlord's photos do not show an unclean unit and considering the Tenant's evidence of having cleaned the unit, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant failed to leave the unit reasonably clean. I dismiss the claim for cleaning costs.

Section 7(1) of the Act provides, inter alia, that a landlord may charge, a service fee charged by a financial institution to the landlord for the return of a tenant's cheque; and if provided for in the tenancy agreement, an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent. As the Landlord has not provided any evidence of bank charges but given the term in the tenancy agreement that provides for a \$25.00 fee for late or returned cheques, I find that the Landlord is not entitled to no more than \$25.00 for each of the NSF and late rent payments. Based on the undisputed evidence of 4 such occurrences I find that the Landlord is entitled to **\$100.00**.

Given the undisputed evidence that the Tenant owes the Landlord **\$11,119.00** in unpaid rent I find that the Landlord is entitled to this amount. As the Landlord's claims have met with substantial success, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$11,319.00**.

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. Based on the undisputed evidence that the Landlord received the Tenant's forwarding address on February 28, 2021, withdrew its previous application claiming against the security deposit and thereafter did not make its application to claim against the security deposit until June 9, 2021, I find that the Landlord failed to act within 15 days of receipt of the forwarding address. The Landlord must now repay the Tenant double the combined security and pet deposit plus zero interest of **\$3,316.00**. Deducting this amount from the Landlord's entitlement of **\$11,319.00** leaves **\$8,003.00** owed to the Landlord.

Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$8,003.00**. 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 RTB under Section 9.1(1) of the Act.

Dated: December 08, 2021

Residential Tenancy Branch