



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 landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary award for damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenants' security and pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants 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 tenant NM confirmed they represented both named respondents.

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 the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the deposits for this tenancy?

Is the landlord entitled to recover the filing fee from the tenants?

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 tenancy began on October 1, 2019 and ended October 14, 2020. The monthly rent was \$3,850.00 payable on the first of each month. A security deposit of \$1,925.00 and pet damage deposit of \$1,925.00 were collected at the start of the tenancy and are still held by the landlord. The parties completed a move-in condition inspection report at the start of the tenancy. No move-out condition inspection report was completed.

There was an earlier hearing under the file number on the first page of this decision. In the earlier decision dated July 12, 2021 the presiding arbitrator writes:

For the purposes of the return of the security deposit, I find the Landlord is served with the forwarding address of the Tenant, as of the date of this hearing.

The landlord filed their present application on July 14, 2021.

The landlord submits that there was a preliminary move-out inspection with JR, the agent for the tenants, on October 16, 2021. The landlord testified that they were made aware, in advance of the inspection, that JR was attending as agent for the tenants. The landlord characterizes the inspection conducted on that date as preliminary as the tenants were not personally in attendance and the landlord claims there was items left in the rental unit. The landlord did not prepare a condition inspection report in writing on that occasion.

The landlord submits that subsequently they attempted to arrange for another move-out inspection with the personal tenants in attendance. The parties were not able to make arrangements for a second inspection.

The tenants submit that they have not provided written authorization that the landlord may retain any portion of the security or pet damage deposit for this tenancy.

The landlord submits that the rental unit required cleaning and restoration due to damage caused by smoking in the suite, their pets and other deficiencies. The landlord now claims a monetary award of \$2,850.00 for the damages to the rental unit.

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 earlier decision provides that the landlord is served with the tenants' forwarding address on July 12, 2021, the date of that hearing. The landlord filed their application for authorization to retain the deposits on July 14, 2021. Accordingly, I find the landlord was within the statutory timeline to file their application.

Section 36(2) of the *Act* provides that the right of a landlord to claim against a security and pet damage deposit is extinguished if, having made an inspection with the tenant, they do not complete a copy of a condition inspection report in accordance with the regulations.

Regulation 15 provides that a tenant may appoint an agent to act on their behalf and attend a condition inspection.

In the present case the tenants appointed JR as their agent and advised the landlord in advance of the inspection that they would be acting for the tenants in respect of the inspection and was authorized to sign a condition inspection report.

The parties agree that a move-out inspection took place on October 16, 2021. The landlord did not complete a written condition inspection report at that time. While the landlord characterized this scheduled inspection as a "preliminary inspection" I do not find this reasonable. The inspection was attended by the agent for the tenants and the documentary evidence by way of text communication between the parties shows that it was expected to be a final move-out inspection. I find no reasonable reason why the landlord failed to prepare an inspection report at this time as required under the *Act* and regulations. If the rental unit was not fully cleaned the landlord could have noted so on the report. Instead, having completed an inspection in accordance with the *Act* and

regulations with the agent of the tenants, the landlord submits they sought to schedule a second inspection with the named tenants.

I find there was a move-out inspection conducted in accordance with the *Act* and regulations and the tenants were under no obligation to attend a second inspection nor required to attend in person when they had appointed an agent pursuant to the regulations to attend on their behalf.

I find that the landlord failed to prepare a condition inspection report as required and pursuant to section 36(2)(c) have extinguished their right to claim against the security and pet damage deposit.

I therefore find that the landlord has extinguished their right to retain the deposits and the tenants are entitled to a monetary award in the amount of \$3,850.00, the full 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 am not satisfied with the evidence of the landlord that there has been any damage to the rental unit attributable to the tenancy. I find the few photographs submitted by the landlord to be insufficient to establish that the rental property was damaged or that any deficiencies are attributable to a breach on the part of the tenants. I find the landlord's claims to be vague, without substantive details and not supported in the documentary evidence. Accordingly, I dismiss the landlord's claim.

Conclusion

The landlord's claim is dismissed in its entirety without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$3,850.00. The landlord must be served with this Order as soon as possible. Should the landlord 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: January 27, 2022

Residential Tenancy Branch