



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **TT: MNSDB-DR, FFT**
 LL: MNDL-S, MNDCL-S, FFL

Introduction

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

The corporate landlord applied for:

- a monetary order pursuant to section 67;
- authorization to retain all or a portion of the tenant’s deposits pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant named the personal respondent JK and applied for:

- a monetary order pursuant to section 67;
- a return of the deposits for this tenancy pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

At the outset of the hearing the agent for the corporate landlord testified that the named respondent JK is no longer an employee and the appropriate party to be named is the corporate entity. The tenant consented to amending their application and naming the corporate landlord as the respondent and removing the personal respondent JK. The style of cause for this decision and accompanying order are accordingly amended.

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 corporate landlord was represented by its agent (the “landlord”).

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 deposits for this tenancy?

Is either party entitled to recover the filing fee from the other?

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 background facts. This fixed-term tenancy began on October 1, 2020 and ended May 31, 2021. Monthly rent was \$2,250.00 payable on the first of each month. A security deposit of \$1,072.50 and pet damage deposit of \$1,072.50 were paid at the start of the tenancy and are still held by the landlord.

The parties completed a condition inspection report at the start and end of the tenancy. A copy of the report was submitted into evidence. The move-out inspection report signed by the parties on May 29, 2021 notes some patches on the walls of the rental unit. The portion of the report provided for the landlord to list any deductions from the deposits is stroked out and no amount of deductions is provided. The tenant provided their forwarding address on the report.

The landlord submits that their practice is to not indicate the proposed deductions in the condition inspection report and instead to obtain quotes from third parties and issue a deposit statement at a later date. In the present case the landlord issued a Deposit Statement dated June 3, 2021 showing a balance payable of \$904.02 which includes payment of liquidated damages under the tenancy agreement, unpaid utilities and cost of painting and floor cleaning.

The landlord filed their application for dispute resolution with the Branch on June 17, 2021. The landlord seeks a monetary award of \$904.02.

The tenant filed their application on July 19, 2021 seeking a return of the deposits for this tenancy. The tenant confirmed that they agree to a deduction for liquidated damages, outstanding utility bills and the floor cleaning but does not agree to the painting.

The parties agree that the disputed amount is \$315.00 representing re-painting of the suite.

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 the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

In the present case the parties agree that the tenancy ended on May 31, 2021 with the tenant provided their forwarding address previously on May 29, 2021. The landlord filed their application for dispute resolution on June 17, 2021, outside of the 15 days provided under the *Act*.

I find that the landlord's issuance of a Deposit Statement does not extend the tenancy nor the statutory deadlines. I do accept that the tenant agreed to a deduction of \$589.02 representing the liquidated damage, carpet cleaning and utility bills. I therefore find that as the landlord was holding the balance of the deposits for this tenancy,

\$1,555.98 without written authorization and had failed to file an application for authorization to retain the deposits within the 15 days provided under the Act, the tenant is entitled to a monetary award in the amount of \$3,111.96, double the portions of the security and pet damage deposits for this tenancy.

Pursuant to section 21 of the Regulations a condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection. The report submitted into evidence notes some damage to the walls of the unit but makes no indication that the cost of repairs will be pursued. The landlord crossed out the portion of the report reserved for indicating the charges to be applied against the deposits. If the landlord's practice, as testified, was to obtain more accurate figures for repairs and charge those to the tenant it would be reasonable to expect that some indication would be given on the report. A simple notation that charges are pending would indicate that there were unresolved issues.

I further find it noteworthy that despite some charges such as the amount of liquidated damages being known the landlord chose not to indicate that in the report. I find the landlord's practice of providing deductions after the portion of the report allowing for deductions to be struck out, the parties sign off, and the report has been completed to be confusion at best and contradictory to the intention of completing a move-out report.

I find the photographs submitted into evidence to merely show some areas of discoloration and are far from a preponderance of evidence required to rebut a condition inspection report completed and signed by the parties. I am not satisfied that the cost of painting was required or attributable to the tenant. Consequently, I dismiss the landlord's claim.

As the tenant was successful in their application, they are entitled to recover their filing fee from the landlord.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$3,211.96. 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 11, 2022

Residential Tenancy Branch