



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL, MNSDB-DR, FFT

Introduction

This hearing was convened in response to an application by the Landlord and an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied for:

1. A Monetary Order for damage to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied for:

1. An Order for the return of the security deposit - Section 38;
2. An Order for the return of the filing fee - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord sets out the name of one of the Tenant’s incorrectly. The Parties agree that this Tenant’s name is as spelled in the tenancy agreement and as set out on the Tenants’ application. The Parties agree that the Landlord’s application should be amended to correct the Tenant’s name. Given this agreement I remove the incorrectly spelled Tenant’s name and replace it with the correct spelling.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to retain the security deposit?

Are the Tenants entitled to return of the security deposit?

Are the Parties entitled to recovery of their filing fee?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on March 26, 2021, to end March 31, 2022. The Tenants moved out of the unit on July 1, 2021. During the tenancy rent of \$1,600.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$800.00 as a security deposit and \$200.00 as a pet deposit. No move-in or move-out reports were completed. The Landlord received the Tenants' forwarding address on July 15, 2021. The Landlord did not return the security deposit.

The Landlord states that at move-out the smoke and carbon monoxide alarm was missing, that the Landlord checked with the Tenants and that the Tenants looked for it but were unable to locate it. The Landlord replaced the alarm and claims \$100.00 for the costs of the alarm and labour to install. The Landlord does not provide any invoice or receipts. The Tenants state that the alarm was removed because it was constantly going off. The Tenant states that it was replaced at move-out.

The Landlord states that the Tenants left pet waste in a container and claims \$25.00 paid to the next tenant and \$25.00 to the handyman for the removal of the waste. The Landlord does not provide any invoice or receipts. The Tenant states that the waste was left in a pail shared with another tenant who also had a pet.

The Landlord states that the Tenants left the kitchen and other walls damaged by inadequately covering the damages that the Tenants made to the walls. The Landlord

states that the Tenants also left a bedroom or bathroom door damaged by a dent. The Landlord states that the unit was fully painted, and that the Landlord watched daily video updates of the work. The Landlord claims the costs of \$300.00 for the repairs and supplies. The Landlord's handyman did the work however the Landlord did not provide an invoice or receipt. The Landlord provides photos. The Tenant states that there was pre-existing damage on all the walls of the unit at move-in, that the unit was in the process of being painted on the move-in date and that the painting stopped at this point leaving parts of the unit unpainted with the pre-existing damage. The Tenant agrees that they did try to repair the one wall hole they caused at move-in. The Tenant states that no door was left with any damage at move-out.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, and that costs for the damage or loss have been incurred or established.

As the Landlord does not have any invoice to support the amount of costs claimed for the smoke and carbon dioxide alarm, I find that the Landlord has not substantiated that these costs were incurred. However, the Landlord's evidence describing the Parties search for the alarm held a ring of truth. For this reason, I prefer the Landlord's evidence and find that the Tenants did fail to return the alarm and that the Landlord is therefore entitled to a nominal sum of **\$25.00** for this breach.

Whether or not the Tenant breached the tenancy agreement in leaving pet waste in a container shared with another tenant, and I note that the tenancy agreement includes garbage removal, given the lack of receipts for the cost of removal I find that the Landlord has failed to substantiate the costs claimed and I dismiss this claim.

As there is no duly completed move-in condition inspection report showing the state of the unit at move-in and given the Tenant's evidence of pre-existing damage to the walls I find on a balance of probabilities that the Landlord has not substantiated that the Tenants left the damage claimed except for the one dent caused by the Tenants. As there is no invoice setting out any costs for the costs of repairs, I find that the Landlord has only substantiated a nominal sum for the one area of wall damage in the amount of **\$25.00**.

As the Landlord's claims have met with minimal success, I find that the Landlord is only entitled to recovery of the half of the filing fee in the amount of **\$50.00** for a total entitlement of **\$100.00**.

Section 24(2) of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the undisputed evidence that no move-in inspection was conducted with a duly completed inspection report I find that the Landlord's right to claim against the security deposit was extinguished at move-in.

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. Policy Guideline #17 provides that return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act. As the Landlord's right to claim against the security deposit was extinguished at move-in and given the undisputed evidence that the Landlord did not return the security and pet deposit I find that the Landlord must now pay the Tenants double the combined security and pet deposit plus zero interest of **\$2,000.00**. As the Tenants have been successful with their claim for the return of the security deposit, I find that the Tenants are also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,100.00**. Deducting the Landlord's entitlement of **\$100.00** from this amount leaves **\$2,000.00** owed to the Tenants.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,000.00**. 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 Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 11, 2022

Residential Tenancy Branch