



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

The Landlord seeks compensation against the security deposit pursuant to ss. 38 and 67 of the *Residential Tenancy Act* (the “*Act*”) for damages caused by the Tenant. The Landlord also seeks the return of her filing fee pursuant to s. 72.

S.H. appeared as the Landlord. The Tenant did not attend, nor did someone appear on her behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began at the time set in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted without her participation as permitted by Rule 7.3 of the Rules of Procedure.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord confirmed that she was not recording the hearing.

The Landlord advises that she served the Notice of Dispute Resolution and her evidence on the Tenant by way of registered mail sent on August 29, 2021. The Landlord provides evidence of service in the form of a tracking receipt and says the application materials were sent to forwarding address provided to her by the Tenant. I find that the Landlord’s application materials were served in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the Landlord’s application materials on September 3, 2021.

Issue(s) to be Decided

- 1) Is the Landlord entitled to claim against the security deposit? If so, in what amount?
- 2) Is the Landlord entitled to the return of her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlord confirmed the following details with respect to the tenancy:

- The Tenant began to occupy the rental unit on June 1, 2019.
- The Tenant moved-out of the rental unit on August 1, 2021.
- The Landlord holds a security deposit of \$575.00 in trust for the Tenant.

A copy of the tenancy agreement was provided by the Landlord.

The Landlord advises that she and the Tenant had an informal move-in inspection of the rental unit on June 1, 2019. There was no written move-in inspection report. However, the Landlord advised at the hearing that the rental unit was in good condition and no objections were raised by the Tenant during the informal move-in inspection.

The Landlord further advises that the move-out inspection was conducted on August 1, 2021. The Landlord says that she had arranged for a move-out inspection with the Tenant on that date. However, the Tenant declined to participate and left the keys on the counter for the Landlord. The Landlord says that the Tenant told her on August 1, 2021 that she could not participate as her mother was in the hospital and that the Landlord could keep whatever she wanted from the security deposit. The Landlord completed the move-out inspection on her own on August 1, 2021 without the Tenant's participation.

Some days later, the Tenant contacted the Landlord enquiring about the return of her security deposit. The Landlord advises that there was some disagreement on what amount, if any, would be returned to the Tenant, which prompted the present application.

The Landlord further stated that she received the Tenant's forwarding address on August 5, 2021.

The Landlord says that the Tenant caused various damage to the rental unit, including damage to walls, markings on doors, uncleanliness, and a broken window. The Landlord provides photographs of the damage she says was caused by the Tenant.

The Landlord provides copies of estimates for painting, cleaning, and window repair, all of which the Landlord says total \$1,550.00, the amount she claims from the Tenant. The Landlord says that she retained the services of the companies that provided invoices and paid the amounts listed within the estimates.

Analysis

The Landlord claims against the security deposit for damages she says are caused by the Tenant.

Pursuant to s. 23 of the *Act*, a landlord and tenant must inspect the condition of the rental unit on the day the tenant is entitled to take possession or on another date that the parties agree to. Section 23(4) of the *Act* specifies that a landlord must complete a condition inspection report in accordance with the regulations. Section 23(5) provides that the parties are to sign the inspection report and the landlord is to provide a copy to the tenant.

Here, the Landlord says that an informal inspection was conducted by the parties on June 1, 2019 and that no formal condition inspection report was made at all. As none was made, none was provided to the Tenant.

Under s. 24(2)(c) of the *Act*, a landlord's right to claim against the security deposit is extinguished if the landlord does not complete an inspection report and give it to the tenant.

I find that the Landlord has failed to comply with her obligation under s. 23(4) to complete a condition inspection report and that due to this failure, her right to claim against the security deposit is extinguished by virtue of s. 24(2) of the *Act*.

Further, s. 38(1) of the *Act* specifies that a landlord must repay the security deposit or file an application to claim against the security deposit within 15 days of the tenancy ending or when the tenant provides a forwarding address, whichever is later.

The Landlord's right to claim against the security deposit was extinguished by virtue of s. 24(2). Accordingly, the Landlord could not file a claim against the security deposit and must have returned the security deposit within 15-days of receiving the Tenant's forwarding address, which in this case would have been by August 20, 2021. As the Landlord has failed to return the security deposit as set out in s. 38(1) of the *Act*, the doubling provision of s. 38(6) is triggered such that the Tenant is entitled to the return of double of her security deposit. In this case it would be \$1,150.00 (\$575.00 x 2).

The Landlord seeks compensation for damages she says were caused by the Tenant.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Here, the Landlord says that the Tenant broke a window, damaged the walls and left the rental unit in an uncleanly state.

Sections 32(2) of the *Act* imposes an obligation on a tenant to maintain reasonable health, cleanliness, and sanitary standards throughout the rental unit and the other areas of the residential property the tenant has access. Further, s. 32(3) requires a tenant to repair damage to the rental unit or common areas caused by the tenant or an individual permitted onto the residential property by the tenant. As set out in s. 32(4), a tenant is not, however, responsible for reasonable wear and tear. Policy Guideline 1 provides guidance that reasonable wear and tear refers to the natural deterioration that

occurs due to aging and other natural forces, where the tenant has used the rental unit in a reasonable fashion.

I find that the Tenant has breached her obligations under s. 32(2) and 32(3) of the *Act* with respect to the broken window, the damaged walls, and the rental unit's cleanliness. I have reviewed the Landlord's evidence with respect to the damages and am satisfied that none of it is of the nature of normal wear and tear. In particular, the walls and a door have been drawn on, the window is clearly broken, and there is garbage strewn about the back of the property in the area adjacent to the rental unit. Based on the Landlord's uncontradicted evidence, I accept that the Tenant caused this damage.

I am satisfied that the Landlord has established that they suffered quantifiable damages as a result of the Tenant's breach in the amounts paid out in the invoices provided by the Landlord. The Landlord's monetary order worksheet indicates that garbage removal provided a quote over the phone. However, there is no receipt evidencing this amount or that it was paid, accordingly, I do not include it in the Landlord's claim.

I find that the Landlord has established a monetary claim taking the following into account:

Item	Amount
Painting and Wall Repair	\$872.50
Cleaning Costs	\$240.00
Broken Window Repair	\$250.00
TOTAL	\$1,362.50

I find that the Landlord has established a monetary claim in the amount of \$1,362.50.

Offsetting the Landlord's monetary claim from doubled security deposit that ought to have been paid to the Tenant, I find that the Tenant is to pay \$212.50 to the Landlord.

Conclusion

The Landlord's right to claim against the security deposit is extinguished by s. 24(2) of the *Act*. Accordingly, the Landlord had no right to claim against the security deposit in her application and ought to have returned the security deposit within 15-days of receiving the Tenant's forwarding address as per s. 38(1). This triggers the doubling return of the Tenant's damage deposit under s. 38(6).

The Landlord has established a monetary claim in the amount of \$1,362.50. Offsetting this from the double return of the security deposit, the total amount owed by the Tenant is \$212.50.

As the Landlord was successful in their application, I order that the Tenant pay the Landlord's \$100.00 filing fee pursuant to s. 72(1) of the *Act*.

Pursuant to s. 67 of the *Act*, I order that the Tenant pay **\$312.50** to the Landlord, which comprises the total compensation for damages and the \$100.00 filing fee. I exercise my discretion under s. 72(2) of the *Act* and direct that the Landlord retain \$312.50 from the security deposit of \$575.00 she had retained at the end of the tenancy. The balance, being \$362.50 (\$575.00 - \$312.50), is to be returned to the Tenant.

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: February 16, 2022

Residential Tenancy Branch