



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

- a monetary order for damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant 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 was assisted by an advocate.

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 deposit for this tenancy?

Is the landlord entitled to recover the filing fee

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 February 1, 2020 and ended on July 1, 2021. Monthly rent during the tenancy was \$1,300.00. A security deposit of \$650.00 was paid at the start of the tenancy and is still held by the landlord. There was no move-in condition inspection report prepared.

The landlord submits that the rental unit required considerable, cleaning, restoration and work at the end of the tenancy due to its condition. The landlord submitted into evidence a move-out inspection report dated July 3, 2021 and some photographs of the suite. The landlord says the cost of work to restore the suite to its pre-tenancy condition was \$2,730.00 and submits an estimate from a third-party restoration company as evidence.

The tenant disputes that they caused any excess damage to the rental unit and attributes any deficiencies to the condition at the start of the tenancy. The tenant did not give written authorization that the landlord may retain any portion of the deposit.

Analysis

Section 24 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not complete a copy of a condition inspection report in accordance with the regulations at the start of the tenancy.

I accept the undisputed evidence of the parties that no move-in condition inspection report was prepared for this tenancy. I find the landlords' testimony about doing a walk through with the tenant or their recollection of the condition of the suite to be an inadequate substitute for a proper inspection report completed in accordance with the *Act* and regulations. The landlords are in the business of taking payment for rental suites and it is incumbent upon them to be familiar with the requirements of the applicable legislation and the consequences when they do not comply

Accordingly, I find the landlords have extinguished their right to retain the security deposit for this tenancy.

Pursuant to section 38 of the *Act* a landlord who has extinguished their right to claim against a deposit by failing to prepare a condition inspection report must return the tenant's security deposit in full within 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If the fail to do so, in accordance with section 38(6)(b) of the *Act*, the landlord must pay an amount equivalent to double the value of the security and pet damage deposit.

Residential Tenancy Policy Guideline 17 provides further guidance and sets out:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- 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*

Therefore, I find the tenant is entitled to a monetary award in the amount of \$1,300.00, double the value of the security 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.

The landlords claim for the cost of repairs and cleaning of the rental unit. In the absence of a proper condition inspection report prepared by the parties at the start of the tenancy in accordance with the regulations, I find there is insufficient evidence in support of the landlord's claim. I find the photographs and invoices submitted to be insufficient to establish that the damages the landlords now claim are attributable to the tenancy. I find the testimony of the landlords that the rental unit was brand new at the start of the tenancy to have little documentary evidence in support and is disputed by the tenant. I find the landlords have failed to meet their onus of proof on a balance of probabilities and accordingly dismiss their application.

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Conclusion

The landlords' application is dismissed in its entirety without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$1,300.00. The landlords must be served with this Order as soon as possible. Should the landlords 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: February 1, 2022

Residential Tenancy Branch