



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

LL: **MNDL-S, FFL**

TT: **MNSDB-DR, FFT**

Introduction

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

The tenant applied for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlords applied for

- a monetary award for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain the deposit for this tenancy 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 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.

The landlord confirmed receipt of the tenant's materials. Based on the testimonies I find the landlord duly served with the tenant's materials in accordance with sections 88 and 89 of the *Act*.

The landlord gave evidence that they served the tenant with their application and materials by registered mail sent on November 7, 2021. The landlord provided a valid Canada Post tracking receipt as evidence of service. The tenant testified that they did not pick up the landlord's application and materials from the postal service. Based on the testimonies I find the tenant deemed served with the landlord's materials on November 12, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*. Pursuant to Residential Tenancy Policy Guideline 12 the willful failure of a party to accept or pick up materials sent by registered mail does not override the deeming provisions of the *Act*.

Issue(s) to be Decided

Is either party entitled to a monetary award as claimed?

Is either party entitled to recover the filing fee for their application 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/or arguments are reproduced here. The principal aspects of the parties' claims and my findings around each are set out below.

The parties agree on the following facts. This tenancy began on April 3, 2020 and ended on September 30, 2021. The monthly rent during the tenancy was \$3,500.00 payable on the first of each month. A security deposit of \$1,750.00 and pet damage deposit of \$1,750.00 were collected at the start of the tenancy and are still held by the landlords.

The parties participated in a move-in and move-out inspection and prepared a condition inspection report in accordance with the regulations. The parties disagreed on the assessment of the condition of the rental unit at the end of the tenancy and the tenant did not authorize any deductions from the deposits.

The landlord filed their application for dispute resolution on November 2, 2021. The tenant submits that they first formally provided a forwarding address in writing to the

landlord by a letter dated January 3, 2022, served on the landlords by registered mail on that date.

The parties submitted a copy of the condition inspection reports for this tenancy. The move-in inspection report indicates the condition of the rental unit as Good. The landlords submit that at the end of the tenancy the rental unit had considerable damage including holes in the drywall, broken bathroom countertops, broken electrical sockets, broken window blinds, appliances damaged, broken or unusable and the liner to their pool needing replacement due to damage. The issues are recorded in the inspection report and repeated in the correspondence between the parties.

The landlords submitted photographs of the rental suite in support of their position. The landlord also submitted some invoices and receipts for the cost of repairs and work performed. The landlords seek a monetary award of \$10,718.43 for the cost of restoring the rental unit to its pre-tenancy condition.

The tenant disputes the landlord's claim and submits that there are no deficiencies attributable to the tenancy. The tenant submits some receipts into evidence to demonstrate that they incurred some costs for cleaning and care of the rental property.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

In the case at hand, the undisputed evidence before me is that the landlord filed their application for dispute on November 2, 2021 after the tenant had provided a forwarding address by email and the tenant first provided their forwarding address in writing in a manner required under the *Act* on January 3, 2022. I therefore find the landlord was within the timelines provided under the *Act* to file their application for dispute resolution.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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 claimant also has a duty to take reasonable steps to mitigate their loss.

Residential Tenancy Regulation 12 provides that a condition inspection report prepared in accordance with the legislation is evidence of the state of repair of the rental unit unless there is a preponderance of evidence to the contrary.

In the present case I am satisfied with the evidence of the landlords that the rental unit required work, repairs and replacement of appliances, items and fixtures due to the tenancy. I find the inspection report details the issues identified and the landlord's photographs and other documentary materials consistently support the claim. I find the evidence of the landlord to be clear and reasonable in showing the state of the rental property in a state of disarray requiring considerable restoration work.

I find the few invoices submitted by the tenant are insufficient to rebut the evidence of the inspection report, photographs and invoices submitted by the landlords.

I find the nature and scope of work detailed in the invoices and receipts submitted by the landlord to be reasonable and commensurate with the restoration of the rental unit to its pre-tenancy condition. I find that the amounts claimed are reasonable for the damage noted and the work is limited to restoration rather than improvement or renovation.

Accordingly, I find that the landlords are entitled to a monetary award in the amount of \$10,718.00 as claimed.

As the landlords are successful, they are also entitled to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security and pet damage deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

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

I issue a monetary order in the landlords' favour in the amount of \$7,318.00, allowing for the damages and loss, recovery of filing fees and withholding the deposits for this tenancy. The tenant must be served with this Order as soon as possible. Should the tenant 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: March 25, 2022

Residential Tenancy Branch