



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 landlords and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The landlords applied for:

- a monetary order for damages and loss pursuant to section 67;
- authorization to retain the tenants’ deposits pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenant applied for:

- a return of the deposits pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord 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 landlord BAKM primarily spoke on behalf of both landlords (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 and the deposits for this tenancy as claimed? 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.

Both parties confirmed that this matter falls within the jurisdiction of the *Act* and the Branch. The landlords made some initial submissions that there is no tenancy agreement between the parties only a lease agreement which allows the tenant exclusive use of the rental property for a fixed-term during which the tenant is obligated to make monthly rent payments.

The parties agree on the following facts. This fixed-term tenancy began on April 1, 2021 and ended on July 31, 2021. The monthly rent was \$1,400.00 payable on the first of each month. A security deposit of \$700.00 and pet damage deposit of \$700.00 were paid at the start of the tenancy. No condition inspection report was prepared at any time for this tenancy. The tenant provided a forwarding address to the landlords, initially by text message and subsequently by Notice of Forwarding Address sent on September 27, 2021. The landlord returned the amount of \$650.11 on August 14, 2021 and retains the balance of \$749.89.

Both parties confirmed that this matter falls within the jurisdiction of the *Act* and the Branch. While the landlords made some initial submissions that there is no tenancy agreement between the parties only a lease.

The landlords submit that the tenant failed to clean the rental unit adequately and they incurred costs for cleaning and work to restore the suite to its pre-tenancy condition. The landlord says that while no inspection report was ever prepared for this tenancy, the parties performed a walk-through to inspect the state of the rental unit and submitted some photographs of the suite.

The tenant submits that they have not given written agreement to the landlords to any deduction from the deposits for this tenancy and seek their return.

Analysis

I find this matter falls within the jurisdiction of the *Act* and Branch and the description and form of the agreement between the parties meets the definition of a tenancy agreement as set out in Section 1 of the *Act*. I further find that the rental property was occupied by the tenant as a residence.

Section 38 of the *Act* requires the landlord to either return the tenant's security and pet damage deposit in full or file for dispute resolution for authorization to retain the deposits 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security and pet damage deposit.

Section 24 of the *Act* provides that the right of a landlord to claim against a security and pet damage deposit is extinguished if they do not comply with the requirements of section 23 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

I accept the undisputed evidence of the parties that no condition inspection report was prepared at any time for this tenancy. I find the landlords' submission that the parties performed a walkthrough inspection and some photographs taken to not be a substitute for the requirements of the *Act* and regulations that a report be prepared in writing. Consequently, I find that the landlords have extinguished their right to make a claim against the deposits for this tenancy.

Based on the undisputed evidence before me, I find that the landlords have extinguished their right to claim against the security and pet damage deposit by failing to complete a condition inspection report in accordance with the *Act* and has failed to return the deposits in full within 15 days of receipt of the tenant's forwarding address. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a \$2,149.89 Monetary Order,

double the value of the security and pet damage deposit paid for this tenancy less the amount of \$650.11 previously returned. No interest is payable over this period.

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.

I find that the landlord has provided insufficient evidence in support of their monetary claim. While the landlord submitted evidence about the condition of the suite, I find there is insufficient evidence that there is anything more than the wear and tear that one would expect from a tenancy. In order to make a claim for a monetary award for loss or damages the applicant must show on a balance of probabilities that there are losses greater than that which would be expected in the ordinary course of occupying a rental suite. I find that the evidence presented does not meet that evidentiary burden.

I find the undated photographs of the landlords to be of little assistance in determining the state of the rental unit and, in the absence of a proper condition inspection report prepared and signed by the parties at the start of the tenancy, there is insufficient evidence that any damage found within the rental unit is attributable to the tenancy. I find the fragment of an online conversation between the parties to be insufficient to demonstrate that the costs incurred by the landlords arise from the tenancy.

Taken in its entirety, I find the landlords have failed to establish, on a balance of probabilities, any portion of their monetary claim. Consequently, I dismiss the landlords' application in its entirety without leave to reapply.

As the tenant was successful in their application, I allow the tenant to recover their filing fee from the landlords.

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 \$2,249.89, representing a return of double the security and pet damage deposit withheld by the landlords and recovery of their filing fee. 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: May 5, 2022

Residential Tenancy Branch