



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

The Landlords seek the following relief under the *Residential Tenancy Act* (the “Act”):

- A monetary order under s. 67 to compensate for repair or damages caused by the Tenant during the tenancy by claiming against the security deposit; and
- Return of their filing fee pursuant to s. 72.

P.B. and C.A. appeared as the Landlords. K.D. appeared as the Tenant.

The parties 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 parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Both parties advise having served their application materials on the other. The Landlords and Tenant both acknowledged receipt of the others application materials and neither raised objection with respect to service. I find that pursuant to s. 71(2) of the *Act* the parties were sufficiently served with the others application materials as acknowledged by them at the hearing.

Issues to be Decided

- 1) Are the Landlords entitled to compensation for damages caused by the Tenant during the tenancy and retain the security deposit?
- 2) Are the Landlords entitled to the return of their 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 issues in dispute will be referenced in this decision.

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

- The Tenant took occupancy of the rental unit on August 15, 2021.
- The tenancy was for a fixed term ending on October 31, 2021.
- The Tenant vacated the rental unit by surrendering the keys on September 25, 2021.
- Rent of \$1,800.00 was payable on the first day of each month.
- The Tenant paid a security deposit of \$900.00 to the Landlords.

A copy of the tenancy agreement was put into evidence confirming these details. The Tenant advised that rent was paid for October 2021 despite moving out of the rental unit before the end of the fixed term. The Landlords did not dispute this.

The Landlords claim \$461.65 against the security deposit due to mould that is said to have built up on the gasket for the washing machine. According to the Landlords, the Tenant left the washing machine door closed prior to her departing the rental unit on September 25, 2021. The Landlords indicate that they were out of country until the end of October 2021 such that the washer door remain closed for a period of five-weeks thus causing the mould to develop. Photographs of the mould and the repair invoice for the washing machine were put into evidence by the Landlords.

The Landlords further emphasized that they have acted with restraint and say that there were other damages to the rental unit, including an issue with lint build-up in the dryer and water overflowing from the bath. Again, the only amount claimed is the repair to the washing machine gasket.

The Tenant does not dispute the mould build-up but argues that the issue is one of maintenance. She read an email she received from the Landlords explaining the issue, which is said to have stated that the problem was due to water pooling in the gasket. The Tenant argued that this is evidence that the mould was due maintenance rather than her neglect. The Landlords deny this and emphasized that the repair person evaluated the washing machine and only repaired the mouldy gasket as no other issues were present.

The parties confirm that no written move-in or move-out inspection was conducted. The Landlords advise that an informal walkthrough was conducted on August 15, 2021 and that no mould was present in the washing machine prior to the tenancy.

The Tenant confirmed that she received \$438.35 (\$900.00 - \$461.65) from the Landlords on November 15, 2022. The Tenant says she did not consent to the Landlords withholding this amount and only received notice that there was an issue with the washing machine when the security deposit was partially returned.

The Landlords say the Tenant provided them with her forwarding address on November 29 or 30, 2021. This is confirmed in the Tenant's evidence, which includes a notice of forwarding address signed on November 30, 2021.

Analysis

The Landlords claim against the security deposit for damages to the rental unit.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38 nor may they claim against the security deposit for damages to the rental unit if their right to do so is extinguished under either ss. 24 or 36 of the *Act*.

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.

In this instance, the Landlords admit that no written move-in inspection was ever conducted. I find that the Landlords breached their obligation to complete a move-in inspection as required by them under s. 23(4) of the *Act*. As no move-in inspection was completed by the Landlords, s. 24(2) extinguishes their right to claim against the security deposit for damage to the rental unit.

Accordingly, I find that the Landlords cannot claim against the security deposit for damages to the rental unit as their right to do so under the *Act* has been extinguished.

Policy Guideline #17 provides the following guidance with respect to the retention or return of the security deposit:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on:
 - a landlord's application to retain all or part of the security deposit; or
 - a tenant's application for the return of the deposit.unless the tenant's right to the return of the deposit has been extinguished under the *Act*. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.
...
9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:
 - to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
 - to file a claim against the deposit for any monies owing for other than damage to the rental unit;
 - to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and
 - to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Landlords made their application on November 15, 2021. The 15-day claim or return window under s. 38(1) of the *Act* was not triggered until November 30, 2021, which is the date the Tenant provided her forwarding address. I find that the application was made in compliance with s. 38(1) such that the doubling provision of s. 38(6) does not apply.

Looking at the substantive issue, being the mouldy gasket, without a move-in condition inspection report, I am unable to make a finding that the problem was not also present at the beginning of the tenancy. This was a short tenancy in which the Tenant only lived within the rental unit for a little over one month. The extent of the mould in the gasket

may lead to the conclusion that the issue was present, at least to a certain degree, at the beginning of the tenancy.

Further, s. 37 of the *Act* only requires a tenant to return the rental unit in a reasonably clean and undamaged state except for reasonable wear and tear. The complaint here is that the Tenant left the washing machine door closed, which I would hardly characterize as unusual. Indeed, closing the washing machine door would be the standard course of action. If mould were to develop so easily, it is a by-product of a defect in the machine's design and not the Tenant's actions or neglect. I would find that the mould, if it did develop through the course of the tenancy, is the result of reasonable wear and tear of the washing machine.

Presently, it is undisputed that the Landlords retained \$461.65 from the security deposit and returned the balance to the Tenant. The Tenant testified and I accept that this was done on November 15, 2021. The Tenant says that she did not consent to the withholding of the partial withholding of the security deposit, which was not disputed by the Landlords at the hearing. I would note that any consent would be invalid upon application of s. 38(5) of the *Act* due to the extinguishment of the Landlords' right to retain all or part of the security deposit.

As the Landlords failed to return the security deposit, could not claim against it, and that they have failed to establish a monetary claim in any event, I order that the Landlords return the balance of the security deposit, being \$461.65, to the Tenant.

Conclusion

The Landlord's right to retain any portion of the security deposit for damages to the rental unit was extinguished under s. 24 of the *Act*. I cannot make a finding that the Tenant is responsible for the mouldy washing machine gasket due to there not being a move-in inspection report. Further, the claimed issue would constitute reasonable wear and tear of the washing machine. Their claim for compensation against the security deposit is dismissed without leave to reapply.

Accordingly, I order that the Landlords return the remaining balance of the security deposit to the Tenant, being the amount of \$461.65.

As the Landlords were unsuccessful in their application, I find that they are not entitled to the return of their filing fee. Their claim under s. 72 of the *Act* is dismissed without leave to reapply.

It is the Tenant's obligation to serve the monetary on the Landlords. If the Landlords do not comply with the monetary order, it may be filed by the Tenant with 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: July 19, 2022

Residential Tenancy Branch