



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The owner of the landlord company (the "owner") and the building manager (the "manager") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the owner, manager and I were the only ones who had called into this teleconference.

The owner and the manager were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The owner and the manager testified that they were not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The owner confirmed the landlord's email addresses for service of this decision and order.

Preliminary Issue- Service

The owner testified that the tenant was served with a copy of the landlord's application for dispute resolution and evidence via registered mail on February 10, 2022. A Canada Post registered mail receipt was entered into evidence. I find that the tenant was deemed served with the landlord's application for dispute resolution and first evidence package on February 15, 2022, five days after their mailing, in accordance with sections 88, 89 and 90 of the *Act*.

The owner testified that the tenant was served with the landlord's second evidence package via registered mail on February 22, 2022. The landlord testified that he did not enter the receipt into evidence. I accept the owner's undisputed testimony that he served the tenant additional evidence via registered mail on February 22, 2022. I find that the tenant was deemed served with the landlord's second evidence package on February 27, 2022, five days after its mailing, in accordance with sections 88 and 90 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both the owner and the manager, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the owner and the manager's claims and my findings are set out below.

The owner provided the following undisputed testimony. This tenancy began on February 1, 2021 and ended on January 31, 2022. Monthly rent in the amount of \$1,710 was payable on the first day of each month. A security deposit of \$855.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The owner testified that an agent for the landlord and the tenant completed a joint move in condition inspection and inspection report on January 8, 2021. The move in condition inspection report was entered into evidence and is signed by the tenant and an agent of the landlord.

The manager testified that she completed the move out condition inspection and inspection report with the tenant's agent/mother on January 31, 2022. The move out condition inspection report was entered into evidence and is signed by the manager and the tenant's agent/mother. The move out condition inspection report also has the tenant's forwarding address.

The owner testified that at the start of the tenancy the stovetop was one year old and was in satisfactory condition. The owner testified that at the end of the tenancy the stovetop was severely scratched and required replacement. The move in and out condition inspection reports state same. The owner entered into evidence photographs of a severely scratched stove top that were taken at the end of the tenancy.

The move in condition inspection report states that the tenant agrees that the move in condition inspection report fairly represents the condition of the rental unit. The move out condition inspection report states that the tenant's agent/mother agrees that this report fairly represents the condition of the rental unit.

The move out condition inspection report states that the tenant's agent/mother agrees to allow the landlord to retain \$596.84 from the tenant's security deposit "under the condition that the tenant sees the replaced stove top".

The owner testified that \$258.16 from the tenant's security deposit (the difference between the security deposit of \$855.00 and the \$596.84 for the stove top) was returned to the tenant via interac e transfer on February 3, 2022. The landlord entered into evidence an interac transaction record stating same.

The owner testified that after the tenant's agent/mother signed the move out condition inspection report she verbally rescinded her written authorization to retain \$596.84 from the tenant's security deposit. The owner testified that it was at this point that the landlord decided to pursue this application even though the landlord had the tenant's agent/mother's written authorization to retain \$596.84 on condition that the tenant could see the new stove top and receipt. The landlord filed this application for dispute resolution on February 10, 2022.

The owner testified that on February 23, 2022 the landlord emailed the tenant photographs of the newly installed stove top and a receipt for said stove top in the amount of \$546.84. The letter sent to the tenant via email on February 23, 2022 was entered into evidence. The February 23, 2022 email was also entered into evidence.

The owner testified that the landlord's maintenance person installed the stovetop and that they pay him \$34.50 per hour plus 4% vacation pay and payroll taxes of 6-7% and that this ends up costing the landlord approximately \$40.00 per hour. The owner testified that at the time of the move out inspection the maintenance man estimated it would only cost \$50.00 in labour to complete the repairs, and so the quote provided to the tenant's agent/mother at the move out condition inspection report was \$546.84 plus \$50.00 labour which equals the total claim for the stove top of \$596.84. The owner testified that during the move out inspection the manager looked up the cost of replacing the stove top from the landlord's online supplier and consulted with the maintenance person regarding the amount of labour required.

The owner testified that it actually took the maintenance man 3 hours to complete the installation, but the landlord is only seeking \$50.00 as that is what was quoted during the move out condition inspection.

Analysis

Section 38(1) of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the move out condition inspection report I find that the landlord received the tenant's forwarding address on the move out condition inspection report on January 31, 2022. The landlord filed for authorization to retain a portion of the tenant's security deposit on February 10, 2022. I find that the landlord made an application for dispute resolution claiming against the security deposit within 15 days of receipt of the tenant's forwarding address in writing and within 15 days of the end of the tenancy in accordance with section 38(1)(a) and 38(1)(b) of the *Act*.

Section 38(4) of the *Act* states:

(4)A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a)at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b)after the end of the tenancy, the director orders that the landlord may retain the amount.

Based on the move out condition inspection report which was signed by the manager and the tenant's agent/mother, I find that the tenant's agent/mother authorized the landlord to deduct \$596.84 from the tenant's security deposit on condition that the tenant saw the replaced stove top.

Based on the undisputed testimony of the owner, and the February 23, 2022 email entered into evidence, I find that the landlord showed the tenant photographs of the stovetop replacement and provided the tenant with a copy of the stovetop invoice. I find that the landlord completed the condition set by the tenant's agent/mother for the landlord's retention of \$596.84 from the tenant's security deposit. Pursuant to section 38(4)(a) of the *Act*, I find that the landlord is entitled to retain \$596.84 from the tenant's security deposit because the tenant's agent agreed in writing to that retention.

I find that the tenant's agent's verbal withdrawal of authorization for the landlord to retain \$596.84 from the security deposit does not revoke the written agreement on the move out condition inspection report.

Based on the owner's undisputed testimony and the interac transfer entered into evidence, I find that the landlord returned \$258.16 of the tenant's deposit to the tenant on February 3, 2022.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

The landlord is entitled to keep the \$596.84 of the tenant's security deposit that was retained by the landlord, pursuant to section 38(4) of the *Act*.

The landlord is entitled to a Monetary Order for the \$100.00 filing fee. I issue the landlord a Monetary Order in the amount of \$100.00.

The landlord is provided with this Order in the above terms and 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: September 13, 2022

Residential Tenancy Branch