



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Duttons & Co. Real Estate Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCT, MNSD, FFT**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“the Act”) for orders as follows:

- For a monetary order for damage or compensation pursuant to section 67 of the Act
- For an order returning the security deposit pursuant to section 38 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

The landlord appeared by agents SB, ZS, and AS. The tenant JS appeared for himself. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to RTB Rules of Procedure 6.11. The parties were affirmed.

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

1. Is the tenant entitled to a monetary order for compensation?
2. Is the tenant entitled to an order for return of the security deposit?
3. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced May 1, 2016. Rent was \$1,164.00 per month paid on the first of the month. The landlord still holds a security deposit in trust for the tenant. The tenant vacated the rental unit August 31, 2022.

Tenant's Evidence

The tenant testified that at the time the tenancy ended he was living overseas. Two friends were occupying the apartment in his absence on a temporary basis. The tenant was paying the rent. The apartment was fully furnished with the tenant's furniture and his personal belongings remained in the residence.

The tenant gave the landlord notice to end the tenancy on July 31, 2022. He stated that he was in regular contact with the landlord. The occupants of the rental unit made the arrangements for the move out inspection. A move out condition inspection report (CIR) was completed with the landlord and the occupants on August 29, 2022 and signed by the one of the occupants. The tenant provided a copy of the move out CIR in evidence that he stated was provided to him by the landlord. He also provided the document he signed providing the landlord with his forwarding address. The forwarding address document was not dated.

The tenant was not aware that the move out inspection took place on August 29, 2022 as the occupants did not communicate that information to him. The tenant had wished to be involved in the move out inspection but acknowledged that the occupants didn't make these arrangements with him. He believed that he had possession of the rental unit until August 31, 2022.

The tenant believed that upon vacating the rental unit, the landlord would pack up and store his personal belongings. However, he then discovered that his belongings were all missing including furniture as well as personal belongings. He stated that almost everything he owned was gone. He believes the landlord threw out everything without his permission and as a result he is seeking compensation. He believes the landlord removed the belongings prior to August 31, 2022 and as he had possession of the property until that date, he could have made arrangements for moving and storage up until that time. He pointed to the signature of the occupant on the move out CIR agreeing to the cleaning and hauling on August 29, 2022 and argues that the items must have been removed that same day.

Landlord's Evidence

The landlord stated that on August 1, 2022 by email the tenant gave his notice to end the tenancy on August 31, 2022. The notice was defective, but the landlord accepted the notice. The landlord emailed the tenant to schedule a move out inspection, but he never replied. The landlord provided the email sent to the tenant August 25, 2022 requesting he attend the inspection. The landlord stated that the occupants contacted them regarding the move out inspection so the landlord booked the move out inspection with them.

The move out inspection took place on August 29, 2022 with the occupants present. At the inspection the landlord took photos of the rental unit which were produced in evidence. The landlord stated that the photos depicted the condition of the rental unit on the date it was vacated. All that remained in the unit during the move out inspection at that time was some bags of garbage, a broken rocking chair, and a fridge full of food. The damage listed on the move out CIR is \$275.00 for carpet cleaning, \$350.00 for cleaning and \$220.00 for hauling for a total of \$845.00.

On the move out CIR there is a signature of one of the occupants agreeing that the landlord retain \$795.00 as a result of the necessary cleaning of the rental unit. The landlord agreed that they received the tenant's forwarding address.

The landlord stated that the items that they did remove from the rental unit were removed on September 1, 2022 and they provided the invoices for those days in evidence. They specifically denied removing any furniture other than the rocking chair, and only removed garbage bags and food. They also specifically denied agreeing to storing and removing the tenant's belongings, stating that if they had made such an agreement, they would have required the tenant to pre-pay for that service and they received no payments in that regard.

Analysis

Pursuant to sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to security and pet damage deposits if they do not comply with the Act and Residential Tenancy Regulation (the "Regulations"). Further, section 38 of the Act sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Although a move in condition inspection report was not provided in evidence, neither party raised that as an issue during the hearing. Accordingly, I find that neither party extinguished their rights under section 26 of the Act.

The parties agree that a move out CIR was completed, signed, and a copy received by the tenant. I find based on the evidence of the tenant, that the occupant had been authorized by him to conduct the move out inspection with the landlord. I further find that if the tenant had wished to participate, those arrangements should have been made through the occupant. Neither party extinguished their rights under section 36 of the Act.

The occupant, who was authorized by the tenant to act on his behalf, agreed to allow the landlord to retain \$795.00, the entire security deposit, and provided his signature on the move out CIR to that effect. Therefore, I find that the landlord was entitled to retain the entire security deposit pursuant to section 38(4) of the Act.

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. As noted in Policy Guideline #16, 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. In this case, the onus is on the tenant to prove their entitlement to a claim for a monetary award.

The tenant was not present for any of the move out inspection and was not a part of any conversations with the landlord regarding the move out inspection. All of the dealings with the landlord were delegated to the occupants, who have provided no evidence in this hearing. The tenant provided no evidence that the landlord removed his belongings, other than his assertion that he assumed the landlord was taking care of storing his personal belongings.

The landlord provided evidence of the condition of the rental unit on move out, including the contents of the rental unit both in the move out CIR and by way of photographic evidence. The rental unit contained only garbage and food on August 29, 2022, the date the move out CIR was completed.

I do not find the date the occupant signed for the hauling and cleaning to be of significance. I accept the landlord's evidence that the occupant agreed to those

charges on August 29, 2022 but the hauling and cleaning actually took place on September 1, 2022. I further note that although the date on the photos in handwriting is September 1, 2022, I accept the landlord's evidence that the pictures were taken August 29, 2022, and that the date was written on them to confirm that the residence was in the same state on September 1, 2022 when the actual cleaning and hauling took place. I find that no agreement existed between the landlord and tenant whereby the landlord assumed any responsibility for the tenant's belongings or removed any of the tenant's belongings.

Therefore, I find that the tenant has not satisfied his onus to establish that the landlord caused damage that would entitle the tenant to compensation under section 67 of the Act.

I find that on August 29, 2022, the date that the move out CIR was completed, the residence contained only the items depicted in the photos provided in evidence by the landlord. I further find that there was no arrangement between the landlord and tenant for the landlord to remove and store his furniture and personal belongings.

The tenant's application is dismissed in its entirety. As the tenant was unsuccessful in his application, he is not entitled to recover his filing fee for the application.

Conclusion

The tenant's application is dismissed.

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: January 18, 2023

Residential Tenancy Branch