



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to an application by the Tenants and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenants applied on October 4, 2022 for:

1. An Order for the return of the security deposits - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on November 16, 2022 for:

1. A Monetary Order for unpaid and utilities - Section 67;
2. A Monetary Order for damage to the unit - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the return of double the security and pet deposits?

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their filing fees?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on August 1, 2018 and ended on June 29, 2022. Rent of \$1,350.00, which included \$100.00 for water, was payable on the first day of each month. At the outset of the tenancy the

Landlord collected \$675.00 as a security deposit and \$200.00 as a pet deposit. The Parties mutually conducted both a move-in and move-out condition inspection with reports for each copied to the Tenants. The Landlord has not returned the security deposit.

The Tenant states that they gave the Landlord their forwarding address in person on June 29, 2022 and on the move-out condition inspection report dated June 30, 2022. The Tenants claim the return of double the security and pet deposits. The Landlord confirms receipt of the Tenants' forwarding address and the date of the Landlord's application.

The Landlord states that the Tenants gave short notice on June 11, 2022 to end the tenancy on June 20, 2022. The Landlord states that the unit was advertised online for a monthly rental amount of \$1,600.00. The Landlord states that the unit was then listed for sale in July 2022 and sold September 21, 2022. The Landlord claims rent for July 2022 of \$1,250.00 plus \$47.57 for the water. The Landlord provides a receipt for the water fill for the period May to July 2022.

The Tenant states that the Landlord advertised the unit for \$1,600.00 and argue that this is in excess of the value of the rental, and more than the Tenants were paying. The Tenant does not dispute the water cost of **\$47.57**.

The Landlord states that the Tenants left the unit damaged and claims \$178.88 for missing doorknob, missing sink stopper, stained exterior door screen, damaged closet bifold door, chip on stove top, damaged bathroom closet hardware, and labour to repair the doors. The Landlord confirms that the only damage noted on the move-out is to two stove burners and a missing garbage can. The Landlord made no claim for the missing garbage can. The Landlord did not provide a receipt for the cost to replace the stove burners. The Tenant denies leaving anything damaged in the unit other than the stove

burners. The Tenant states that after washing the burners there was rust and argues that this damage is wear and tear only.

The Landlord states that they provided photos of the damages being claimed. It was noted that no photos could be found in the Landlord's evidence given to the RTB. The Tenant confirms that the Landlord's evidence package contains some photos.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

As none of the items claimed as damaged by the Landlord, other than the stove burners, were noted on the move-out report as damaged and given the Tenant's testimony that no damages were left other than the stove burners, I find that the Landlord has not substantiated the damages claimed other than the stove burners. I consider that any photos that the Landlord may have provided could not have provided evidence of when the items were damaged and given the move-out report I consider that the photos would not have made any difference to the outcome. I therefore dismiss these claims. Although the Landlord has not provided any receipt for costs to replace the burners, I find that the Landlord has not substantiated that the costs claimed were incurred. I dismiss this claim.

As the Landlord advertised the unit for an amount that exceeded the rent paid by the Tenants and as the Landlord listed the unit for sale in July 2022, I find that the Landlord failed to take reasonable steps to mitigate any losses that may have been caused by the Tenants' short notice. I dismiss the claim for July 2022 rent or lost rental income. Given that the Tenants do not dispute the water costs of **\$47.57** I find that the Landlord has substantiated this claim. As the Landlord's claims have met with minimal success, I find that the Landlord is only entitled to half the filing fee in the amount of \$50.00 for a total entitlement of **\$97.57**.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the undisputed evidence that the Landlord received the Tenants' forwarding address at the end of June 2022 and as the Landlord did not make their application within 15 days of this date, I find that the Landlord must now pay the Tenants double the combined security and pet deposits in the amount of **\$1,750.00** (\$875.00 x 2). As the Tenants have been successful with their claim for the return of the deposits, I find that the Tenants are entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,850.00**. Deducting the Landlord's entitlement of **\$97.57** from the Tenants' entitlement leaves **\$1,752.43** owed to the Tenants.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$1,752.43**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: January 10, 2023

Residential Tenancy Branch