



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was reconvened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent and utilities- Section 67;
2. A Monetary Order for damages to the unit - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. 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. The Landlord confirms that some evidence such as documents labelled “witness evidence” was not provided to the Tenant as the Landlord was informed by her legal counsel that it was not relevant to the dispute. This evidence however was provided to the Residential Tenancy Branch (the “RTB”). The Tenant confirms that it appears the remaining evidence provided to the RTB from the Landlord has been received by the Tenant. The Tenant was given opportunity to raise evidence issues during the hearing as they arose from the Landlord’s submissions of supporting evidence. No further issues were raised by the Tenant.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy started on June 1, 2019. On April 28, 2019 the Landlord collected \$575.00 as a security deposit and \$575.00 as a pet deposit. The tenancy agreement provides that the Tenant is responsible for 1/3 of the hydro costs and 1/3 of the oil costs. As of January 1, 2022 rent of \$1,167.25 was payable on the first day of each month. The rent was increased to \$1,190.60 as of January 1, 2023. The Parties mutually conducted a move-in and move-out inspection with completed reports copied to the Tenant. The Tenant's forwarding address was provided on the move-out report.

The Landlord states that the Tenant moved out of the unit on November 18, 2022 as that is when the Landlord saw a moving truck at the unit. The Landlord confirms that the Tenant paid rent for December 2022. The Landlord also states that they do not know when the Tenant moved out of the unit and that the keys were returned on January 1, 2023 the same date as the move-out inspection that was conducted with the Tenant's agent. The Tenant states that they moved out of the unit on December 26, 2022 and that the keys were returned on the day of the move-out inspection that took place on December 29, 2022. It is noted that the date of the move-out inspection is not included in the move-out report.

The Landlord states that the Tenant gave notice to end the tenancy by email dated December 1, 2022 for a move-out date of December 31, 2022. The Landlord states that they did not read this email until December 4, 2022. The Landlord states that the unit was advertised on December 5, 2022 for rent of \$1,700.00. The Landlord also states that the unit was initially advertised for a different rental amount. On pointing out the inconsistent evidence of rental rate the Landlord states "okay" and confirms the unit was advertised on December 5, 2022 for \$1,700.00. The Landlord states that given the state of the unit it was not rented for January 2023 and was filled with new tenants for February 1, 2023. The Landlord claims rent of \$1,190.60 for January 2023 due to the

Tenant's late notice. The Landlord also claims hydro and oil costs for January 2023. The Landlord did not provide utility bills as evidence for these proceedings.

The Landlord claims the costs of unpaid oil for December 2022 in the amount of **\$300.67**. The Tenant does not dispute this claim.

The Landlord states that the Tenant left the carpet stained. The Landlord claims \$7,951.21 as the estimated costs to replace the carpet. The Landlord has not replaced the carpet and states that the carpet is around 15 to 20 years old.

The Landlord states that at the outset of the tenancy the Tenant was given permission to paint the unit walls as long as the walls were returned to the original paint color at the end of the tenancy. The Landlord states that this was not done, and the Landlord claims \$5,800.00 as the estimated costs for painting the unit. The Landlord has not painted the unit.

The Landlord states that the Tenant left belongings at the unit and claims \$498.75 as the estimated removal costs. The Landlord states that the belongings are stored and still available to the Tenant for collection. The Tenant states that they want to collect these belongings and were not able to collect them at the end of the tenancy as the Landlord had items that blocked access to the Tenant's belongings. The Tenant states that the Landlord was informed that when the Landlord removed the blocking items the Tenant would remove their belongings. The Parties were unable to come to an agreement on a date and time for the collection of the Tenant's belongings.

Analysis

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

the damage or loss claimed was caused by the actions or neglect of the responding party, 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.

Given the Landlord's inconsistent evidence in relation to the end of the tenancy and dates I prefer the Tenant's evidence and find on a balance of probabilities that the tenancy ended, and the forwarding address was provided on December 29, 2022.

Given the Landlord's evidence that the unit was shortly thereafter advertised for a much higher rent than was being paid by the Tenant I find that the Landlord failed to take any steps to mitigate the rental loss claimed and I therefore dismiss the claim for January 2023 rent. As the tenancy ended on December 29, 2022, as there is no evidence that the Tenant consumed any utility past this date and as there is no supporting evidence of the utility bill, I find that the Landlord has not substantiated their claim to any January 2023 utilities. I dismiss this claim.

Given the age of the carpet I find that the carpet is beyond its useful life or value and that any costs to replace the carpet lies with the Landlord. As there is no evidence of any costs incurred or any rental losses suffered in relation to the paint, I dismiss the claim for costs to paint the unit.

Based on the undisputed evidence that Landlord was informed of the Tenant's inability to remove their belongings at the end of the tenancy, that the Landlord was informed that the Tenant would collect their belongings when the Landlord provides access, that the Landlord has not provided such access to date and that the Landlord has not disposed of any of the Tenant's belongings I dismiss the Landlord's claim for disposal costs.

As the Landlord's claims have met with limited success, I find that the Landlord is only entitled to half the filing fee of **\$50.00** for a total entitlement of **\$350.67**. Deducting this

entitlement from the combined security and pet deposit plus interest of **\$1,158.30** (\$1,150 + \$8.30) leaves **\$807.63** to be returned to the Tenant forthwith.

Conclusion

I Order the Landlord to retain the amount of **\$350.67** from the security deposit plus interest of \$1,158.30 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$807.63**. 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: May 15, 2023

Residential Tenancy Branch