



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 cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38, including double the amount;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be provide affirmed testimony, to present evidence and to make submissions.

The landlord acknowledged she did not do a walk-through move-in inspection with the tenants and therefore withdrew her application pertaining to cleaning fees.

Issues

Is the landlord entitled to a monetary award for unpaid rent and late fees?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Are the tenants entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement?

Are the tenants entitled to return of all or a portion of the security deposit pursuant to section 38, including double the amount?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Evidence & Analysis

This tenancy began May 1, 2022 and ended on October 17, 2022. The monthly rent was \$2650.00 payable on the 1st day of each month. A security deposit of \$1325.00 was paid at the start of the tenancy which the landlord continues to retain.

The landlord is also claiming unpaid rent for the month of October 2022 plus \$25.00 late fees for September and October 2022. The landlord submitted a tenant ledger in support of the above including evidence of a late payment in September 2022. The landlord testified the tenants did not pay October 2022 rent and moved out on October 17, 2022 therefore the landlord was not able to re-rent the unit for this month.

The tenants did not deny the unpaid rent for October 2022 but rather argued the rent was withheld as the landlord failed to maintain appliances in working order. The tenants submit they were just frustrated with the lack of action from the landlord so they withheld rent and vacated only five months into the tenancy.

Section 26(1) of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find the tenants did not have a right under the Act to withhold rent. The landlord is awarded \$2650.00 for October 2022 rent plus \$50.00 for late fees for September and October 2022 for a total of \$2700.00.

The landlord is entitled to retain the \$1325.00 security deposit in partial satisfaction of this claim. The landlord is therefore entitled to a monetary award of \$1375.00.

The tenants' are claiming reimbursement of May 2022 rent, a rent reduction of \$200.00 per month for the appliances not working for 5 months, and double the security deposit.

The tenants claim they were not able to move-in until May 15, 2022 due to the rental unit not being in move-in ready condition. The tenants submit they reported the issues with the condition of the unit to the landlord, but nothing was done and they had to clean the unit themselves. The tenants submit they rented a furnished unit but a lot of the furniture was damaged. The tenants submitted pictures of the unit at the start of the tenancy. The tenants submit the landlord's own move-in inspection which was conducted without them depicts a unit in a dirty and damaged condition. The tenants submit that throughout the 5-month tenancy they experienced issues with the stove, dishwasher and ai conditioner. Each issue was reported to the landlord as evidenced by the landlord's own maintenance log. The tenants submit the landlord would open a task but then close it without fully correcting the issues. The tenants submit they reported the heat pump was dripping water on May 27, 2022 but this was not resolved until June 10, 2022. The tenants submit they reported the dishwasher not working to the landlord on May 24, 2022. It was fixed on June 29, 2022 but was still leaking. He put in another service request but nothing was done.

In response to the tenants' application, the landlord testified that they always responded to tenants maintenance requests as evidenced by the maintenance log; however, the contractors were often not able to contact the tenant so repair work was delayed. The landlord submits the unit was not in an unsanitary condition on move-in as claimed by the tenants. The landlord submitted pictures of the unit on move-in. The landlord testified the dirty condition of the unit mostly only refers to the walls.

Section 38(1) of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. As per section 38(6), a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

The landlord filed its application within 15 days the tenancy ending as required; therefore, the doubling provisions of the Act do not apply. Although the landlord's right to claim against the deposit for damages was extinguished as the landlord failed to complete a move-in inspection report, the landlord still retained the right to claim against the deposit for unpaid rent. The tenants claim for return of the security deposit including double the amount is dismissed without leave to reapply.

Subsection 32(1) of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

I find the landlord did not meet its obligation to do repairs within reasonable timelines after being notified of the issues by the tenant. The onus is on the landlord to do repairs. The tenants' obligation is to report the repair issues in a timely manner. I find the maintenance logs support that the tenant reported issues to the landlord in a timely manner and the landlord did not do their part in resolving the issues in a timely manner. The landlord cannot put the onus on the tenant to arrange work orders or appointments with the contractors. That is the landlord's responsibility. I find the tenant's testimony and maintenance logs support a finding that repair tasks were often closed without any action being taken by the landlord, aside from attempting to contact the tenant. While it may be more convenient to set up appointments in conjunction with the tenants' availability, ultimately the responsibility falls on the landlord. The landlord could have just provided sufficient notice of entry as per the Act and had the repair work completed in a timely manner. I also find the unit was not in move-in ready condition at the start of the tenancy as evidenced by the landlord's own inspection report as well as the tenants maintenance requests right at the outset of the tenancy.

I find an award of \$1375.00 to the tenants is reasonable for the losses suffered by the tenants for the unit and furnishings not being in move-in condition at the start of tenancy plus all the issues they encountered with the appliances and lengthy delays for repair work.

The two claims offset each other so neither party is issued a monetary award. As both parties were somewhat successful in their respective applications, I make no awards for the filing fees.

Conclusion

The landlord may retain the tenants security deposit in full.

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: August 01, 2023

Residential Tenancy Branch