



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was scheduled to convene at 1:30 p.m. on December 22, 2023 concerning an application made by the landlord seeking a monetary order for damage to the rental unit or property, an order permitting the landlord to keep all or part of the security deposit or pet damage deposit, and to recover the filing fee from the tenants for the cost of the application.

An agent for the landlord attended the hearing, gave affirmed testimony, and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenants joined the call.

The landlord's agent testified that each of the tenants were served with the Notice of Dispute Resolution Proceeding and all other required documents by registered mail on June 17, 2023 and has provided a Canada Post cash register receipt containing that date and 2 tracking numbers. I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

The landlord's agent also testified that the tenants were served with the landlord's evidence by registered mail on November 14, 2023 and has provided a Canada Post cash register receipt containing that date and 2 tracking numbers. I am satisfied that the tenants have received the landlord's evidence in accordance with the law. All evidence of the landlord has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the rental unit or property?

- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on March 15, 2021. The tenants gave notice to end the tenancy effective May 31, 2023 but remained in the rental unit until June 2, 2023.

Rent in the amount of \$2,000.00 was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,000.00, which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that no move-in or move-out condition inspection reports were completed, but the parties walked through the rental unit at move-out and went over the damages. The landlord's agent was present.

The landlord has provided an invoice for cleaning totaling \$315.00, as well as an invoice for \$432.60 for repair to a garage door, and \$168.00 for replacement of blinds. Photographs of the damages have also been provided for this hearing. The landlord claims those amounts from the tenants in addition to the \$100.00 filing fee, but would be content with an order permitting the landlord to keep the \$1,000.00 security deposit.

The landlord received the tenants' forwarding address in writing on or about June 5, 2023.

Analysis

Firstly, the onus is on the landlord to establish that the move-in and move-out condition inspection reports are completed in accordance with the *Act* and the regulations. If a landlord fails to do so, the landlord's right to claim against the security deposit for damages is extinguished, and I so find.

The landlord received the tenants' forwarding address in writing on June 5, 2023 and made the application on June 14, 2023, which is within the 15 days as required by the law. However, having found that the landlord's right to claim against the security deposit for damages is extinguished, the landlord ought to have returned the security

deposit to the tenants. Since the landlord has not done so, the landlord must be ordered to repay double the amount to the tenants, or \$2,000.00.

The landlord's right to make a claim for damages is not extinguished. I have reviewed the photographs, and I accept the undisputed testimony of the landlord's agent that the damages did not exist at the beginning of the tenancy, and I find that the landlord has established the claim for damages totaling \$915.60.

Since the landlord has been successful with the claim the landlord is also entitled to recover the \$100.00 filing fee from the tenants.

I refer to Residential Tenancy Policy Guideline #17 – Security Deposit and Set off, which states, in part, that the right of a landlord to obtain the tenant's consent to retain or file a claim against the security deposit for damage to the rental unit is extinguished if the landlord does not offer the tenant at least 2 opportunities for inspection as required; or having made an inspection does not complete the condition inspection report in the form required by the regulation or provide the tenant with a copy of it. It also states:

9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
- to file a claim against the deposit for any monies owing for other than damage to the rental unit;
- to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and
- to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit; or

- a tenant's application for the return of the deposit. unless the tenant's right to the return of the deposit has been extinguished under the Act.

The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
- if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;
- if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
- whether or not the landlord may have a valid monetary claim.

Therefore, I find that the landlord must repay the tenants double the amount of the security deposit (\$2,000.00), less the amount of damages (\$915.60) and the filing fee (\$100.00), and the difference of \$984.40 must be returned to the tenants.

Conclusion

For the reasons set out above, I order the landlord to keep the \$1,000.00 security deposit, and I grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$984.40.

This order is final and binding and may be enforced.

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: December 29, 2023

Residential Tenancy Branch