



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCL-S, LRSD, OLRD, FFL, MNSDB-DR, FFT

Introduction

The hearing occurred by conference call based on an Application for Dispute Resolution (Application) filed by the Landlord on August 14, 2023, and an Application filed by the Tenants on December 13, 2023.

The Landlord applied:

- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The Tenants applied:

- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

- I find that Tenant C.D. was served on August 23, 2023, in accordance with section 89(1) of the Act. A copy of the Canada Post registered mail tracking number was provided by the Landlords as evidence.

- I find that Tenant G.D. was served on August 23, 2023, in accordance with section 89(1) of the Act. A copy of the Canada Post registered mail tracking number was provided by the Landlords as evidence.
- I find that the Landlord was served on December 14, 2023, by registered mail in accordance with section 89(1) of the Act.

Service of Evidence

- Based on the submissions before me, I find that the Landlord's evidence was not served to the Landlord in accordance with section 88 of the Act.
- Based on the submissions before me, I find that the Tenants' evidence was served to the Tenant in accordance with section 88 of the Act.

Preliminary Matters – Landlord Service of Notice and Evidence

At the outset of the hearing it was determined that the Landlord served the bulk of her evidence to the Tenants via DropBox. No address for service using email or DropBox was agreed to by the parties. The Tenants stated that the registered mail package sent to them on August 23, 2023 contained the notice of hearing only.

Based on the failure of the Landlord to serve evidence in accordance with the Act, only evidence submitted by the Landlord that would have been previously shared with or otherwise known to the Tenants will be considered.

Issue(s) to be Decided

1. Is the Landlord a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?
2. Is the Landlord entitled to authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act?
3. Is the Landlord entitled to authorization to recover the filing fee for this application from the Tenant under section 72 of the Act?
4. Are the Tenants entitled to a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act?
5. Are the Tenants entitled to authorization to recover the filing fee for this application from the Landlord under section 72 of the Act?

Background and Evidence

I have reviewed all evidence, including the testimony of both parties but will refer only to what I find relevant for my decision.

Evidence and testimony provided by the parties indicates that the tenancy began on October 1, 2021, with a monthly rent of \$2,600.00 due on the first of each month. A security deposit in the amount of \$1,300.00 and a pet deposit in the amount of \$1,300.00 was paid by the Tenants. The Landlord currently holds these deposits. The Tenancy ended on July 31, 2023.

The Landlord testified that she is claiming \$297.50 for cleaning services, \$1,365.00 for deodorization services, \$367.50 for carpet cleaning services and \$60.00 for the fridge filter for a total of \$2,090.00.

According to the Landlord, no move-in inspection or move-out inspections were conducted. She testified that the Tenants were offered August 4, 2023, but the Tenants declined. She stated that this date was selected as her sister who would be conducting the move-out inspection for her was out of town at the time the Tenants moved out and the new tenants moved in. The Landlord testified that the new tenants said the unit was unclean, completed an inspection report and supplied pictures following their August 1, 2023 move in.

Tenant C.D. testified that she was not provided with any pictures from the new tenants and that she does recall doing an initial move-in inspection but did not receive a copy of a report despite her request to the Landlord for one.

Tenant C.D. further testified that she declined the August 4, 2023 move-out inspection date offered by the Landlord because the new Tenants would already be moved in by that date and she could not be responsible for the unit once handing over the keys to the new tenants as requested by the Landlord. Copies of text correspondence between the Tenants and Landlord were submitted by the Tenants as evidence.

According to Tenant C.D., she used her own carpet cleaner to clean the carpets in the unit and performed a thorough cleaning of the suite per the instructions on the Landlord's cleaning list. Copies of the cleaning list and pictures of the unit were submitted by the Tenants as evidence.

Tenant C.D. stated that the Landlord was provided with a forward address on July 31, 2023, by registered mail. A copy of a letter dated July 31, 2023, with the Tenant's forwarding address and a request for the return of their security and pet deposits was submitted as evidence by the Tenants.

Analysis

Is the Landlord a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?

To be awarded compensation for a breach of the Act, the tenant must prove:

- the landlord has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the tenant acted reasonably to minimize that damage or loss

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has not established a claim for damage or loss under the Act, regulation or tenancy agreement.

I find that, as the Landlord did not complete a move-in inspection with the Tenants and did not provide the Tenants an opportunity to conduct a move-out inspection prior to new tenants moving in, the Landlord has failed to provide evidence that the rental unit was not in the same condition at the end of the tenancy as it was at the start.

I find that the Landlord relied on the statement and evidence of the new tenants to determine the state of the unit rather than on an inspection conducted by her representative and the Tenants prior to occupation by the new tenants. I therefore find the Tenants testimony and evidence that the unit was left in a reasonable state of cleanliness to be credible.

For the above reasons, the Landlord's application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

Section 38 of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it. As the tenancy ended on July 31, 2023, and the Landlord made their application on August 14, 2023, I find that the Landlord did make their application within 15 days of the tenancy ending/the forwarding address being provided.

Under section 23 and 35 of the Act, a landlord is required to conduct a move-in and move-out inspection. Sections 24 and 36 of the Act state that if these inspections are not completed, a landlord extinguishes their right to claim damages against the security and/or pet deposit. I find that the Landlord is seeking to retain the security and pet

damage deposits as compensation for monetary loss for cleaning rather than damages and therefore the extinguishment of rights is not a consideration in this matter.

I find that the Landlord has been unsuccessful in their claim for compensation for monetary loss or other monies owed.

For the above reasons, the Landlord's application for authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act is dismissed, without leave to reapply.

As I have dismissed the Landlord's application to retain the security and pet damage deposit, I find that the Tenants are entitled to a monetary award in the amount of \$2,656.53, including interest, for the return of the security and pet damage deposits.

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

As the Landlord was not successful in this application, the Landlord's application for authorization to recover the filing fee for this application from the Tenants under section 72 of the Act is dismissed, without leave to reapply.

Are the Tenants entitled to authorization to recover the filing fee for this application from the Landlord under section 72 of the Act?

As the Tenants were successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant the Tenants a Monetary Order in the amount of **\$2,756.53** under the following terms:

Monetary Issue	Granted Amount
a monetary award for the Tenant for the return of their deposits from the Landlord including interest	\$2,656.53
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$2,756.53

The Tenants are provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The Landlord's application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

The Landlord's application for authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act is dismissed, without leave to reapply.

The Landlord's application for authorization to recover the filing fee for this application from the Tenants under section 72 of the Act is dismissed, without leave to reapply.

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 29, 2024

Residential Tenancy Branch