



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 convened 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 damage to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant confirms its email address as set out in the Landlord's application.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Relevant Background and Evidence

The following are agreed facts: The tenancy under written agreement started on August 22, 2019 and ended on June 1, 2020. At the outset of the tenancy the Landlord collected \$650.00 as a security deposit. The Landlord received the Tenant's forwarding address on June 1, 2020. No move-in or move-out inspections were offered by the Landlord. The Landlord did not receive any written authority from the Tenant to retain

any amount of the security deposit. On June 14 or 15, 2020 the Landlord returned \$525.00 to the Tenant and retained the rest of the security deposit.

The Landlord states that the Tenant failed to leave the unit clean and claims the cleaning costs of \$125.00. The Landlord states that the Tenant failed to dust and failed to clean the toilet, the floors and the top of the appliances. The Landlord provides photos and an invoice setting out the costs of \$250.00 for cleaning the entire unit. The Landlord states that the Tenant is not responsible for the entire cleaning that was done and that its claim for half the costs to clean the entire unit was determined arbitrarily. The Tenant states that it left the unit reasonably clean and provides photos. The Tenant states that it vacuumed and wiped down the floors, sanitized the bathroom and cleaned the appliances. The Tenant states that it did miss the top of the fridge and the bottom of the toilet lid. The Tenant states that it dusted the unit including the baseboards. The Tenant states that while the unit was left reasonably clean the amount claimed by the Landlord for the missed items is excessive. The Tenant states that the areas missed amount to about 5 to 10 square feet out of an approximate 900 square foot unit. The Tenant's Advocate refers to the legal submissions provided by the Tenant.

Analysis

Section 23 of the Act requires that at the start of a tenancy, the landlord must offer at least two opportunities to conduct an inspection of the unit, the landlord and tenant must together inspect the condition of the rental unit, and the landlord must complete a condition inspection report in accordance with the regulations. Section 24(2) of the Act provides that where a landlord has not made any offers for the inspection and does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished. Based on the undisputed evidence that the Landlord failed to offer and conduct a move-in inspection I find that the Landlord's right to claim against the security deposit was extinguished at move-in.

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. Section 3(c) of the Policy Guideline provides that 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 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.

As the Landlord's right to claim against the security deposit was extinguished at move-in and based on the undisputed evidence that the Landlord did not return the full security deposit to the Tenant, I find that the Landlord must now pay the Tenant double the security deposit plus zero interest of **\$1,300.00**. Deducting the **\$525.00** already returned to the Tenant leaves **\$775.00** owed by the Landlord.

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 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. While the Tenant's photos show general or surface cleaning I note that they do not include areas that are not readily visible as can be seen in the photos provided by the Landlord. For this reason, I find on a balance of probabilities that the Landlord has substantiated that the Tenant failed to leave the unit reasonably clean in these areas. However, the Landlord's allocation of costs to these areas are arbitrarily based and I accept the Tenant's undisputed evidence about the relative size of the unit. For this reason, I find that the Landlord has only substantiated a nominal sum of **\$50.00** for the Tenant's breach of the Act. As the Landlord's claim to

retain the security deposit was contrary to the Act and as the Landlord's claim for costs has met with very minor success, I decline to award recovery of the filing fee to the Landlord.

Deducting the Landlord's entitlement of **\$50.00** from the **\$775.00** owed to the Tenant leaves **\$725.00** owed to the Tenant.

Conclusion

I grant the Tenant an Order under Section 67 of the Act for the amount of **\$725.00**. 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: October 07, 2020

Residential Tenancy Branch