



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT, FFL, MNRL-S, MNDL-S, MNDCL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to a monetary award for damage and losses arising out of this tenancy?

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

Is the tenant entitled to a monetary award equivalent to the amount of the security deposit?

Is either party entitled to recover the filing fee for this application?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on June 1, 2018 and ended on May 31, 2020. The tenant was obligated to pay \$2400.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$1200.00 security deposit. The landlord testified that the tenant left the suite dirty and damaged. The landlord testified that a written condition inspection report was not conducted at move in or move out. The landlord testified that the tenant damaged carpets, walls, appliances and left the unit extremely dirty at move out. The landlord is seeking \$3837.41 plus the \$100.00 filing fee for this application.

The tenant gave the following testimony. The tenant testified that she adamantly disputes the landlord's claim. The tenant submits that the photos submitted by the landlord are a very poor quality, the photos are not date stamped, that the unit was in very poor condition and that the landlord is attempting to renovate the unit at her expense. The tenant testified that a written condition report was not conducted at move in or move out. The tenant testified that she is seeking the return of her security deposit and the \$100.00 filing fee.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In

this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The landlord uploaded poor photos and poor copies of documents for this hearing. However, the determining factors were as follows. The landlord testified that the amount sought is not her actual out of pocket costs as some of the claims are estimates only. The landlord testified that the house was built in 1975 but did not expand or elaborate on the age of the items she alleges the tenant damaged. The landlord did not provide written condition inspection reports for this hearing.

It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation to provide a "snapshot" of the condition of the unit at move in, I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support any portion of their claim and I therefore dismiss their application.

Both parties agreed that the landlord had filed an application within fifteen days of receiving the tenants forwarding address in accordance with section 38 of the Act. Considering my findings that the landlord is not entitled to any monetary award, I find that the tenant is entitled to the return of the \$1200.00 security deposit. The tenant is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

I grant the tenant an order under section 67 for the balance due of \$1300.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord's application is dismissed in its entirety 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: October 23, 2020

Residential Tenancy Branch