Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   MNSDS – DR, FFT, MNDCT, MNDL-S, FFL

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:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- 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 landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make arguments and to cross-examine one another. 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 landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award equivalent to double the value of her security deposit because of the landlord's failure to comply with the provisions of section 38 of the *Act*?

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

Background, Evidence

The tenant's testimony is as follows. The tenancy began on July 1, 2011 and ended on September 29, 2020. The tenants were obligated to pay $1900.00 per month in rent in advance and at the outset of the tenancy the tenants paid a $950.00 security deposit. The tenant testified that she gave her forwarding address to the landlord on September 29, 2020. The tenant testified that the landlord did not have her permission to keep the deposit. The tenant testified that she is seeking the return of double her security deposit and the recovery of the filing fee for this application for a total claim of $2000.00.

The landlord gave the following testimony. The landlord testified that written condition inspection reports were not done at move in or move out. The landlord testified that the unit was renovated prior to the tenant moving in back in 2011. The landlord testified that the unit was not left reasonably clean for the next incoming tenant which cost the landlord $250.00 to clean. The landlord testified that she spent $450.00 to rehang a closet door that was removed and replace lightbulbs and smoke detectors. The landlord testified that she spent $500.00 removing miscellaneous items, debris, and garbage that the tenant had left behind. The landlord testified that she spent over $1200.00 but would be satisfied with the deposit and the recovery of the $100.00 filing fee for a claim of $1050.00.

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.

The tenant said she is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy* Act.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord confirmed that she received the tenants forwarding address on September 29, 2020. She also confirmed that she did not file an application until almost two months after the tenancy ended and did not have the tenants written authorization to retain the deposit. Based on the above, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenant is entitled to the return of double her deposits $950.00 x 2 = $1900.00

The tenant is also entitled to the recovery of the $100.00 filing fee for a total award of $2000.00.

I address the landlords claim as follows.

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 testified that she had incurred $1200.00 "out of pocket" costs as a result of the tenants' actions. The tenant adamantly disputed the claims put forward by the landlord. The landlord argues that the unit was newly renovated when the tenant moved in and provided letters from the contractor. However, the letters lacked detailed itemization of the scope of work done and any accompanying receipts or bills to corroborate it. In addition, 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 sufficient supporting documentation, I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord's failure to do this is a significant factor as to why they were not successful in their application. The landlord has not provided sufficient evidence to support any portion of their claim, therefore I dismiss their entire application without leave to reapply.

Conclusion

The tenant has established a claim for $2000.00. I grant the tenant an order under section 67 for the balance due of $2000.00. 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: February 16, 2021

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Residential Tenancy Branch