



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The Tenants applied for a monetary order to recover all or part of the security deposit and to recover the filing fee for the Application.

The Landlords applied for a monetary order to keep all or part of the security deposit and to recover the filing fee for the Application.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Preliminary Matter

The Tenants testified that they were unaware the Landlords had filed an application for dispute resolution as they had not received the notice. Landlord HN testified that he sent the notice of hearing by registered mail to the address provided by the Tenants and provided tracking numbers. I am satisfied that the Tenants were served in the time and manner under Section 89 of the Act, and I allowed the Landlords to proceed with their application.

Issue(s) to be Decided

Are the Tenants entitled to a monetary order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Are the Landlords entitled to a Monetary Order under sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

There was no written tenancy agreement but I heard undisputed testimony that the tenancy started on January 15, 2007 and ended on July 31, 2010. Monthly rent was \$1,500.00 and a security deposit of \$675.00 was paid on January 13, 2007.



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Tenant LK supplied evidence and gave affirmed testimony that the Landlords were provided the Tenants' written forwarding address 2-3 days after they moved out on July 26, 2010. The Tenants testified that the Landlords have not returned their security deposit despite having made written requests for the same.

The Tenants deny causing any damage to the rental unit and provided a detailed written response to the Landlords' letter outlining a list of alleged damages to the rental unit.

Landlord HN testified that the Tenants damaged the rental unit during their tenancy to the extent he believed justified in deducting \$500.00 from the Tenants' security deposit and refunding the remaining balance. In support of his claim, the Landlord supplied photos depicting alleged damage to the rental unit caused by the Tenants. The Landlord also supplied a letter to the Tenants outlining what he believes were the damages caused by the Tenants and certain receipts, one dated August 22, one dated September 2, one dated September 9, one for a can of paint and two dated August 26.

In response, the Tenants replied that they did not cash the Landlords' cheque for the remaining balance as they denied causing any damage.

Upon query, the Landlord acknowledged receiving the Tenants' forwarding address no later than August 10, 2010, that he had no written authority from the Tenants to withhold part or all of the security deposit, and that there was no move in or move out condition inspection or written report in conformance with the Act.

Analysis

Based on the testimony, evidence and a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim as follows:

First proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly** proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Tenants' Application:

In this case the evidence and undisputed testimony supports that the Tenants provided the Landlords with their written forwarding address by the end of July and no later than August 10, 2010 when the Landlord wrote a letter acknowledging receipt of the same.

The Landlords did not apply for dispute resolution until December 13, 2010, do not have an Order allowing them to keep any portion of the security deposit and do not have the Tenants' written consent to retain the security deposit.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlords were required to return the Tenants' security deposit in full or file for dispute resolution no later than August 25, 2010.

Based on the above, I find that the Landlords have failed to comply with Section 23 (1) and 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit. I find that the Tenants have succeeded in proving the test for damage or loss as listed above and I approve their claim for the return of their security deposit plus interest.

I find that the Tenants have succeeded with their application and I award recovery of the \$50.00 filing fee.

Monetary Order – I find that the Tenants are entitled to a monetary claim as follows:

Doubled Security Deposit owed 2 x \$675.00	\$1,350.00
Interest owed on the Security Deposit of \$675.00 from January 13, 2007 to July 31, 2010	20.06
Filing Fee	50.00
TOTAL AMOUNT DUE TO THE TENANTS	\$1,420.06

The Tenants are hereby granted a monetary **Order** in the amount of **\$1,420.06**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.



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Landlords' Application:

Section 23 and 35 of the Act requires a landlord to provide opportunities for a move in and move out condition inspection and to complete an inspection report in accordance with the Act and regulation.

In the absence of the inspection reports, I find the Landlords have not submitted proof of the condition of the rental unit either before or after this tenancy and therefore I find that the Landlords have **not** met the first two steps required to prove a monetary claim.

I therefore **dismiss** the Landlords' Application without leave to reapply.

Conclusion

The Tenants are granted a monetary Order in the amount of **\$1,420.06**.

The Landlords' Application is dismissed.

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 17, 2011.

Residential Tenancy Branch