



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with applications pursuant to the *Residential Tenancy Act* (the *Act*) from the male landlord and his agent and from the tenant who identified the male and female landlords in her application. Landlords JH and JJ (acting as the landlords' agent) applied for:

- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant applied for authorization to obtain a return of double her security deposit pursuant to section 38. Her application (file 784716) was originally scheduled to be heard on March 26, 2012. When the original Dispute Resolution Officer (DRO) convened that hearing, both parties who were represented testified that a second hearing regarding the landlords' claim to retain the tenant's security deposit was scheduled for May 17, 2012. As the same set of facts seemed to be at issue with respect to the two applications, the landlords' agent (the landlord) requested that the two hearings be joined and heard together at the May 17, 2012. As the tenant did not oppose the landlords' request for the hearing of the two applications together, the original DRO joined the two applications to be heard together in this hearing on May 17, 2012 and issued an Interim Decision to that effect, sent to the parties on March 26, 2012.

The tenant did not attend the May 17, 2012 hearing of the two joined applications, although I waited until 9:55 a.m. in order to enable her to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he handed the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on August 1, 2011. He also testified that he sent the tenant a copy of the landlords' dispute resolution hearing package for the landlords' application on March 16, 2012, by registered mail. He provided a Canada Post Tracking Number to confirm this mailing. He testified that his check of the Canada Post

on-line tracking system revealed that the package was received by the tenant's daughter on March 19, 2012. I am satisfied that the above documents were served by the landlords in accordance with the *Act*. I am also satisfied that the landlord received a copy of the tenant's dispute resolution hearing package and the March 26, 2012 Interim Decision, and was aware that the tenant's application would also be considered at the May 17, 2012 hearing.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and for damage arising out of this tenancy? Which of the parties is entitled to the tenant's security deposit? Is the tenant entitled to a monetary award equivalent to the amount of her security deposit as a result of the landlords' failure to comply with section 38 of the *Act*? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that he allowed the tenant to move into the rental unit by June 24, 2010, although the tenancy did not officially start until July 1, 2010, when the tenant commenced paying rent. Monthly rent for this periodic tenancy was set at \$450.00. The landlord agreed to allow the tenant to pay her rent in two equal payments each month to coincide with the tenant's source of income. The landlord continues to hold the tenant's \$225.00 security deposit, paid on June 24, 2010.

The landlord testified that the tenant vacated the rental premises by August 31, 2011. He said that the landlord did not know the whereabouts of the tenant until late January 2012, when Landlord JH received the tenant's forwarding address. The landlord entered into written evidence a copy of the October 6, 2011 letter from the tenant which did not include the tenant's forwarding address. The tenant entered into written evidence a copy of the same letter which included her forwarding address at the bottom of the letter. The landlord said that he was willing to send the original October 6, 2011 letter to demonstrate that the tenant had not included her forwarding address in the October 6, 2011 letter.

The landlords' application for a monetary award of \$841.00 included the following:

Item	Amount
Unpaid August 2011 Rent	\$450.00
Lock Replacement	15.00
Cleaning	75.00
Repainting Living Room, Kitchen and Baseboards, Recaulking Toilet and Tub;	260.00

Replace Tiles in Counter Top	
Paint Ceiling in Living Room & Repair Door Base	125.00
Install Baseboard Heaters Back to Wall	25.00
Replace Missing Blinds, Deadbolt Lock	55.00
Supplies	36.00
Less Security Deposit	-200.00
Total Monetary Award Requested	\$841.00

The tenant applied for a monetary award of \$450.00, double her security deposit, as she maintained that the landlord did not comply with the provisions of section 38 of the *Act*, after the end of her tenancy and after receiving her forwarding address in writing by at least October 2011.

Analysis – Security Deposit

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

Although the tenant maintained that she provided her forwarding address to the female landlord at the end of her tenancy, she did not provide any written proof of doing so. As outlined above, there is conflicting evidence as to whether the tenant's forwarding address was included at the bottom of the tenant's October 6, 2011 letter to the landlord. In the absence of any sworn testimony from the tenant, I accept the landlord's sworn testimony that the tenant did not include her forwarding address in writing to the landlords until the end of January 2012. The landlord said that the tenant provided her address in writing to Landlord JH in late January 2012. The landlord said that he did not receive this address until Landlord JG sent it to him some time thereafter.

Based on the landlord's sworn testimony, I find that the landlords did not return the tenant's security deposit in full or file an application for dispute resolution within 15 days of the tenant providing her forwarding address in writing to the landlord in late January 2012. The landlords' application to retain the tenant's security deposit was received by the Residential Tenancy Branch on March 14, 2012, significantly more than 15 days after one of the landlords received the tenant's forwarding address in writing. I find that the landlords have not returned the security deposit nor have they applied for dispute resolution within 15 days of receipt of the tenant's forwarding address. The tenant is therefore entitled to a monetary award of \$450.00, amounting to double the security deposit with interest calculated on the original amount only. No interest is payable over this period.

Analysis – Unpaid Rent

Based on the undisputed evidence submitted by the landlords, I find that the landlords are entitled to a monetary award of \$450.00 for unpaid rent owing from the last month of this tenancy, August 2011. In coming to this decision, I accept that the written evidence provided by the landlords supported the landlords' claim that a \$450.00 payment made by the tenant's daughter on August 6, 2011 was for rental arrears owing for July 2011.

Analysis – Damage Arising from Tenancy

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer 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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once 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 landlords did not conduct a joint move-in condition inspection nor complete a move-in condition inspection report. The landlord testified that the rental unit was newly repainted and in excellent condition when the tenancy began. The landlord entered into written evidence a copy of a final notice identifying a proposed date for the joint move-out condition inspection. When the tenant did not attend, the landlord conducted his own inspection of the premises on September 3, 2011. He submitted a copy of his move-out condition inspection report that he sent to the tenant once he received her forwarding address. He also submitted copies of an invoice for work that was performed on the rental unit after the tenancy ended and photographs that he testified accurately reflected the condition of the rental unit after the tenant vacated the rental unit.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful.

Since the landlords did not follow the requirements of the *Act* in conducting a joint move-in condition inspection, I find that the landlords' eligibility to claim against the security deposit for damage arising out of the tenancy is limited. However, based on the oral, written and photographic evidence of the parties, I find on a balance of probabilities that the tenant did not comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit "reasonably clean and undamaged" as some cleaning and repair was likely required by the landlords after the tenant vacated the rental unit.

I find that the invoice for the work conducted by the landlords' handyman service is not specific enough to enable me to separate the eligible and ineligible portions of the landlords' claim for a monetary award for damage. Under these circumstances, it is not possible to arrive at an accurate breakdown of the landlords' monetary claim.

I am satisfied that the landlords are entitled to all of the following claims:

- Replacement of locks - \$15.00
- Cleaning – \$75.00
- Installation of Baseboard Heaters back to wall - \$25.00
- Replacement of Missing Blinds and Deadbolt Lock - \$55.00
- Supplies - \$36.00

The remaining two portions of the landlords' claim include repainting costs and repair costs. With respect to the repainting costs, I refer to Residential Tenancy Branch Policy Guideline 40 which identifies the useful life of items associated with residential tenancies for the guidance of DROs in determining claims for damage. This Guideline notes that the normal useful life for an internal paint job is 4 years. The landlord testified that the entire rental unit was repainted shortly before the tenancy began, presumably in June 2010. Based on this undisputed evidence, the landlords had to repaint the premises in September 2011. This occurred during the 15th month of the regular 48 month useful life for this paint job. Based on these calculations, the landlords would only be entitled to recover 33/48 (i.e., 69%) of their repainting costs. However, the absence of a joint move-in condition inspection report calls into question whether

the items identified in the landlord's list of damage arising as a result of this tenancy truly occurred during this tenancy. Consequently, I allow the landlords a monetary award of \$192.50, one-half of the remaining amount claimed for repainting and repairs.

As the landlords have been partially successful in their application for dispute resolution, I allow the landlords to recover \$25.00 from their filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms which allows the landlords to recover unpaid rent, damage arising from this tenancy and part of the landlord's filing fee, less the monetary award issued to the tenant under section 38 of the *Act*:

Item	Amount
Unpaid August 2011 Rent	\$450.00
Lock Replacement	15.00
Cleaning	75.00
Repainting Living Room, Kitchen and Baseboards, Recaulking Toilet and Tub; Replace Tiles in Counter Top, Paint Ceiling in Living Room & Repair Door Base (\$260.00 + \$125.00 = \$385.00 x 50% = \$192.50)	192.50
Install Baseboard Heaters Back to Wall	25.00
Replace Missing Blinds, Deadbolt Lock	55.00
Supplies	36.00
Less Tenant's Security Deposit	-225.00
Less Monetary Award to Tenant for Landlords' Failure to Comply with s. 38 of <i>Act</i>	-225.00
Landlord's Recovery of ½ of Filing Fee	25.00
Total Monetary Order	\$423.50

Landlord JJ is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 *Residential Tenancy Act*.

Dated: May 17, 2012

Residential Tenancy Branch