



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This is an application by the tenants for a monetary order for return of double the security deposit and for monetary compensation for damage or loss under the Act.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of double the security deposit?
Are the tenants entitled to a monetary order of loss under the Act?

Background and Evidence

The tenancy began on December, 1, 2009. Rent in the amount of \$950.00 was payable on the first of each month. A security deposit of \$475.00 was paid by the tenants.

The tenants' claims as follows:

a.	Double security deposit	\$950.00
c.	Compensation for new rental accommodation	\$1,040.00
	Total Claimed	\$3,990.00

Double security deposit

The tenants paid a security deposit of \$475.00 at the start of tenancy. The tenants vacated the premises on April 1, 2012. The tenants provided the landlord with a written notice of the forwarding address to return the security deposit to, and did not sign over a portion of the security deposit.

The landlord's agent acknowledged receipt of the tenants' forwarding address on June 11, 2012. The landlord's agent confirmed they did not apply for arbitration to retain any portion of the security deposit.

Damage to front and rear bumper on vehicle

The tenant (CD) testified that due to the roof being repaired there were large vehicles parking in the parking area. The tenant stated due to these vehicles she had difficulties getting out of her parking spot and struck her front bumper on the metal post. The tenant stated that her rear bumper was also damaged by one of these vehicles.

The tenant (CD) stated that she would have been able to claim this damage on her vehicle insurance, but chose not to claim against the insurance policy to avoid an increase to her premium.

The tenant (CD) stated that to replace the front and rear bumper of the vehicle it would cost \$2,000.00. The tenant did not submit any documentary evidence, such as photographs or estimates for repairs.

The landlord's agent testified they are not responsible for the actions of the tenant driving her car poorly. The landlord's agent stated that if there was an issue with the roofing company's vehicle parked too close, the tenant should have made a request to have the vehicle moved, instead of attempting to leaving the parking spot and damaging her vehicle on the metal post.

Compensation for new rental accommodation

The tenant (CD) testified that she is claiming \$1,040.00 for April 2012 rent as she feels she was forced out of the rental unit due to the construction.

The landlord's agent testified the tenants were not forced out of the rental unit. The tenant provided written notice to move from the rental unit and is not responsible to pay her rent elsewhere.

The tenant (CD) argued that she did provide written notice to end tenancy. However, it was due to the construction in the building.

Analysis

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

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the tenants have the burden of proof to prove a violation of the Act and a corresponding loss.

Double security deposit

There was no evidence to show that the tenants had agreed, in writing, that the landlord could retain any portion of the security deposit, plus interest.

There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenants, to retain a portion of the security deposit, plus interest.

The landlord has breached section 38 of the Act. The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer. Here the landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit or interest.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit of \$475.00. The legislation does not provide any flexibility on this issue. The tenants are granted a monetary compensation in the amount of **\$950.00**.

Damage to front and rear bumper on vehicle

In this case, the damage to the tenant's vehicle was not caused by the action or neglect of the landlord violating the Act, rather the damage was caused by the action of the tenant when she chose to leave the parking spot in an unsafe manner and hit the metal post. Further, the tenant claims the rear bumper was hit by a vehicle that was onsite performing work for the landlord. Vehicle are required to be covered by insurance for the purposes of accidents and the parties involved in the accidents are required to make claims for damages through their insurance companies. If the parties involved in the accident do not to make a claim against their vehicle insurance to avoid insurance premiums increases, it would be absurd that the landlord would be responsible for those costs. The tenant had vehicle insurance and chose not to make a claim. As a result, I dismiss the tenants claim for compensation for vehicle damage.

Compensation for new rental accommodation

In this case, the tenants provided the landlord with written notice to end tenancy for April 1, 2012. The tenants are seeking to have the landlord pay for April 2012, rental accommodations at another rental unit. I find the tenants have failed to prove damage or loss exists and that the damage or loss was due to the action of the landlord violation the Act. Therefore, I dismiss the tenants claim for compensation for damages or loss under the Act.

Conclusion

I grant the tenants' a monetary order for return of double the security deposit in the above amount. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

The tenants' application for compensation for damage or loss under the Act 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: September 10, 2012.

Residential Tenancy Branch