



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF, O

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

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

The tenants applied for:

- authorization to obtain a return of double their security deposit pursuant to section 38;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72; and
- other remedies that they identified in their application for dispute resolution as their loss of earnings and the recovery of \$300.00 of their moving expenses.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The female tenant (the tenant) confirmed that the tenants received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on October 13, 2012. The landlord confirmed that she received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on December 20, 2012. I am satisfied that both parties served one another with their dispute resolution hearing packages and their written evidence in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, utilities or damage arising out of this tenancy? Are the tenants entitled to a monetary award for the return of a portion of their security deposit? Are the tenants entitled to a monetary award equivalent to the amount of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Are the tenants entitled to receive

any other monetary award arising out of this tenancy? Are either of the parties entitled to recover their filing fee for this application from one another?

Background and Evidence

The parties agreed that this one-year fixed term tenancy was scheduled to commence on May 1, 2012. The landlord testified that the tenants commenced moving their possessions into the rental premises prior to that date and actually moved into the premises on April 28, 2012. The tenant testified that the tenants commenced living in the rental unit on April 29, 2012. Monthly rent was set at \$1,450.00, payable in advance on the first of each month, plus 50% of the cost of utilities for this rental property. The tenants paid a \$725.00 security deposit on March 23, 2012. The parties agreed that the landlord returned \$184.42 of the tenants' security deposit by way of an October 12, 2012 cheque. The tenants have not cashed the landlord's \$184.42 cheque for a return of that portion of their security deposit. They maintained that this cheque was not negotiable because it identified both tenant names and they do not have a joint account.

The parties agreed that this tenancy ended on September 30, 2012, by which time the tenants had vacated the rental unit as per a mutual agreement to end this tenancy that the parties signed on September 7, 2012. This agreement called for an end to this tenancy by October 1, 2012.

Although the parties participated in a joint move-in condition inspection on April 28, 2012, the landlord did not prepare a joint move-in condition inspection report. Similarly, the landlord did not prepare any move-out condition inspection report with respect to her move-out condition inspection at the end of this tenancy.

The landlord's application for a monetary award of \$490.58 included the following:

Item	Amount
3 Days of Unpaid August 29-31, 2012	\$145.00
Unpaid Utilities from Last Statements	111.37
Estimated Hydro Owing at end of Tenancy	37.21
Estimated Gas Owing at end of Tenancy	36.42
Sink Cover and Replacement of 8 Light Bulbs	39.39
Replacement of Missing Fire Sprinkler Cover	11.19
Cleaning	50.00
Repair of Drawer	50.00

Estimated Cost of Registered Letter	10.00
Total Monetary Award Requested	\$490.58

The landlord also requested the recovery of her \$50.00 filing fee from the tenants.

The tenants' application for a monetary award of \$2,938.22 included the following items:

Item	Amount
Security Deposit less Agreed Deductions x 2 for Late Arrival and Deductions Without Agreement (\$725.00 – (\$111.37 + \$96.67 + \$37.21 + \$36.42) = \$443.33 x 2 = \$886.66)	\$886.66
Loss of Earnings	1,701.56
Moving Expenses	300.00
Recovery of Filing Fee	50.00
Total Monetary Award Requested	\$2,938.22

Analysis

I will first address the tenants' claim that the landlord's \$184.42 cheque was not negotiable. At the hearing, I told the tenant that I found that the cheque was properly sent to the tenants under both of their names. I suggested that if one of them is unable to obtain funds for this cheque without the other one in attendance, they should both attend a financial institution together to negotiate this cheque,.

At the hearing, I also addressed the tenants' claim for their loss of earnings and recovery of moving expenses. I noted that this tenancy ended by way of a signed Mutual End to Tenancy Agreement. Without any other written agreement between the parties with respect to any monetary settlement between the parties, I find that there is no basis for the tenants' claim for a monetary award for loss of earnings or the recovery of \$300.00 of their moving expenses. I dismiss this element of the tenants' application without leave to reapply.

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 security deposit (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 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."

In this case, the tenant said that she provided the landlord with the tenants' forwarding address by way of an October 1, 2012 email. As I noted at the hearing, an email does not comply with the requirement that a tenant provide a forwarding address to the landlord in writing at the end of a tenancy in order to obtain a return of a security deposit. However, the landlord confirmed that she did receive the tenant's emailed forwarding address and did send a portion of the deposit to the tenants on October 12, 2012. Also on October 12, 2012, the Residential Tenancy Branch (the RTB) received the landlord's application for dispute resolution. As I am satisfied that the landlord applied for dispute resolution within the 15-day time period established under section 38 of the *Act*, I find that the tenants are not entitled to a monetary award for double their deposit. I dismiss this aspect of their application without leave to reapply.

At the hearing, I also advised the landlord of my decision to dismiss her claim for unpaid rent. I did so as there was conflicting evidence from the parties as to whether the tenants made an oral agreement to pay the landlord for three days before their fixed term tenancy agreement was to take effect. The landlord maintained that the tenants had agreed to pay their rent early each month because they had moved into the premises prior to May 1, 2012. The tenant denied that there was any agreement whereby the tenants were required to pay their rent prior to the first of each month, the date noted in their tenancy agreement. Under these circumstances, I find that the written and signed terms of the tenancy agreement provide the best evidence as to when monthly rent became due. Although the landlord provided the tenants with keys to the rental unit prior to May 1, 2012, there is insufficient evidence to demonstrate that the landlord was entitled to modify the date when rent became due at the beginning of this fixed term tenancy agreement. Consequently, I dismiss the landlord's claim for unpaid rent owing for the last three days of this tenancy without leave to reapply as I find that this request does not confirm with the written terms of the parties' tenancy agreement entered into written evidence.

The tenant did not dispute the landlord's claim of \$111.37 in utilities as of the last statement the landlord received before the tenants vacated the premises. Similarly, the tenant did not dispute the landlord's estimated claim for \$37.21 for hydro and \$36.42 for gas that became due during the final period of this tenancy. I issue a monetary award

in the landlord's favour in the above amounts for each of these three utility charges that remain unpaid.

I have also considered the landlord's oral, written and photographic evidence with respect to the landlord's claim for damage arising out of this tenancy. 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. 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. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 24(2) of the *Act* reads in part as follows:

Consequences for tenant and landlord if report requirements not met

24 (2) *The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord...*

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 36(2)(c) of the *Act* establishes similar provisions if the requirements for a joint move-out condition inspection are not met.

In this case, the landlord admitted that she did not complete either a joint move-in or move-out condition inspection report. Responsibility for completing this report rests with the landlord.

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 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 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.

When considering conflicting evidence from the parties as to the condition of a rental unit before and after a tenancy, reference to move-in and move-out condition inspection reports is very helpful. I find that the landlord's failure to prepare these reports and send them to the tenants places the landlord in a position where she could not demonstrate that the rental premises were damaged during this tenancy. The tenant maintained that she raised concerns about the damaged drawer shortly after she moved into the rental unit. She also claimed that many light bulbs were burned out when this tenancy commenced. She also asserted that there never was a fire sprinkler cover and that this was an issue that she raised with the landlords as well.

Under these circumstances, the only damage claim that I am willing to approve is a portion of the landlord's claim for cleaning. The tenant testified that some cleaning was likely necessary at the end of this tenancy, although she said that she would have been willing to clean such items as the toilet, the washing machine and a few other areas had the landlord not said that it was alright and that she would look after these items. Based on a balance of probabilities and the landlord's photographic evidence, I find that the landlord is entitled to a monetary award of \$40.00 for cleaning, an amount that allows the landlord to recover two hours of cleaning of the rental unit at a rate of \$20.00 per hour. I dismiss the remainder of the landlord's claim for damage without leave to reapply as I am not satisfied that she has demonstrated that this damage exceeded reasonable wear and tear and that it arose during this tenancy.

As both parties were partially successful in their applications, I issue no orders with respect to their applications to recover their filing fees. Both parties are to assume their own costs of submitting their applications.

After returning \$184.42 of the tenants' security deposit, the retained portion of the tenants' security deposit plus applicable interest is \$540.58, currently held by the landlord. No interest is payable over this period. As set out above, I find that the landlord is entitled to a total monetary award of \$225.00 ($\$111.37 = \$37.21 + \$36.42 + \$40.00 = \225.00). I order the landlord to return the remaining \$313.58 of the tenants' security deposit to the tenants.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms, which allows the tenants to recover the difference between the remaining value of their deposit and the monetary awards issued in the landlord's favour:

Item	Amount
Unpaid Utilities	\$111.37
Estimated Hydro Owing at end of Tenancy	37.21
Estimated Gas Owing at end of Tenancy	36.42
Cleaning	40.00
Less Retained Value of Tenants' Security Deposit (\$725.00 - \$184.42 = \$ 540.58)	-540.58
Total Monetary Order	(\$315.58)

The tenants are provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord 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.

I also order the tenants to negotiate the landlord's cheque for \$184.48 provided to the tenants in October 2012.

I dismiss the remainder of the claims of both parties 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: January 15, 2013

Residential Tenancy Branch

