



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of double their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this 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 submissions and to cross-examine one another. The landlord confirmed that on October 17, 2012, he received the tenants' October 15, 2012 email advising the landlord that the tenants were ending their tenancy by October 22, 2012.

The landlord also confirmed that the female tenant handed him a copy of the tenants' dispute resolution hearing package on November 7, 2012. I am satisfied that the tenants served the landlord with a copy of this package in accordance with the *Act*.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the return 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 losses arising out of this tenancy? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This one-year fixed term for a rental strata unit began on January 1, 2012. Monthly rent was initially set at \$850.00, payable in advance on the first of each month. The female tenant (the tenant) testified that a monthly charge for cable was added to their rent during the course of this tenancy. The landlord continues to hold the tenants' \$425.00 security deposit paid on December 31, 2011.

The parties agreed they conducted a joint move-in condition inspection on January 1, 2012. A copy of the move-in condition inspection report was provided to the tenants by the landlord at that time. The landlord testified that the tenants prepared their own move-out condition inspection of the premises. He confirmed that there was no damage caused by the tenants at the end of this tenancy on October 22, 2012. Both parties confirmed that the landlord has not forwarded a signed copy of the move-out condition inspection report to the tenants.

On October 1, 2012, the tenants paid their monthly rent for October 2012. The following day an overflowing toilet in a strata unit above the tenant's rental unit caused major flooding damage to the rental unit. Although the landlord retained a restoration company to assess the damage and to repair the premises, the tenants provided undisputed evidence that they were never able to reside in the rental unit following the October 2, 2012 flooding incident. They noted that a series of fans were placed in the rental unit for the first 10 days of the restoration process. The tenant testified that these fans increased their hydro bill by an estimated \$35.00, and raised the temperature in the rental unit to "100 degrees" (Fahrenheit).

The tenants entered undisputed written evidence that they were unable to obtain an estimate from the landlord as to when the work to repair drywall and flooring would be completed, to allow them to return to the rental unit. After repeated attempts to resolve this matter, the tenants issued their notice to end tenancy, as they considered their fixed term tenancy agreement ended by the landlord's failure to provide them with the accommodations that he committed to provide at the commencement of this tenancy.

The tenants' application for a monetary award of \$1,736.29 included the following items:

Item	Amount
Return of Pro-Rated Rent for October 2012 ($\$910.00 \times 29/31 = \851.29)	\$851.29
Return of Initial Security Deposit	425.00
Monetary Award for Landlord's Failure to Comply with Provisions of s. 38 of the <i>Act</i>	425.00
Additional Hydro Charges Resulting from Restoration of Rental Unit	35.00
Total of Above Items	\$1,736.29

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 security 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."

In this case, the landlord confirmed that the tenant handed him a written copy of the tenants' forwarding address on October 24, 2012. There is also no dispute between the parties that this tenancy ended on October 22, 2012, at which time the tenants yielded vacant possession of the premises to the landlord. I find that for the purposes of section 38 of the *Act*, the 15-day time period requiring action by the landlord commenced on October 24, 2012.

I find that the landlord has not returned the tenants' security deposit in full within 15 days of receipt of the tenants' forwarding address in writing. The landlord confirmed that he has not applied for dispute resolution to obtain authorization to retain any portion of the tenants' security deposit. The landlord testified that he has not obtained the tenants' written authorization at the end of the tenancy to retain any portion of the tenants' security deposit. In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double their security deposit with interest calculated on the original amount only. No interest is payable over this period.

Analysis – Remainder of Tenants' Application for a Monetary Award

Section 7(1) of the *Act* establishes that a landlord who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the tenant for losses that result from that failure to comply. Section 32(1)(a) of the *Act* establishes a requirement that a landlord provide and maintain residential property in a proper state of repair. Section 45(3) of the *Act* provides the authority whereby a tenant can end a tenancy if the landlord has failed to comply with a material term of the tenancy agreement "and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure."

I am satisfied that the tenants provided written notices that they did not consider that the rental unit was habitable following the flooding incident. The landlords' failure to provide the tenants with a firm estimate of when the restoration work would be completed led to the landlord's breach of a material term of the tenancy agreement. I find that the landlord breached a material term of this residential tenancy agreement by failing to take action within a reasonable time to ensure that the tenants could reside in the rental unit after the flooding incident of October 2, 2012. For this reason, I agree with the tenants' assertion that they were entitled to end their fixed term tenancy by October 22, 2012 in accordance with section 45(3) of the *Act* and even though they did not give the landlord proper notice to end this tenancy within the time frames otherwise established under the *Act*.

In considering the tenants' claim for losses amounting to 29/31 of the rent they paid the landlord for October 2012, I have taken into account a number of factors. The tenants have agreed that they are responsible for the payment of rent for the first two days of October 2012, the period preceding the flooding incident. I have also taken into consideration that during the initial days following the flooding incident the landlord was taking measures to restore the premises to a habitable condition, as evidenced by the fans brought to the premises by the restoration company. Given the significance of the flooding event, it would seem that the landlord would have needed at least a few days to respond to this situation and chart a course whereby he could advise the tenants of the time period when they would have to live elsewhere. Other than their estimate of the additional hydro costs while the fans were running, the tenants have not supplied any receipts for expenses they incurred as a result of this flooding incident. For example, they did not provide hotel or food receipts for this period.

Under these circumstances, I find that the tenants have established their entitlement to a monetary award for their loss of facilities that they expected to be provided by the landlord and paid for as part of their rent for the month of October 2012. I find that their entitlement is limited to a reduction in the stated monthly rent in their tenancy agreement (i.e., \$850.00) for the last 26 days of October 2012 ($\$850.00 \times 26/31 = \712.90). This allowance takes effect on October 6, 2012, three days after the flooding incident of October 2, 2012.

The tenants also confirmed that they kept their belongings in the rental unit for much of October 2012, and did not yield vacant possession of the premises to the landlord until October 22, 2012. I find that from October 6, 2012 until October 22, 2012, the tenants had the use of the rental unit to store their belongings. I find that the landlord is entitled to \$100.00 in storage rent for this period, thus reducing the tenants' eligibility to a monetary award for losses for October 2012 from \$712.90 to \$612.90.

Based on the tenants' undisputed evidence with respect to their estimated additional hydro costs for October 2012, I allow the tenants' application for recovery of \$35.00 from their hydro bill.

In considering the tenants' claims for losses, I am also mindful that the parties confirmed there are additional parties who appear to have taken some responsibility in this matter. For example, the landlord testified that he did not have to pay anything for the restoration work, completed in early November 2012, as this was looked after by the strata corporation. He said that the resident of the strata unit above this rental unit had insurance for the damage caused and the strata resident's insurance company paid to have damage repaired. While the landlord has a contractual duty under the residential tenancy agreement with the tenants to provide the services and facilities agreed to between the landlord and the tenants, the landlord may also have recourse against third parties if he can demonstrate losses arising out of their actions.

As the tenants have been successful in their application, I allow them to recover their \$50.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms, which allows the tenants to recover double their security deposit, and to recover losses arising out of this tenancy and their filing fee:

Item	Amount
Return of Pro-Rated Rent for October 2012 ($\$850.00 \times 26/31 - \$100.00 = \$612.90$)	\$612.90
Return of Initial Security Deposit	425.00
Monetary Award for Landlord's Failure to Comply with Provisions of s. 38 of the <i>Act</i>	425.00
Additional Hydro Charges Resulting from Restoration of Rental Unit	35.00
Filing Fee for this Application	50.00
Total Monetary Order	\$1,547.90

The tenants are provided with these Orders in the above terms and the landlord must be served with an **Original Order** 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.

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 31, 2013

Residential Tenancy Branch

