



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

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

- authorization to obtain a return of all or a portion of the tenant's security deposit pursuant to section 38;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlords 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 landlords confirmed that they received a copy of the tenant's dispute resolution hearing package sent to the landlords by the tenant by registered mail on April 4, 2013. I am satisfied that the tenant served this package to the landlords in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of any portion of his security deposit? Is the tenant entitled to a monetary award equivalent to the amount of his security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*? Should any other orders be issued against the landlords? Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

This periodic tenancy began on October 1, 2009. Monthly rent when the tenancy ended by December 1, 2012 was set at \$1,000.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$500.00 security deposit paid on or about October 1, 2009.

Although the parties agreed that they conducted a joint move-in condition inspection of the rental unit, the landlord did not produce a report of that inspection. The landlord did not produce a report of his inspection of the rental unit when he inspected the premises after the tenant left the rental unit.

The tenant testified that he sent the landlords a request to return his security deposit along with his forwarding address by way of a February 27, 2013 registered letter. He did not enter into written evidence a copy of that letter or any other written evidence pertinent to the merits of his application for dispute resolution. The male landlord testified that the landlords did not receive the tenant's February 27, 2013 letter and did not know the tenant's forwarding address until they received his dispute resolution hearing package. The female landlord testified that she did receive the tenant's registered letter of February 27, 2013 on February 28, 2013.

The tenant's application for a monetary award of \$1,000.00 included the return of his security deposit as well as the cost of work that he maintained he performed to clean and paint the basement suite in this rental property. Other than a brief description of the work he performed at the basement suite in his application for dispute resolution and his sworn testimony, he provided no further evidence to substantiate his claim for work at the basement suite. He said that he did not have the landlords' written approval to reimburse him for this work.

Analysis – Losses Arising from Repair of Basement Suite

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 tenant has not applied for a monetary award for reimbursement of work that he performed at the rental property for the landlords. However, he has included this request in the Details of the Dispute section of his application for dispute resolution. The landlords were clearly aware that the tenant intended to seek compensation for the work he performed in the basement suite when this tenancy began. Consequently, I have considered the tenant's application for a monetary award for the losses he incurred in repairing the basement suite when he took occupancy of the rental unit.

Based on the evidence before me, I am not satisfied that the tenant has demonstrated to the extent required that he is entitled to a monetary award for losses arising from his work in repairing the basement suite of this rental property. He testified that he did not have the landlords' written approval to obtain a reduction in rent or some other monetary allowance for the work he undertook when he moved into this rental property. Since the tenant has not met the burden of proof required to obtain a monetary award for this item, I dismiss his application for a monetary award for losses arising out of his repair of the basement suite without leave to reapply.

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 security 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 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, I find that the landlords have not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address in writing on February 28, 2013, the date the female landlord said she received the letter containing the tenant's address. The male landlord confirmed that the landlords have not applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The male landlord also testified that the landlords have not obtained the tenant's written authorization to retain any portion of the tenant's security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the security deposit with interest calculated on the original amount only. No interest is payable over this period.

Since the tenant has been successful in this application, the tenant is entitled to recover his filing fee from the landlords.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms which allows the tenant to recover his original security deposit and filing fee, plus a monetary award equivalent to the value of his security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*.

Item	Amount
Return of Security Deposit	\$500.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	500.00
Filing Fee	50.00
Total Monetary Order	\$1,050.00

The tenant is provided with these Orders in the above terms and the landlords must be served with a copy of these Orders as soon as possible. Should the landlords 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 dismiss the remainder of the tenant's application for losses arising out of this tenancy 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: June 27, 2013

Residential Tenancy Branch