



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KEY MARKETING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: MND MNSD FF

For the tenants: MNSD FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”). The tenants applied for the return of all or part of their security deposit, and to recover their filing fee. The landlord applied for a monetary order for damage to the unit, site or property, for authorization to retain all or part of the security deposit, and to recover the filing fee.

An agent for the landlord (the “agent”) and the tenants attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

At the outset of the hearing, the parties confirmed that they received the evidence package from the other party and that they had the opportunity to review that evidence prior to the hearing. Based on the above, I find the parties were served in accordance with the *Act*. I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matter

During the hearing, the tenants agreed to amend their application to reflect the correct unit number of the rental unit, and to add the company name of the landlord, versus only the agent for the landlord. As a result, the tenants’ application was amended to

reflect the correct rental unit as the dispute address, and added the company name of the landlord.

Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on July 1, 2012, and reverted to a month to month tenancy after June 30, 2013. Monthly rent in the amount of \$1,300.00 was due on the first day of each month. The tenants paid a security deposit of \$650.00 at the start of the tenancy which the landlord continues to hold.

The tenants have claimed for the returned of their security deposit and have specifically stated that they do not waive their right to the return of double the security deposit if they are entitled to it under the *Act*. In addition, the tenants have applied for the recovery of their filing fee.

The landlord has claimed a total of \$3,894.86 comprised of the following:

Item 1. Unplugging blocked toilet	\$95.00
Item 2. Replacement of damaged blinds	\$450.00
Item 3. Flooring replacement in living room	\$2,794.86
Item 4. Remote control	\$55.00
Item 5. Painting damaged walls	\$500.00
TOTAL	\$3,894.86

Settlement Agreement

During the hearing, the parties mutually agreed to settle on items 3, 4 and 5 above in the following amounts:

Description of item resolved by way of a mutually settled agreement	Amount agreed upon by parties
Item 3. Flooring replacement in living room (30% of claimed amount for this item)	\$838.46
Item 4. Remote control (100% of claimed amount for this item)	\$55.00
Item 5. Painting damaged walls (agreed upon amount)	\$50.00
TOTAL	\$943.46

Based on the above, items 3, 4 and 5 will not be analyzed further in this Decision. The agreed upon amount owing by the tenants to the landlord of \$943.46 as noted above, will be discussed later in this Decision.

Evidence related to Landlord's claim

Regarding item 1, the landlord alleged that the tenants plugged the toilet and is seeking compensation of \$95.00 as a result. The landlord referred to page 18 of the landlord's evidence package, which is invoice 16247 dated 06/08/2013 which reads in part:

"...August 19/13

TOILET NO DRAIN

- checked and found toilet clogged
- repaired and unclogged thoroughly
- applied auger four times
- tested toilet, okay
- ADDITIONAL LABOUR

\$95.00..."

[reproduced as written]

The tenants denied that they clogged the toilet and did not agree with this portion of the landlord's claim. The tenants referred to the condition inspection report which they stated indicates good condition on the outgoing condition inspection report submitted in evidence. In addition, the tenants referred to document "A" in the tenants' evidence package, which is an e-mail dated August 10, 2012, from the tenants to the landlord agent which reads in part:

"...also the toilet is very weak and is causing us to plunge it weekly. It would be great if we can get this all fixed as it was take a great load off our shoulders!..."

[reproduced as written]

The above-noted e-mail was written just over one month from the start of the tenancy. The agent did not dispute the contents of the e-mail. The agent testified that the toilet was “not checked” during the condition inspection report.

Regarding item 2, the landlord has claimed \$450.00 to repair a damaged blind. The tenants stated that the landlord changed the condition inspection report after it was completed in relation to the blinds from “good” to “missing”, which the agent confirmed during the hearing as he stated he “missed the blinds and changed it afterwards.” The agent confirmed that there were no photos showing the blinds were missing and the tenants testified that the blinds were still in the rental unit and denied damaging the blinds. The invoice submitted by the landlord reads in part:

“2x window blind replacement
- found both window blinds broken
...”

[reproduced as written]

Evidence related to Tenants’ claim

The parties agreed that an incoming and outgoing condition inspection report were completed during the tenancy. The parties agreed that the tenants provided their written forwarding address to the landlord on July 30, 2013, on the outgoing condition inspection report. The parties agree that the tenants did not surrender or sign over any portion of the security deposit to the landlord in writing. On November 8, 2013, the landlord submitted an application claiming towards the tenants’ security deposit under the *Act*. The agent stated that the tenants were co-operating until November 4, 2013 and the owner was under the impression that the matter would be resolved outside the Residential Tenancy Branch.

Analysis

Based on the documentary evidence and the testimony of the parties, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Landlord's claim for item 1 – The landlord has claimed \$95.00 for a repair to the rental unit toilet and claimed that the tenants plugged the toilet. Although the landlord referred to page 18 of the landlord's evidence package, I find that the condition inspection report indicates that the toilet was in good condition at the end of the tenancy. The agent testified that the toilet was not checked during the outgoing condition inspection, which I find is contradictory to the landlord's evidence. Given the above, I find the landlord has failed to meet the burden of proof to prove this portion of his claim. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient and contradictory evidence, **without leave to reapply**.

Landlord's claim for item 2 – The landlord has claimed \$450.00 to repair a damaged blind. The agent confirmed that the landlord changed the condition inspection report after it was completed in relation to the blinds being in "good" condition to "missing". The agent confirmed that there were no photos showing the blinds were missing and the tenants testified that the blinds were still in the rental unit at the end of the tenancy and denied damaging the blinds. The invoice submitted by the landlord supports that the blinds were not missing and were located in the rental unit. Based on the above, I find the landlord's testimony to be contradictory and that by changing the condition inspection report after it was completed, I find the landlord's actions to have rendered the blind portion of the condition inspection report to be void. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient and contradictory evidence, **without leave to reapply**.

Tenants' claim - The landlord continues to hold the tenants' security deposit of \$650.00, which has accrued \$0.00 in interest since the start of the tenancy. Section 38 of the *Act* states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[emphasis added]

Based on the above, **I find** the landlord breached section 38 of the *Act* by failing to return the tenants' full security deposit of \$650.00 within 15 days of date the landlord confirmed receiving the tenants' written forwarding address, July 30, 2013, which was the same date as the end of tenancy when the tenants vacated the rental unit. As July has 31 days, the landlord had until August 14, 2013 to either apply to retain the tenants' security deposit, or return the security deposit in full, which the landlord failed to do. The landlord did not have written permission from the tenants to retain any portion of the security deposit. Therefore, **I find** the tenants have met the burden of proof to prove their claim. **I grant** the tenants double their original security deposit of \$650.00, for a total of **\$1,300.00**.

As the tenants' application had merit, **I grant** the tenants the recovery of their \$50.00 filing fee. As only a portion of the landlord's application had merit, **I grant** the landlord the recovery of half of their filing fee in the amount of \$25.00.

Based on the above, **I find** that the parties have established monetary claims as follows:

Item Description	Amount
Tenant's claim for double the security deposit	\$1,300.00
Tenant's recovery of the filing fee	\$50.00
<i>Less landlord's items 3, 4 and 5 by settled agreement between the parties described above</i>	-(<i>\$943.46</i>)
<i>Less landlord's recovery of half of the filing fee</i>	-(<i>\$25.00</i>)
TOTAL BALANCE OWING BY LANDLORD TO TENANTS	\$381.54

Given the above, **I grant** the tenants a monetary order pursuant to section 67 of the *Act*, for the balance owing by the landlord to the tenants in the amount of **\$381.54**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenants have been successful with their application. The landlord has been successful with only a portion of their application. The tenants have been granted a monetary order for the balance owing by the landlord to the tenants in the amount of \$381.54. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: February 17, 2014

Residential Tenancy Branch

