



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenants applied 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 all or a portion of 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 by conference call and gave affirmed testimony. The tenants confirmed receipt of the landlords' notice of hearing package and the submitted documentary evidence. The landlord confirmed receipt of the tenants' notice of hearing package and the submitted documentary evidence. Based on the above evidence, I am satisfied that both parties have been served with the notice of hearing packages and the submitted documentary evidence as per section 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Is the tenant entitled to a monetary order for money owed or compensation for the return of double the security deposit, recovery of the last months' rent and their filing fee?

Background and Evidence

Both parties confirmed that this tenancy began on December 1, 2010 on a month-to-month basis as per a signed tenancy agreement. Neither party submitted a complete copy of the signed tenancy agreement. A security deposit of \$1,200.00 was paid on November 15, 2010.

Both parties agreed that the monthly rent at the beginning of the tenancy began at \$2,400.00 and was \$2,500.00 for the last month of tenancy.

The tenants have submitted a copy of a notice of rent increase issued by the landlord dated April 1, 2014 and states that the current rent of \$2,200.00 would be increased by \$300.00 to begin on June 1, 2014. The tenant provided direct testimony that the \$2,500.00 in rent was paid starting on July 1, 2014.

The tenants are seeking a monetary claim of \$4,900.00 equal to the return of double the security deposit and compensation equal to one months rent for complying with a 2 Month Notice issued for Landlord's Use. On this basis, the tenants' application was amended to allow for the monetary claim of \$4,900.00.

During the hearing, the tenants clarified that the monetary claim of \$4,800.00 was filed, but that there was a mathematical error and that the claim should have been for \$4,900.00. It was clarified with both parties that although the tenants application did not specify detailed amounts, the tenant's application was for "double the damage deposit and one months rent."

\$1,200.00	Original Security Deposit
\$1,200.00	Compensation Sec.38(6)
\$2,500.00	Compensation Sec.51
\$4,900.00	Total

The tenants stated that the landlord was served with their forwarding address in writing in a letter dated December 2, 2014, a copy of which is submitted in the tenants' documentary evidence. The landlords' dispute this stating that the first indication of the tenant's mailing address was received in the tenants' notice of hearing package which included the tenants' application for dispute resolution in May of 2015. The tenants stated that the letter dated December 2, 2014 was sent by Canada Post Registered Mail, but did not submit any proof of service.

Both parties confirmed that the landlord served the tenants with a 2 Month Notice to end tenancy issued for landlord's use (the 2 Month Notice) dated July 1, 2014 showing an effective end of tenancy date of September 1, 2014. The stated reason for the notice is shown as:

- The landlord or his family intend to occupy the rental premises.

The tenants confirmed that they complied with the 2 Month Notice dated July 1, 2014 and vacated the rental premises on July 31, 2014. The tenants seek compensation pursuant to section 51 of the Act of \$1,200.00 which is equal to one months rent.

The landlords stated that the tenants vacated the rental unit leaving it damaged. The landlord relies on submitted photographs of the state of the rental unit and copies of receipts and invoices for services and materials to repair the damage.

The landlords' seeks a total monetary claim of \$9,726.19 which consists of:

Paint	\$35.00
Building materials	\$80.79
Paint	\$412.76
Carpet Removal (Main and Basement)	\$875.00
Cabinet Repairs (Main and Basement)	\$300.00
Wall Repair/Paint	\$425.00
Countertop install (Main and Basement)	\$340.00
Blinds	\$60.00
New Countertops	\$645.00
Wall Repair and Paint (Upstairs)	\$1,600.00
Ensuite Tile Floor	\$125.00
Paint	\$147.75
Mice/Pest Infestation	\$280.88
Building materials	\$120.27
Garbage Dump	\$52.00
Paint	\$147.71
Tile Flooring	\$536.52
Carpet	\$1,329.35
Flooring	\$862.75
Building materials	\$655.49
Building materials	\$84.69
Building materials	\$19.99
Building materials	\$33.01
Paint	\$52.72

Building materials	\$50.47
Building materials	\$7.26
Building materials	\$44.03
Paint	\$35.00
Building materials	\$214.00
Building materials	\$10.15
Building materials	\$48.15
Building materials	\$56.00
Building materials	\$10.45
Garbage Dump	\$29.00

The tenants disputed the claims of the landlord stating that no damage was caused by the tenants and that the rental was left clean. The tenants refer to the submitted 23 photographs which show the condition of the rental unit during the tenancy. The photographs show clean furniture occupied rental premises, a photograph of the front door with damaged weather stripping, exposed ceiling from leaking pipes, a dirty bathroom tub, clean carpets and clean walls.

The landlord confirmed that no condition inspection report for the move-in or the move-out was completed. The landlords however refer to the submitted 38 photographs which show handwriting with the tenants family name on the wall, broken tiles in the ensuite bathroom, scrapes on multiple walls, a damaged cable outlet faceplate, a cracked light panel, a broken handle on the sliding door, stained carpet on the stairs living room and , a missing wall plate for an access panel, a picture of a mouse trap, TV cable around house drilled through walls of house, removed drywall from garage walls and spray painted their family name on walls, garbage left behind.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

Based upon the evidence of both parties, I find that the tenant has failed to provide sufficient evidence to satisfy me that the landlords were served with a separate written notice of the tenants forwarding address in writing via letter dated December 2, 2014. I find that the landlords received the tenants' mailing address in the tenants' application for dispute filed in May 2015 and are not entitled to recovery of twice the security deposit. However, the landlord having received this is deemed to have received the tenants' forwarding address in writing as of the hearing date. The hearing date October 16, 2015 will become the date on which the Landlords received the Tenants' forwarding address in writing. The tenants' application for

return of double the security deposit is dismissed as the tenancy is at an end. However, the tenants are entitled to the return of the original \$1,200.00 security deposit. The tenants are successful in this portion of their claim.

The tenants also seek compensation for complying with the landlords' notice to end tenancy issued for landlord's use pursuant to section 51 of the Act.

Section 50 of the Act states that if a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] the tenant may end the tenancy early and if the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice. On this basis, I find that the tenant has established a claim for \$1,200.00 in compensation for complying with the 2 Month Notice dated July 1, 2014.

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.

In this case, the landlords rely on submitted photographs and invoices/receipts for damages to the rental property. The tenants have disputed these claims and have provided photographs of the rental unit during and at the end of the tenancy showing the condition of the rental premises. The landlord has confirmed that no condition inspection reports for the move-in or the move-out were completed to allow for a comparative view of the condition of the rental premises before the tenancy began and at the end of the tenancy. Both parties have provided conflicting evidence and I find that although the landlord has provided some evidence of damage to the rental property, the landlord has failed to provide sufficient conclusive evidence of damages to the extent of the claims filed. On this basis, I find on a balance of probabilities that the landlords have failed to prove their burden. The landlords' application is dismissed without leave to reapply.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$50.00 filing fee paid for this application.

The tenants' are granted a monetary order for \$2,400.00 consisting of the return of the original \$1,200.00 security deposit and compensation for \$1,200.00 pursuant to section 51 of the Act.

The landlords' application is dismissed without leave to reapply.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant an award of \$1,200.00 for their original security deposit and compensation of \$1,200.00 pursuant to section 51 of the Act, plus the recovery of their \$50.00 filing fee

Item	Amount
Return of Original Security Deposit	\$1,200.00
Compensation Section 51	\$1,200.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$2,450.00

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: October 20, 2015

Residential Tenancy Branch

