



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, 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:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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 their filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the documentary evidence by the other party. As such, I find that both parties have been properly served with the notice of hearing packages and the submitted documentary evidence as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and for recovery of the filing fee?

Are the landlords entitled to retain all or part of the security deposit?

Are the tenants entitled to a monetary order for the return of double the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of both parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the claims for both parties and my findings around it are set out below.

This tenancy began on January 1, 2014 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated December 15, 2013. The monthly rent was \$825.00 payable on the 1st day of each month and a security deposit of \$425.00 was paid.

The landlords seek a monetary claim of \$1,025.00 which consists of:

Lost Rental Income (June 2015)	\$825.00
Unpaid Rent (May 2015)	\$200.00

The landlord, A.P. (the landlords) stated that the tenant failed to pay the entire May 2015 rent of \$825.00. The landlords stated that the tenants made a partial payment of \$425.00 and then later made a partial payment of \$200.00. The tenants disputed this claim stating that a verbal agreement was made for the tenant to only pay for ½ of the monthly rent for May 2015. The tenants also provided written submissions that there was a “pre-agreed” verbal arrangement for the tenants to end the tenancy on May 21, 2015 and stated,

...A.P. and I (A.M.) verbally agreed on the exit end of tenancy date of May 21, 2015, proving rent for the month of May 2015 equalling \$200 was in fact not shorted as it was pre-agreed.

The landlords disputed this claim stating that there was no agreement for the tenants not to pay the entire monthly rent as agreed upon. The landlord gave verbal testimony that the premises were re-rented for June 2015.

The tenants seek a monetary claim of \$662.50 for the return of double the security deposit. The tenants clarified that this claim was a request for the doubling of the disputed amount of \$331.25. The tenants stated that the landlords returned only \$18.25 of the original \$425.00 security deposit, except for the agreed upon concession of a \$75.00 cleaning charge.

The tenants stated that she provided her forwarding address in writing to the landlord on May 21, 2015 in a letter dated May 21, 2015. The landlords disputed this stating that no forwarding address in writing was received from the tenants.

Analysis

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it

stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

I find that the landlord has failed to establish a claim for the loss of rental income for June 2015 of \$825.00 as it cannot be demonstrated that the landlord lost any rental income. The landlord provided direct testimony that she was able to re-rent the rental for June 2015. This portion of the landlord's claim is dismissed.

As for the landlord's claim for unpaid rent of \$200.00 for May 2015, I find on a balance of probabilities that the landlord has established a claim. The tenants confirmed that \$200.00 of the May 2015 rent was not paid. Although the tenants provided testimony that a verbal "pre-agreed" arrangement was reached with the landlord to not pay this amount, it was disputed by the landlord. Based on a balance of probabilities, the tenants were unable to provide sufficient evidence to satisfy me that such an arrangement was made. As such, the landlord has established a monetary claim of \$200.00 for unpaid rent for May 2015.

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. However, pursuant to paragraph 38(4)(a) of the Act, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy. Both parties confirmed that the tenancy ended on May 21, 2015. The landlords retained the \$425.00 security deposit and returned \$18.25. The landlords applied for dispute resolution to retain the security deposit on July 6, 2015. Both parties confirmed that the landlords did not have permission from the tenants to retain the security deposit. The landlords confirmed that they do not have authorization from the Residential Tenancy Branch to retain the security deposit. I find that section 38 (6) of the Act applies. The tenants are entitled to an amount of \$425.00 equal to the security deposit paid.

The tenants are entitled to the return of the original \$425.00 security deposit minus the agreed \$75.00 cleaning charge. The landlord is also credited for the \$18.25 returned to the tenants. The landlords must return the remaining balance of \$331.75.

As both parties have been partially successful, I make no order regarding the recovery of their filing fees. The landlords have established a total monetary claim of \$200.00. The tenants have established a total monetary claim of \$756.75. In offsetting these claims, I award to the tenants a monetary order for \$556.75.

Conclusion

I issue a monetary order in the tenants' favour under the following terms which allows the tenants to partially recover their original security deposit plus a monetary award equivalent to the value of their security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the Act:

Item	Amount
Return of the \$425.00 security deposit less \$18.25 already returned by landlord and the agreed upon cleaning charge of \$75.00	\$331.75
Monetary Award for Landlords' Failure to Comply with s. 38 of the Act	425.00
Less Unpaid Rent	-200.00
Total Monetary Order	\$556.75

The tenants are provided with this order in the above terms and the landlord(s) must be served with a copy of this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order 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: November 20, 2015

Residential Tenancy Branch

