



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND,MNR, MNSD, FF

Introduction

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

- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security and pet damage deposits in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant 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 landlord 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 submitted by the other party. Both parties have confirmed receipt of the documentary evidence submitted by the other party. I accept the undisputed affirmed testimony of both parties and 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

Is the landlord entitled to a monetary order for unpaid rent, for damage to the unit and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security and pet damage deposits?

Are the tenants entitled to a monetary order for the return of the security and pet damage deposits and recovery of the filing fee?

Background and Evidence

This tenancy began on July 1, 2014 on a fixed term tenancy ending on June 30, 2015 as shown by the submitted copy of the signed tenancy agreement dated June 8, 2014. The monthly rent was \$1,500.00 payable on the 1st day of each month and a security deposit of \$750.00 and a pet damage deposit of \$750.00 were paid on June 30, 2014. A condition inspection report for the move-in was completed by both parties on June 30, 2014. An incomplete condition inspection report for the move-out was submitted by the landlord.

The landlord seeks a monetary claim of \$2,852.50 which consists of:

Lost Rental Income for June 2015	\$1,500.00
Repairs (bathroom) for Water Damage	\$510.00
Cleaning Fireplace	\$129.00
Replace Screen Door	\$234.00
Photocopying Documents	\$109.50
Cleaning	\$240.00
Repair Walls and Paint	\$80.00
Filing Fee	\$50.00

The landlord relies on:

- 12 photographs of door trim (in bathroom), hardwood transition slip, dirty fan #1, dirty fan #2, damaged outer hallway (outside rental unit), dirty bath and kitchen drawers, items left by tenants, dirty refrigerator, dirty stop top, dirty patio, dirty glass (fireplace) and a ripped screen door.;
- A condition inspection report for the move-in dated June 30, 2014;
- An incomplete inspection report for the move-out dated May 30, 2015;

- An email quote for repairs to condo water damage, flooring, quarter round, baseboard, door jamb, transition strip and wall... materials \$200-250 labour, .8 hours @\$45 (a handwritten notation for a total of \$510.00);
- An email quote for fireplace services (which includes checking the readings on the thermopile, gas valve and switch gear, inspect the glass safety switch, check the glass seal, check logs, burner, pilot orifice and fan, check the burners, logs, and glass for damage, check the logs for placement, check the gas pressures and ensure proper operation of the fireplace) for \$129.00; and
- A business card from a glass company with handwritten notations for a screen door, lab. \$79.00, total, \$234.00.

The landlord stated that the tenants prematurely ended the tenancy on May 31, 2015 instead of the agreed upon date of June 30, 2015 as shown on the signed tenancy agreement. The landlord stated that he immediately began putting ads online at Craigslist as well as other online forums, but was unable to re-rent the unit for June 2015. The tenants confirmed that the tenancy ended on May 31, 2015, but provided no comments on ending the tenancy prematurely.

The tenants seek a monetary claim of \$1,550.00 for return of the \$750.00 security and \$750.00 pet damage deposits and \$50.00 for recovery of the filing fee.

The tenants stated that they provided their forwarding address in writing to the landlord in a letter dated April 24, 2015. The landlord disputed this stating that he first received the tenants forwarding address in an email on May 1, 2015 and again in an email on May 8, 2015.

Both parties confirmed that the landlord did not have permission to retain all or part of the \$750.00 security and the \$750.00 pet damage deposits. The landlord confirmed in his testimony that he did not receive authorization from the Residential Tenancy Branch to retain either the security or pet damage deposits.

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.

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claim for recovery of litigation costs (photocopying) is dismissed.

I accept the undisputed evidence of the landlord and find that the tenants did prematurely end the tenancy on May 31, 2015 instead of the agreed upon June 30, 2015 date. The landlord provided undisputed affirmed testimony that he attempted to mitigate any possible losses by immediately advertising the unit for rent, but was unsuccessful. As such, I find that the landlord has established an entitlement to the loss of rental income of \$1,500.00 for June 2015.

The landlord has alleged that he had to conduct repairs to the rental unit as a result of the tenant's actions. To be successful in such a claim, the landlord 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 tenants. The landlord has provided a completed condition inspection report for the move-in and an incomplete condition inspection report for the move-out along with limited photographs of damage and limited dirty areas requiring cleaning to show a comparison of the rental unit before and after the tenancy began. The landlord has failed to provide sufficient evidence of any receipts or invoices of an actual amount to repair/replace any damage. The landlord instead relied upon two emails for estimates for work and a copy of a business card with handwritten notations of an estimate. The landlord provided testimony that invoices were issued and paid. He failed to provide sufficient evidence in support of this application. On this basis, I find that the landlord has failed to meet his burden of proof in respect of his monetary claim for damages. However, I find on balance of probabilities that a loss did occur. The tenants admitted to leaving the rental unit dirty, which contravenes the requirement under paragraph 37(2)(a) of the Act to leave the rental unit reasonably clean and undamaged at the end of a tenancy. On this basis, I grant the landlord a nominal award of \$120.00.

Section 38 of the Act requires the landlord to either return all of a tenant's security or pet damage deposits or file for dispute resolution for authorization to retain the security and or pet damage deposits 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.

Residential Tenancy Branch Policy Guideline #17, Security Deposit and Set Off, Section 3 Return or Retention of Security Deposit through Arbitration states,

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit

In this case, it is clear based upon the affirmed testimony of both parties that the landlord applied for dispute resolution on June 10, 2015. The tenancy ended on May 30, 2015 as agreed upon by both parties. The landlord received the tenants' forwarding address in writing in a letter dated April 24, 2015 or in one of two emails on May 1 or May 8. In any event the landlord had 15 days from the later of the end of the tenancy or when he received the tenants' forwarding address in writing to return the combined security and pet damage deposits making it June 15, 2015.

Section 38 (7) of the Act states, if a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

In this case the landlord has not provided any details of pet damage that would require the retention of the pet damage deposit. As such, I find that the tenants are entitled to the return of the original \$750.00 pet damage deposit.

As the landlord has failed to comply with section 38 (1) in returning the pet damage deposit within the allowed 15 day timeframe and has failed to provide any details of any damage caused by a pet, I find that the landlord is liable under section 38 (6) of the Act for an amount equal to the \$750.00 pet damage deposit.

The landlord has established a total monetary claim of \$1,620.00. The tenants have established a total monetary claim of \$1,500.00. As both parties have been successful in their applications, I decline to make any orders regarding the filing fee for both.

In offsetting these claims, I find that the landlord may apply the owed \$120.00 against the \$750.00 security deposit currently held by the landlord. The tenants are granted a monetary order for the return of the difference of \$630.00.

Conclusion

I issue a monetary order for \$630.00 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 pet damage deposit as a result of the landlords' failure to comply with the provisions of section 38 of the Act:

Item	Amount
Return of the Original \$750.00 security deposit less the nominal award of \$120.00	\$630.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the Act for the Pet Deposit	1,500.00
Less the Landlord's loss of rental income	-1,500.00
Total Monetary Order	\$630.00

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

