



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the Act) 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;
- 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; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both tenants attended the hearing. Both landlords attended the hearing. All in attendance were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant RaP testified that the tenants served the landlords with the dispute resolution package in the summer by registered mail. The landlord admitted receipt of this package. On the basis of this evidence, I am satisfied that the landlords were served with the dispute resolution package pursuant to section 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of a portion of his pet damage and security deposits? Is the tenant entitled to a monetary award equivalent to the amount of his pet damage and security deposits as a result of the landlord's failure to comply with the provisions of section 38 of the Act? Is the tenant entitled to a monetary award for compensation for damage or loss under the Act, regulation or tenancy

agreement? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

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

This tenancy began 1 May 2015. Monthly rent of \$1,250.00 was due on the first. The landlords continue to hold the tenants' security deposit in the amount of \$625.00. The rental unit occupies the upper level of the residential property. The lower level of the residential property was occupied by the landlords' relatives.

The parties did not enter into a written tenancy agreement although a two-year, fixed-term tenancy agreement was contemplated by the parties. The landlord PD and tenant RaP testified to difficulties in coordinating a place and time for signing.

In respect of utilities, the parties agreed that the utilities would be in the tenants' names. The parties agreed that the landlords would compensate the tenants for 40% of the total utilities for the use attributable to the lower level occupants.

The tenant RoP testified that in mid June he attended at the landlords' property to provide his forwarding address in writing. The tenant RoP testified that he provided a handwritten note to the landlord PD. I was not provided with a copy of the notice. The landlord PD denies receiving a notice from the tenants on this or any other occasion. The landlord PD testified that he did know that the tenants were moving to a relative's home, but testified that he was never provided with the address.

The tenant RaP testified that she provided verbal notice to end the tenancy in late May 2015. The landlord PD testified that the tenants provided verbal notice to end the tenancy two weeks prior to 30 June 2015. The tenancy ended 30 June 2015 when the tenants vacated the rental unit.

The landlord PD testified that the landlords were entitled to retain amounts from the security deposit for the tenants' early termination of the oral fixed-term tenancy agreement and the tenants' short notice.

I was provided with a natural gas invoice dated 29 June 2015 in the amount of \$175.72. The tenant RaP testified this amount represents the current use for that billing period. RaP testified that 40% of this invoice is \$70.29.

I was provided with an electricity invoice dated 21 May 2015 in the amount of \$87.38. The tenant RaP testified this amount represents the current use for that billing period. RaP testified that 40% of this invoice is \$34.95.

I was provided with an electricity invoice dated 29 June 2015 in the amount of \$144.94. The tenant RaP testified this amount represents the current use for that billing period. RaP testified that 40% of this invoice is \$57.98.

I was provided with a security deposit receipt created by the landlord PD. The receipt sets out that the tenancy begins 1 May 2015 with details to be completed in a lease agreement.

I was provided with text messages between the tenant RaP and the landlord PD. In the messages the landlord PD indicates intent to withhold amounts from the security deposit for the end to tenancy.

The tenants claim for \$1,413.22:

Item	Amount
Return of Security Deposit	\$625.00
Subsection 38(6) Compensation	625.00
Gas Utilities	70.29
Hydro Utilities	34.95
Hydro Utilities	57.98
Total Monetary Order Sought	\$1,413.22

Analysis

Section 38 of the Act sets out relevant rules dealing with security deposits:

- (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...

As can be seen from subsection 38(1), the obligations in paragraphs 38(1)(c) and (d) are triggered by the end of the tenancy and receipt of the tenant's forwarding address in writing. The tenant RoP testified that he provided the tenants' forwarding address in June. The landlord PD has testified that he received verbal notification that the tenants were moving in with a relative, but no written notification. There is no corroborating evidence for either version of events.

Where there are conflicting versions of an event and no corroborating evidence for either, I am required to make a finding of credibility. In this case, I prefer the evidence of the landlord PD over that of the tenant RoP. In particular, the tenants' propensity for providing verbal notice in place of written notice makes it less likely that they provided written notice. The text messages between the parties in respect of the deposit always indicate that the tenants intended to meet the landlords in person at their home. This indicates to me that the tenants did not expect the landlords to provide anything to a forwarding address. Overall I find that the landlord PD's evidence accords with the preponderance of the probabilities which a practical and informed person would readily recognise as reasonable.

On this basis, I find that the tenants did not provide their forwarding address in writing in June 2015. Accordingly, the landlords' obligations in subsection 38(1) are not yet triggered. In order to trigger the requirement to return their security deposit the tenants must send their forwarding address in writing to the landlords within one year of the end of the tenancy: see sections 38 and 39. I dismiss the tenants' claim for return of their security deposit as it is premature. The tenants are at liberty to reapply for return of the deposit once they have served the landlords with notice of the tenants' forwarding address in writing and fifteen days have elapsed.

The oral tenancy agreement between the parties was that the landlords would compensate the tenants for 40% of the utilities bills. The tenants have provided adequate evidence that the landlords owe \$163.22 in respect of the various outstanding invoices. I order that the tenants are entitled to recover this amount from the landlords.

As the tenants have been successful in this application, they are entitled to recover their filing fee from the landlords.

Conclusion

The tenants' claim for return of their security deposit and compensation pursuant to subsection 38(6) of the Act is dismissed as it is premature.

I issue a monetary order in the tenants' favour in the amount of \$213.22 under the following terms:

Item	Amount
Gas Utilities	\$70.29
Hydro Utilities	34.95
Hydro Utilities	57.98
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$213.22

The tenants are provided with a monetary order in the above terms and the landlord(s) must be served with 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 subsection 9.1(1) of the Act.

Dated: January 12, 2016

Residential Tenancy Branch

