



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, 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;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

The landlord MB (the landlord) attended on behalf of both landlords. While both tenants attended the hearing, only the tenant VB (the tenant) provided testimony. 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.

Preliminary Issue – Landlords' Late Evidence

The landlords provided late evidence. The tenants confirmed that they were in receipt of the evidence and had time to review it. On the basis that there is no undue prejudice to the tenants, I have considered the landlords' late evidence.

Preliminary Issue – Scope of Application

The landlords submitted evidence in support of their assertion that the tenants caused the landlords losses. The landlords did not file their own application seeking to retain amounts from the tenants' security deposit.

Subsection 59(2) of the Act sets out how a party may begin proceedings:

- (2) An application for dispute resolution must
 - (a) be in the applicable approved form,
 - (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and
 - (c) be accompanied by the fee prescribed in the regulations.

As can be seen from subsection 59(2), the only way to commence a proceeding before this Branch is to file a dispute with full particulars and after paying the prescribed fee. The landlords have not made any application for dispute resolution of their own. Therefore, I have no authority to consider any request for monetary compensation by the landlords.

Residential Tenancy Policy Guideline, “17. Security Deposit and Set off” (Guideline 17) sets out that:

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:

- If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant’s forwarding address is received in writing;
 - If the landlord has claimed against the deposit for damage to the rental unit and the landlord’s right to make such a claim has been extinguished under the Act;
 - If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;
 - If the landlord has obtained the tenant’s written agreement to deduct from the security deposit for damage to the rental unit after the landlord’s right to obtain such agreement has been extinguished under the Act;
- whether or not the landlord may have a valid monetary claim.

At the hearing I informed the tenants and landlord that I would be applying subsection 38(1) and (6), as well as Guideline 17 in this matter. I then asked the tenant if the tenants were waiving their right to doubling of the deposit. The tenant informed me that the tenants were not and that their failure to include the doubled amount in their application was done out of inadvertence. On this basis the issue of doubling the security deposit is at issue.

The tenants set out in their application that they seek recovery of \$75.00 in sewer fees; however, the tenants did not indicate in the issues checklist that they sought a monetary order for compensation for damage or loss under the Act, regulation or tenancy

agreement. I accept that, despite not checking the box indicating that the tenants were seeking this relief, the remedy is sufficiently pleaded so that the landlords understood that this claim was being advanced.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for the return of their security deposit? Are the tenants entitled to a monetary award equivalent to the amount of their security deposit 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 order for compensation for damage or loss under the Act, regulation or tenancy agreement? Are the tenants 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 testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

This tenancy began 31 August 2014 and ended 31 August 2015. Monthly rent in the amount of \$1,050.00 was due on the first. The landlords collected a security deposit in the amount of \$525.00, which they continue to hold.

The parties entered into a written tenancy agreement on 5 July 2014. That agreement was on the Residential Tenancy Branch standard form and included a one-page addendum. The addendum set out that the tenants were responsible for the sewer bill.

The landlord testified that the parties conducted a condition inspection at the beginning of the tenancy. The landlord testified that the parties filled out an inspection report on the Residential Tenancy Branch standard form. The landlord testified that he delivered this report to the tenants. The tenants could not recall receiving this report, but did recall walking through the rental unit.

The parties agree that they did not conduct a condition inspection together at the end of the tenancy. The meeting was complicated by the fact that the landlords were out of town at various points at the end of tenancy. The landlord testified that the landlords' attempts to arrange an inspection time were frustrated by the tenants' refusal to answer their phone. The tenants deny this. The landlord admits that the landlords did not send any written notice of the end of tenancy condition inspection.

The tenant testified that the tenants delivered their forwarding address by mail to the landlords on 11 September 2015. The landlord admits that the landlords received the tenants' forwarding address by mail.

The tenants did not authorize the landlords to retain any amount from the security deposit. The parties agree that there are no outstanding orders of this Branch.

The tenant testified that the tenants paid \$100.00 for the annual sewer fee in June 2015. The tenant testified that this was the only amount paid by the tenants in the year they occupied the rental unit. The tenants seek return of a prorated amount for the time that the tenants did not occupy the rental unit.

Analysis

Pursuant to subsection 35(2) of the Act, a landlord must offer a tenant at least two opportunities, as prescribed, for the inspection at the end of the tenancy. The details of this scheduling requirement are prescribed in section 17 of the Residential Tenancy Regulation (the Regulation). In particular, the second opportunity must be a notice in the approved form.

Pursuant to subsection 36(2) of the Act, the landlord's right to claim against a security deposit is extinguished if the landlord does not comply with subsection 35(2) of the Act. As the landlords failed to comply with subsection 35(2) of the Act, the landlords' right to claim against the tenants' security deposit was extinguished. This extinguishment does not prevent a landlord from seeking compensation for damages or losses under the Act.

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 fifteen 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.

The tenancy ended 31 August 2015. The landlords were deemed to have received the tenants' forwarding address on 16 September 2015. In accordance with subsection 38(1), the landlords had until 1 October 2015 to return the tenants' security deposit or make an application to the Residential Tenancy Branch. The landlords did not take either action. Accordingly, pursuant to subsection 38(6) of the Act, the tenants are entitled to an award of double their security deposit.

The tenants seek recovery of \$75.00 for what they submit is an over contribution of the sewer fee. The tenant testified that the \$100.00 was for the year starting June 2015 and ending May 2016. The tenant admits that the tenants did not pay any amount for their use of the sewer prior to June 2015. On the basis of the addendum to the tenancy agreement, I find that the tenants were responsible for the full amount of the invoice to compensate for their use of the sewer for one year. On this basis, I refuse the tenants claim for \$75.00 for the sewer bill.

As the tenants have been successful in their application, they are entitled to recovery the \$50.00 filing fee paid from the landlords.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$1,100.00 under the following terms:

Item	Amount
Return of Security Deposit	\$525.00
Subsection 38(6) Compensation	525.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,100.00

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: April 13, 2016

Residential Tenancy Branch