



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNSD, MND

Introduction

This hearing dealt with the landlord's and tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

The landlord applied for the following:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization ~~to retain the tenant's security deposit in partial satisfaction of the monetary order requested~~ for the return of the double the tenants security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the ~~tenant~~ landlord, pursuant to section 72.

Both parties attended the hearing and 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 parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Is the tenant entitled to a monetary award equivalent to double the value of his 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 recover the filing fee for this application from the landlord?

Background, Evidence

The tenants' testimony is as follows. The tenancy began on March 14, 2016 and ended on May 1, 2016. The tenants were obligated to pay \$1700.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$850.00 security deposit. The tenants testified that the relationship with the landlord deteriorated quickly and that both parties agreed to end the tenancy before the one year as originally agreed. The tenants testified that the tenants dispute any responsibility for the damages that the landlord claims. The tenants testified that the landlord did not conduct a written condition inspection report at move in. The tenants testified that the landlord conducted a written condition inspection report at move out. The tenants testified that they provided their forwarding address on April 20, 2016 in writing and again on May 1, 2016 at the move out inspection. The tenants are seeking the return of double the security deposit as the landlord has not returned it as well as the recovery of their filing fee.

The landlord gave the following testimony. The landlord stated that the female tenant threw tampons into the toilet causing the sump pump to get plugged, thus burning out the motor and having the water back up into their mechanical room. The landlord testified that because of that backup the water damaged the cable and internet wiring. The landlord testified that they have incurred costs to replace the sump pump and the cable and internet wiring. The landlord testified that after the tenants moved out she became aware that the washing machine was not

working and had it serviced. The landlord testified that the technician found “barber pins, allen key and coins” in the machines pump. The landlord is seeking the recovery of these costs along with the filing fee.

The landlord is applying for the following:

1.	Repair and Replace Pump	\$1000.00
2.	Replace Cable and Internet wiring	\$350.00
3.	Service Washing Machine	\$126.00
4.	Filing Fee	\$100.00
5.	Minus Deposit being held	-\$850.00
6.		
	Total	\$726.00

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the each party’s claim and my findings around each are set out below.

Firstly, I address the tenants’ application as follows.

The tenants are applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that 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.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord did not return the deposit within 15 days and did not file an application to retain the deposit until almost two months after they received the tenants forwarding address, accordingly; the tenants are entitled to the return of double the security deposit: $\$850.00 \times 2 = \1700.00 . The tenants are also entitled to the recovery of the \$100.00 filing fee for a total monetary award of \$1800.00.

I address the landlords claim as follows.

1. Repair and Replace Pump \$1000.00 and Replace Cable and Internet wiring \$350.00.

The landlord testified that the pump became plugged with tampons on March 22, 2016 that required a technician to clean the pump out at a cost of \$200.00. The landlord testified that the pump became plugged again on April 12, 2016 that required the pump to be replaced for a cost of \$800.00. Due to the pump getting plugged, the water backed up in the electrical room and damaged cable and internet wiring. The landlord testified that the technician found old tampons in the pump and that the female tenant must be responsible for all of this damage.

The female tenant stated that she did not begin her menstrual cycle until March 27, 2016 and did not throw tampons into the toilet at that time. The female tenant testified that she may have thrown one or two "flushable" tampons into the toilet in early April but contends that they are flushable and would not cause a blockage.

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.

Based on the testimony and documentation before me, the landlord has not provided sufficient evidence to satisfy me on a balance of probabilities that the tenant was responsible for this claim and I therefore dismiss this portion of their claim.

2. Washing Machine Service - \$126.00.

The landlord testified that she believes the tenants forgot to remove some personal items from their clothing and that barber pins, an allen key and coins ended up plugging the pump requiring a technician to come and remove the items. The tenants adamantly dispute this claim. The tenants testified that they do not have allen keys or barber pins. The tenants submit that the washing machine was an older model and that it could have been a result of the previous tenants.

As outlined above, the landlord bears the burden of proving that the tenants are responsible. Based on the testimony and documentation before me, the landlord has not provided sufficient evidence to satisfy me on a balance of probabilities that the tenant was responsible for this claim and I therefore dismiss this portion of their claim.

The landlord has not been successful in their application.

Conclusion

The tenants have established a claim for \$1800.00. I grant the tenants an order under section 67 for the balance due of \$1800.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlords' application is dismissed.

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 14, 2016

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON **(November 15, 2016)**
AT THE PLACES INDICATED.

Residential Tenancy Branch