



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF (Tenant's Application)
 MND, MNR, MNSD, FF (Landlord's Application)

Introduction

This hearing convened as a result of cross applications wherein each party sought monetary compensation from the other, orders with respect to the security deposit and recovery of the filing fee.

The hearing was conducted by teleconference on April 19, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenant?
2. What should happen with the Tenant's security deposit?
3. Should either party recover the filing fee?

Background and Evidence

The Tenant testified that the tenancy began December 15, 2015. She stated that she paid \$1,000.00 per month in rent which was raised to \$1,050.00 on May 1, 2016. She

paid \$400.00 as a security deposit on December 15, 2015. She stated that the Landlord did not perform a move in condition inspection report.

The Tenant testified that the tenancy ended on June 16, 2016. She further testified that the Landlords did not perform a move out condition inspection. She stated that she gave her Landlord her forwarding address in writing on September 9, 2016; a copy of this handwritten letter was provided in evidence.

The Landlord, D.J., testified on behalf of the Landlords. He confirmed that he did not perform a move in condition inspection report as required.

D.J. claimed that the Tenant paid a security deposit in the amount of \$300.00, not \$500.00 as provided for in the residential tenancy agreement.

D.J. also claimed that he did not receive the September 9, 2016, handwritten letter from the Tenant with her forwarding address. He confirmed that he lives in a different community than the community in which the rental unit is located. He also claimed that as of May 2016, the upstairs unit (the address to which the Tenant's forwarding address was sent) was vacant. He stated that he received her forwarding address when she applied for Dispute Resolution in October of 2016.

D.J. testified that the Tenant moved out June 30, 2016 and he paid the Tenant the \$200.00 she sought as return of her security deposit.

D.J. stated that the Tenant agreed to the Landlord retaining the balance of the Tenant's security deposit in the amount of \$100.00.

In support of their claim the Landlords submitted a Monetary Orders Worksheet indicating that the Landlords sought compensation in the amount of \$1,482.56 for the following:

Balance of rent owed for May 2016	\$100.00
"unpaid rent: your Husband lived more than three weeks"	\$300.00
Stove damage	\$69.40
Broken entry lock	\$115.36
Dumping grease in toilet, 2 washroom drains	\$247.80
Damage to drywall	\$500.00
Missing parts of blinds	\$100.00
Increase in rent because Tenant occupied "all space behind	\$50.00

house and under sundeck”	
TOTAL	\$1,482.56

D.J. stated that the Tenant’s former husband moved in for three weeks and he believed that he was entitled to charge the Tenant an additional \$300.00 for his presence in the rental home as he rented to her, not to her husband.

D.J. also stated that he has not paid for the drywall repair as he is waiting for his current tenant to go on holidays.

D.J. also claimed that the Tenant damaged the blinds and he estimated the cost of \$100.00 for their repair.

D.J. also claimed \$50.00 for the Tenant occupying more space than permitted in the tenancy agreement, and allowing her male friends to smoke in that area. He confirmed that this was the increase in rent he was expecting the Tenant to pay.

M.J. also testified on behalf of the Landlords. He confirmed that the tenancy began December 15, 2014, not 2015 as the Tenant testified.

M.J. also stated that did not receive the Tenants forwarding address in writing. He further testified that he originally lived in the upstairs unit, and moved out “near the end of the tenancy” although he could not be more specific.

In reply, the Tenant confirmed that she paid \$400.00 as a security deposit, not \$500.00 as provided for on the tenancy agreement. She also confirmed that he returned \$200.00 and retained \$200.00.

In response to the \$100.00 claimed for unpaid rent for May 2016, the Tenant stated that she paid \$900.00 as that was proposed by the Landlord. She stated that she paid by electronic transfer because she was afraid of the Landlords. She said that they asked her to pay in cash and they would reduce her rent to \$900.00 which is what she paid.

The Tenant stated that the stove was damaged when she moved in and that it was a “cheap stove”, and she kept it as clean as she could by using tin inserts to make them look better.

In response to the Landlords’ claims regarding the broken entry lock the Tenant stated that it was already broken. She also stated that she brought this up with them on several occasions and it was a constant issue.

In response to the Landlords' claim that she put grease down toilet she stated that she would never do that and has no malice towards anyone. She confirmed that she did not have any problems with the toilets when she lived in the rental unit.

In response to the Landlords' claim regarding "damage to the drywall", she stated that the stopper was broken, and when she opened the door the knob went into the wall. She said that she spoke to someone about fixing this and the quote she received was \$50.00.

In response to the Landlords' claims regarding the blinds the Tenant confirmed that the top part came off when she was cleaning and she put the piece in the suite, in a cubbyhole.

In response to the Landlords' claim that she was to pay \$50.00 for extra storage, the Tenant stated that the Landlords told her that she could store items in this area as her mother had passed away and she inherited some of her mother's belongings.

Analysis

I will first deal with the Tenant's claim for return of her security deposit.

Section 38 of the *Residential Tenancy Act* provides as follows:

Return of security deposit and pet damage deposit

38 (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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) 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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenants evidence that she paid a security deposit in the amount of \$400.00. I also accept her evidence that she did not agree to the Landlords retaining any portion of her security deposit.

I find that the Tenant provided her forwarding address to the Landlords by letter dated September 9, 2016. Where the parties' evidence conflicts in this regard, I prefer the Tenant's as I found her to be forthright and consistent. The Landlords claimed they lived in a different community, yet the address for service as noted on the tenancy agreement was the rental unit. M.J. also stated that did not receive the Tenants forwarding address in writing as he claimed to have moved out "near the end of the tenancy". Had this been the case, it was M.J.'s responsibility to provide the Tenant with an updated address for service.

The Landlords failed to apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38(1) of the *Act*.

By failing to perform incoming or outgoing condition inspection reports in accordance with the *Act*, the Landlords also extinguished their right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the *Act*.

The security deposit is held in trust for the Tenants by the Landlord. The Landlords may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenants an Order from an Arbitrator. If the Landlords believe they are entitled to monetary compensation from the Tenants, they must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenants' security deposit. Here the Landlords did not have any authority under the *Act* to keep any portion of the security deposit.

Residential Tenancy Policy Guideline 17—Security Deposit and Set Off provides as follows:

5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

- Example B: A tenant paid \$400 as a security deposit. During the tenancy, the parties agreed that the landlord use \$100 from the security deposit towards the payment of rent one month. The landlord did not return any amount. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount that remained after the reduction of the security deposit during the tenancy. In this example, the amount of the monetary order is \$600.00 ($\$400 - \$100 = \300; $\$300 \times 2 = \600).

Example C: A tenant paid \$400 as a security deposit. The tenant agreed in writing to allow the landlord to retain \$100. The landlord returned \$250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained \$50 without written authorization.

The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of the monetary order is \$350 ($\$400 - \$100 = \$300 \times 2 = \600 less amount actually returned \$250).

Note: Interest is not included in the examples above, for the sake of simplicity. Interest is calculated on the original security deposit amount, before any deductions are made, and it is not doubled.

I find the case before me fits into Example A, as the Tenant did not authorize the Landlords to retain any portion of her deposit.

Therefore, the Tenant's initial deposit of \$400.00 is to be doubled to \$800.00. The amount paid to her is deducted from this sum such that she is entitled to return of **\$600.00**.

I will now address the Landlords' claims.

I find the Landlord is entitled to **\$100.00** for the balance of the May 2016 rent. The Tenant alleged the Landlords agreed she could pay \$100.00 less provided she pay in cash. She provided no supporting evidence for this claim and I therefore find she was to pay rent as required by the tenancy agreement.

I dismiss the Landlords' claim for \$300.00 for the Tenant's husband residing in the rental unit. A Landlord is prohibited from charging for occupants unless expressly authorized by the tenancy agreement.

The Tenant claimed the stove was in the same condition at the end of the tenancy as at the beginning. Without a move in condition inspection report, or photos as to the condition of the rental at the start of the tenancy, I am unable to find that the Tenant damaged the stove top. I therefore dismiss the Landlords' claim for related compensation.

Similarly, I am unable to find the Tenant broke the entry lock, or "dumped grease" in the toilets.

Based on the photos submitted, I find the Landlords are entitled to compensation for damage to the drywall. However, I find the amount claimed to be excessive. I also note the Landlords have not incurred this expense as they are waiting for their current tenant

to go on holidays. I award the Landlord **\$100.00** as a nominal amount for the repair to the drywall.

The Tenant testified that the top of the blind came off while she was cleaning and that she left it in the rental unit. I accept her testimony that she did not remove, or lose this part. I further note that the Landlords failed to provide any evidence to support his claim for \$100.00 for this missing part. I therefore dismiss their claim for related compensation.

I dismiss the Landlords' claim for \$50.00 for increased rent based on their claim that the Tenant occupied "all space behind house and under sundeck". The Landlords failed to submit any evidence to support a finding that the Tenant breached the tenancy agreement by storing items outside, or that the Landlord suffered a related loss.

I therefore award the Landlords the sum of **\$200.00** calculated as follows.

Balance of rent owed for May 2016	\$100.00
Damage to drywall	\$100.00
TOTAL	\$200.00

Conclusion

The Tenant is entitled to the sum of \$600.00 representing double her security deposit less the \$200.00 already paid. As she has been substantially successful, I also award her recovery of the **\$100.00** filing fee for a total of **\$700.00**. This is to be offset against the **\$200.00** awarded to the Landlord such that the Tenant is given a formal Monetary Order in the amount of **\$500.00**.

The Tenant must serve the Order on the Landlords and may file and enforce it in the Small Claims division of the Provincial Court 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: April 28 2017

Residential Tenancy Branch

