



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNSD, OLC

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt with the tenant's application for:

- a Monetary Order pursuant to section 67 of the *Act*;
- a return of the security deposit pursuant to section 38 of the *Act*;
- an Order for the landlord to comply with the *Act* pursuant to section 62; and
- recovery of the filing fee from the tenants pursuant to section 72 of the *Act*.

Both the tenant and the landlords attended the hearing. Both parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant gave sworn testimony that an Application for Dispute Resolution and evidentiary package were sent by way of Canada Post Registered Mail to the landlords. The landlords acknowledged receipt of these packages. Pursuant to sections 88 and 89 of the *Act* the landlords are found to have been served with these documents in accordance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order?

Is the tenant entitled to a return of the security deposit?

Can the tenant recover the filing fee from the landlords?

Background and Evidence

Both parties testified at the hearing that the tenancy in question began on December 1, 2016 and ended on February 12, 2017. Rent was \$1,200.00 per month and a security deposit of \$600.00 continues to be held by the landlords.

On February 14, 2017 the landlords were awarded an Order of Possession by way of Direct Request for unpaid rent. Based on the adjudicator's decision of February 14, 2017 it was found that the landlords were entitled to an Order of Possession for unpaid rent owing for February 2017, as of February 8, 2017.

The tenant explained that she is seeking a Monetary Order of \$8,754.43 for the expenses she incurred as a result of an Order of Possession being issued for non-payment of rent. In addition to a Monetary Order, the tenant is seeking a return of the \$600.00 security deposit currently held by the landlords.

During the course of the hearing the tenant explained that following being served with the Direct Request Proceeding documents on February 9, 2017, she informed the landlords that she would be vacating the rental unit the following week. On February 12, 2017 the tenant moved out of the rental suite. The landlords testified that they had not yet served the tenant with the Order of Possession.

The tenant submitted a figure of \$8,754.43 as a reflection of the costs she incurred between February 12, 2017 and March 16, 2017. This number includes the costs associated with:

Item	
February 12 moving expenses	\$494.81
March 16 moving expenses	386.00
Storage of belongings	516.23
Certified Cheque	709.00
Fuel to commute from work and school	234.64
Meals	409.75
Lost Wages	1,104.00
Mutual End of Tenancy for own Property	2,800.00
Loss of perishable foods	200.00
Return of Filing Fee	100.00
Return of Security Deposit	600.00
Return of Rent for January 2017	1,200.00
Total =	\$8,754.43

Analysis – Monetary Order

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. In this case, the onus is on the tenant to prove her entitlement to her claim for a monetary award.

While the tenant provided receipts and a detailed explanation of the financial losses she incurred, the tenant did not establish how the landlords have violated an agreement or contravened the *Act*. This tenancy ended on February 14, 2017 when a 2 Day Order of Possession was issued to the landlords by an adjudicator with the *Residential Tenancy Branch* for non-payment of rent. The adjudicator found that the effective end date of the tenancy was February 12, 2017.

The tenant has sought to recoup money for expenses that arose as a result of her eviction order. In seeking and receiving an Order of Possession, the landlords have not violated the *Act* and are therefore, not responsible for any costs incurred by the tenant after she vacated the rental unit.

The tenant's application for a Monetary Order is therefore dismissed.

Analysis – Return of Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit. One of these actions must occur within 15 days after the *later* of either the end of the tenancy and/or upon receipt of the tenant's forwarding address in writing.

During the hearing, both parties acknowledged that condition inspection reports were not performed at the start or at the conclusion of the tenancy. The onus is therefore on the landlords to return the security deposit within 15 days of receiving the tenant's forwarding address in writing. Testimony was provided to the hearing by the tenant that the tenant provided the landlords with her forwarding address on February 12, 2017 when she vacated the rental unit. The landlords confirmed this date.

As the landlords did not either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit within 15 days of receipt of this

address, the landlords in accordance with section 38(6) of the *Act* must repay double the amount of the security deposit to the tenant.

Section 38(6) notes, if a landlord does not repay the deposit or apply for dispute resolution within 15 days after having received the tenant's forwarding address or following the conclusion of the tenancy, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

As part of their evidentiary package, the landlords have made some submissions concerning damage they may have suffered as a result of the tenancy. I cannot consider any of these matters because the landlords have not submitted any applications to the *Residential Tenancy Branch* for dispute resolution.

Pursuant to section 38(6)(b) of the *Act*, the landlords are required to pay a monetary award equivalent to double the value of the security deposit. I am making a Monetary Order in the tenant's favour in the amount of \$1,200.00 for this item.

As the tenant was partially successful in her application, she is entitled to recovery of \$50.00, equivalent to half of the \$100.00 filing fee.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$1,250.00 against the landlords. The tenant is 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 landlords 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: April 27, 2017

Residential Tenancy Branch