



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("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 obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and gave affirmed evidence. The landlord stated that he did not receive any of the tenants' documentary evidence for this hearing. The tenant provided evidence by way of Canada Post Tracking numbers to show that the landlord was served at his current residence but the package was unclaimed; accordingly I am satisfied that the tenant sent the landlord their documentary evidence on January 18, 2017 in accordance with Section 89 of the Act and was deemed served five days later in accordance with Section 90 of the Act. The tenant testified that she did not receive any documentation from the landlord. However, after some discussions it became clear that the tenant had received the landlords letter in October 2016 outlining his concerns about the unit and therefore that documentation was included as part of this hearing.

Issues to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of her 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 as compensation for loss or other money owed?

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 November 1, 2015 and ended on September 30, 2016. The tenants were obligated to pay \$1050.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$525.00 security

deposit and a \$525.00 pet deposit. The tenant testified that she and the landlord conducted move in and move out condition inspection reports. The tenant testified that at the move out inspection the landlord advised her that everything was “fine” and that she would be receiving her deposits back. The tenant testified that she provided her forwarding address to the landlord at that move out inspection.

The tenant testified that during her tenancy there were 7-9 occasions of pipes, taps, or appliances leaking water. The tenant testified that due to these leaks it caused damage to her personal property including; photos, Christmas decorations and other personal belongings. The tenant testified that the landlord returned \$282.35 of her deposit. The tenant testified that she did not give the landlord her permission to deduct any amount. The tenant testified that she would like a total reward of \$3000.00 to cover the return of her deposits, replace her personal items and one month’s loss of use of the dishwasher.

The landlord gave the following testimony. The landlord testified that the tenant left the unit dirty and with some minor damage. The landlord testified that it was clear she damaged the unit so he returned to her what he thought was appropriate. The landlord testified that he addressed any and all issues with the unit in a quick and timely manner. The landlord testified that the tenant should have had “tenants insurance” to cover any damages that she may have suffered. The landlord testified that he noticed even more damage in the unit after he had already mailed her a cheque. The landlord testified that the pet deposit was \$300.00, not \$525.00 as claimed by the tenant.

Analysis

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

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 on their claim.**

Firstly, I address the issue of the deposit. The landlord testified that he did not have the tenants' permission to retain any portion of the deposit, did not have an order from the Branch allowing him to keep it, and did not file an application for dispute resolution.

Section 38 of the Act addresses this issue as follows:

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.

Based on the landlords own testimony, I find that he has not complied with Section 38 and therefore the tenant is entitled to the return of double her security and pet deposits minus the amount previously returned. However, as the tenant is the applicant, they must provide evidence to support the amount they are seeking. The tenant has not provided supporting evidence to show how much she paid for the pet deposit. In addition the tenant was unclear and changed her testimony as to the amount of the pet deposit. I found that the landlord was clear and concise on this issue and I therefore find on a balance of probabilities, that the amount paid for the pet deposit was \$300.00.

The tenant is entitled to \$825.00 in deposits X 2 minus \$282.35 = \$1367.35.

The remainder of the tenants' monetary claim is for the cost to replace her damaged items and the loss of use of the dishwasher for a month. However, the tenant was very general and vague in terms of the damage to her personal belongings and the specific costs to replace them. Furthermore, as per section 67 of the Act and as outlined above, the applicant must provide actual proof of the costs incurred. The tenant has not provided sufficient evidence of that. Also, as to the loss of use of the dishwasher; once again the tenant was very general in her testimony and as to the costs. I asked the tenant on two occasions to provide a breakdown of costs and her response was different each time. Based on the insufficient and unreliable evidence before me, I dismiss this portion of the tenants' application.

The tenant is entitled to the recovery of the \$100.00 filing fee for this application.

Conclusion

The tenant has established a claim for \$1467.35. I grant the tenant an order under section 67 for the balance due of \$1467.35. This order may be filed in the Small Claims 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 25, 2017

Residential Tenancy Branch