



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC MNSD O

Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the “*Act*”).

The tenant seeks:

- a Monetary Order for damage or loss under the *Act* pursuant to section 67;
- a return of the security deposit pursuant to section 38;
- a return of the filing fee pursuant to section 72; and
- unspecified Other relief

The landlords seek:

- a Monetary Order for money owed for loss under the *Act* pursuant to section 67;
- a return of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application pursuant to section 72.

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 landlords were represented at the hearing by landlord, C.S. (the landlord).

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 on February 6, 2017. 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*.

The tenant acknowledged receiving the landlords’ Application for Dispute Resolution and evidentiary package in person on April 10, 2017. Pursuant to sections 88 and 89 of

the *Act* the tenant is found to have been served with these documents in accordance with the *Act*.

Issue(s) to be Decided

Can the landlords retain the security deposit?

Is either party entitled to a Monetary Order?

Is either party entitled to a recovery of their filing fee?

Background and Evidence

Both parties testified at the hearing that the tenancy in question began on November 1, 2016 and ended on January 30, 2017. Rent was \$950.00 per month and a security and pet deposit of \$675.00 continues to be held by the landlords. The landlord explained that this property was purchased from its previous owner with the tenant occupying the rental unit.

On January 27, 2017, the parties entered into a settlement agreement whereby an Order of Possession was granted to the landlords to take effect on January 31, 2017. In addition to granting the Order of Possession, the arbitrator dismissed the landlords' application for a Monetary Order for \$285.00 to cover the costs of storage fees that were paid due to storing the landlords' items in a storage locker. Additionally, the arbitrator during this settlement agreement dismissed the landlords' application to withhold the security and pet deposits, saying, "The landlord's claim towards the tenant's security deposit and pet damage deposit is premature as the tenancy does not end until January 31, 2017 at 1:00 p.m." No other findings were recorded as being part of this settlement agreement.

The landlord explained that the landlords are seeking a Monetary Order of \$1,744.88, as well as an order to retain the security and pet deposits and a return of the filing fee.

The landlords' claim for a Monetary Order is detailed as follows:

Item	Amount
Replacement of Garden Shed	\$1,314.88
Labour to assemble garden shed	110.00
Labour to clean and remove shower unit	220.00
Return of Filing Fee	100.00

Retention of Security (\$475.00) and Pet Deposits (\$200.00)	(-675.00)
Total =	\$1,069.88

The landlord stated that the landlords sought this amount because of the loss they incurred as a result of the tenant removing a garden shed from the property which was owned by the landlords. The landlord stated that the \$1,314.88 reflected in her Monetary Order worksheet represented the cost associated with replacing the missing shed. The tenant does not deny removing a shed from the property; however, he maintained that he had permission to take this shed down and should therefore not be responsible for replacing it. A copy of the residential tenancy agreement was submitted as part of the landlords' evidentiary package. A close examination of the residential tenancy addendum notes in Section 10 of that, *the tenant shall not make or cause any structural alterations to the premises*. Furthermore, the landlord testified that at no point was the tenant granted any form of permission to remove this shed from the property. Numerous requests were made by the landlords and the police department for the tenant to return the shed to the landlords.

The landlords are also seeking compensation for the labour costs associated with rebuilding this new shed, along with the labour costs that they incurred as a result of the grout and shower unit that needed replacing in the rental unit. The landlord explained that the shower was very dirty and covered in mould. Despite several efforts to clean it, the landlords could not return it to an acceptable condition and it was replaced.

Both parties acknowledge that an end of tenancy condition inspection was set to occur on January 30, 2017 and that the tenant's forwarding address was received on this date. Due to an unforeseen emergency, the tenant informed the landlords 30 minutes prior to their scheduled meeting time, that he was unable to attend the end of tenancy inspection. The landlords and the previous property owner completed this inspection without the tenant. The landlord explained that she invited the previous property owner to perform the inspection with the parties as a condition inspection report was not completed at the start of the tenancy. She said the previous owner and tenant were, therefore the only people with knowledge of the condition of the suite prior to the landlords' purchasing the property.

The tenant testified that he is seeking a Monetary Order of \$1,375.00. This amount reflects a return of the security and pet deposits, as well as labour costs that he incurred removing and rebuilding a garden shed, and loss of enjoyment of the rental unit by having his parking spot removed. It does not include a return of the filing fee which the tenant indicated on his application for dispute resolution that he was looking to recover.

The tenant's Monetary Order is detailed as follows:

Item	Amount
Return of Security (\$475.00) and Pet Deposits (\$200.00)	\$675.00
Labour to assemble garden shed (10 hrs @ \$25.00/hr)	250.00
Loss of parking space (\$10.00/day @ 45 days)	450.00
Return of Filing Fee	100.00
Total =	\$ 1,475.00

The tenant provided testimony that he sought reimbursement for labour associated with disassembling and then later reassembling the garden shed that was removed from the landlords' property. He stated that he and S.W., had to work for ten hours to perform this task. The tenant continued by saying that he paid S.W. for his time and efforts and he should therefore be compensated for the loss he incurred.

The tenant is also seeking \$450.00 for the loss of a parking stall he says was taken from him by the landlords. The tenant produced a copy of the tenancy agreement that notes this tenancy includes parking for 1 vehicle. In the rental agreement addendum for the property, item #2 notes "the tenant agrees to refrain from blocking the common driveway with their vehicle or their guests' vehicles. There is only one guaranteed space for tenant vehicles. Guests may park on the driveway only if they do not block the landlords' vehicles, on the common area designated for parking in the subdivision, or on the street as appropriate."

The tenant acknowledged that he sometimes had numerous vehicles on the property, but stated that these were only ever there for short periods of time and he only maintained one vehicle on the property permanently. The landlords explained that a previous arbitration had ruled that this matter fell outside the scope of the current tenancy and could therefore not be considered. After reviewing the settlement agreement reached by the parties on January 27, 2017 I am unable to find any information to confirm the landlords' assertion. The settlement agreement entered into by the parties on January 27, 2017 is silent on the issue of parking.

Analysis – Security Deposit

Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy and or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security

deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so, has been issued by an arbitrator.

No evidence was produced at the hearing that the landlords applied for dispute resolution within 15 days of receiving a copy of the tenant's forwarding address or following the conclusion of the tenancy on January 30, 2017. If the landlords had concerns arising from the damages that arose as a result of this tenancy, the landlords should have applied for dispute resolution to retain the security deposit within this 15 day time frame. It is inconsequential if damages exist, if the landlords do not take action to address these matters through the dispute resolution process. The landlords cannot decide to simply keep the security deposit as recourse for their loss.

While the landlords acknowledged that they kept the \$675.00 security and pet deposit because of damages and losses they incurred, the landlords did not receive the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a) of the *Act*, nor did they receive an order from an Arbitrator enabling them to do so.

Pursuant to section 38(6)(b) of the *Act*, a landlord is required to pay a monetary award equivalent to double the value of the security and pet damage deposit. I am therefore making a monetary award in the tenant's favour in the amount of \$1,350.00 for the pet damage and security deposits that have not been returned.

Analysis – Monetary Order (Tenant)

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 his entitlement to his claim for a monetary award.

The tenant sought \$250.00 for the labour costs associated with the assembly and disassembly of the shed, along with \$450.00 for the loss of enjoyment of the rental unit due to the removal of his parking.

Examining first the tenant's request for compensation related to the labour associated with the fabrication of the garden shed, I turn to a close examination of section 67 of the *Act*. This section only allows for compensation when a claimant has proved the existence of the damage stemming directly from a violation of the rental agreement or a contravention of the *Act* on the part of the other party. Little evidence was presented at the hearing that any part of the rental agreement included a provision for the tenant to remove the garden shed following the conclusion of the tenancy. In addition, evidence and testimony were produced by the landlords indicating that the tenant had no actual right to remove the shed from the property. The tenant's claim for the labour costs associated with work to the shed is therefore dismissed.

The tenant also sought \$450.00 for the loss of a parking stall. During his oral submissions and as evidenced in his evidentiary package, the tenant explained that the tenancy agreement allowed for him to keep one vehicle on the property. While it is evident that the tenancy agreement did provide parking for one vehicle on the property, photographic evidence presented to the hearing by the landlords demonstrated that at numerous times several vehicles were present on the property. Furthermore, the landlord testified that on numerous occasions she received complaints from neighbours concerning the vehicles on the property and she recounted an incident where one of the tenant's cars was blocking the route for an ambulance to pass. In addition, the tenant has failed to prove how he suffered a loss under section 67 of the *Act*. The tenancy agreement signed by the parties' notes, *the tenant agrees to refrain from blocking the common driveway with their vehicle or their guest's vehicles*. Evidence produced at the hearing demonstrates that at various times the tenant violated this agreement by permitting numerous vehicles on the property, some of which interfered with and blocked access for the landlords and the neighbours. The tenant's application to receive compensation for the loss of a parking stall is therefore dismissed.

Analysis – Monetary Order (landlords)

Section 7(1) and (2) of the *Act* explains that a tenant who does not comply with this Act, the regulations or their tenancy agreement, must compensate the other for damage or loss that results. Section 7(2) establishes that a landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The landlords are seeking a Monetary Order of \$1,744.88. As the issue of the security deposit has already been discussed above, I will focus solely on the Monetary Order seeking compensation for loss that has allegedly resulted from the tenancy. Specifically the landlords sought replacement of the garden shed (\$1,314.88) along with compensation for the labour required to rebuild the shed (\$110.00) and the cleaning that was needed in the bathroom following the conclusion of the tenancy (\$220.00).

Both parties agree that the tenant removed the garden shed from the property. Section 10 of the rental agreement addendum states, *the tenant shall not make or cause any structural alterations to the premises*. The tenant maintained that he had permission to do so, while the landlords argued that no such permission was granted. It is evident that numerous attempts were made by the landlords to have the tenant return the shed to their property. These attempts include emails and letters written to the tenant seeking a return of the shed, along with the involvement of the Police, who spoke with the tenant urging him to return the shed to the landlords. Based on a balance of probabilities; that is, more likely than not, I find that the tenant did not have permission to remove the shed from the property and has therefore violated section 10 of the rental agreement addendum. The tenant must compensate the landlords for this loss and is therefore responsible for the cost of replacing the shed. The landlords may recover the entire \$1,314.88 cost of a replacement shed from the tenant.

The landlords are also seeking compensation for the labour associated with the rebuilding of the shed and the cleaning, removal and replacement of the shower unit. No receipts were produced at the hearing by the landlords during the hearing in support of this claim. Landlord C.S. testified that she could produce receipts following the conclusion of the hearing should they be required. Permitting the landlords to submit evidence following the conclusion of the hearing would be a violation of the principles of natural justice and would allow the landlords to gain an unfair advantage over the tenant. I therefore dismiss the landlords' application to recover monies for the labour associated with the rebuilding of the shed and the cleaning and replacement of the shower unit.

As both parties were partially successful in their applications, they must both cover the costs of their filing fees.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$35.72 against the landlords based on the following monetary awards:

Item	<u>Amount</u>
Return of Security Deposit (2 x \$675.00)	\$1,350.00
Less cost of replacement of the shed	(-1,314.88)
Total =	\$35.12

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 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 3, 2017

Residential Tenancy Branch