



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent and for damage to the unit, site or property pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenants' applied for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the *Act*;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence package of the other party. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 90 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent, for damage to the unit, site or property and recovery of the filing fee?

Are the landlords entitled to retain all or part of the security deposit?

Are the tenants entitled to a monetary order for double the security deposit and recovery of the filing fee?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties confirmed that there was no signed tenancy agreement, but that this was a month-to-month tenancy which began on May 28, 2015 and ended on September 18, 2016. The monthly rent was \$1,500.00 payable on the 1st day of each month and a security deposit of \$750.00 was paid.

The landlords seek a monetary claim of \$847.81 which consists of:

Unpaid Utilities	Fortis \$19.14
	Hydro \$108.67
Unpaid Rent 12 days (Sept 19-30)	\$600.00
Filing Fee	\$100.00

The landlords claim that the tenants failed to pay all of the utilities for September 2016. The tenants confirmed and agreed to the landlords claim for \$19.14 for Fortis and \$108.67 for Hydro utility costs.

The landlords claim that the tenants failed to provide proper 1 Month Notice and moved out on September 18, 2016. Both parties confirmed that the tenants paid for ½ of the monthly rent until September 15, 2016. Both parties confirmed that the tenants had paid \$150.00 for 3 additional days past the September 15, 2016 move-out date. The landlords seek the remaining unpaid rent of \$600.00 (pro-rated at \$50.00 per day X 12 days). The tenants confirmed that they moved out early without 1 months notice because of issues with the tenancy. The tenants stated that there was a verbal agreement to end the tenancy with the landlord on September 15, 2016 and that they would only pay \$50.00 per day for each additional day still in occupation of the rental premises. The landlords dispute this claim stating that no agreement was made as claimed by the tenants.

Analysis

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.

I accept the undisputed affirmed evidence of both parties and find as the tenants have confirmed and accepted the first, two items of claim by the landlords. As such, the landlords are entitled to \$127.81 for the combined unpaid utilities.

As for the 3rd item of claim, unpaid rent of \$600.00, I find that the landlord has established a claim. Although the tenants have claimed that there was a verbal agreement to end the tenancy on September 15, 2016 and to only pay \$50.00 per day for each additional day, the landlords have disputed this claim. I find that the tenants have failed to provide sufficient evidence that a verbal agreement was made to mutually end the tenancy on September 15, 2016 and pay an additional \$50.00 per day until the tenants have vacated the rental premises. I also find that the tenants failed to provide proper 1 Month's Notice to vacate the rental property. The landlords are entitled to unpaid rent of \$600.00.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the *Act* equivalent to the value of the security deposit.

Both parties confirmed in their direct testimony that the tenants have not given permission to the landlords to retain the \$750.00 security deposit. The landlords have confirmed that the tenancy ended on September 18, 2016 and did not file an application for dispute until December 22, 2016. Both parties confirmed that the tenants provided their forwarding address in writing to the landlords on October 4, 2016. Both landlords stated that although they were out of the country and that the tenant's forwarding address in writing was received at the end of October 2016. I find in any event that the landlords have failed to comply with section 38 (1) of the *Act* and as such is subject to

section 38 (6). The tenants have established a claim for return of double the \$750.00 security deposit for \$1,500.00.

As both parties have been successful in their applications, I find that both parties are entitled to recovery of their respective \$100.00 filing fees.

The landlords have established a total monetary claim of \$827.81.

The tenants have established a total monetary claim of \$1,600.00.

In offsetting these claims, I find that the tenants are entitled to a monetary claim of \$772.19. The tenants are entitled to a monetary order for \$772.19.

Conclusion

The tenants are granted a monetary order for \$772.19.

This order must be served upon the landlords. Should the landlords fail to comply with the order, the 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 09, 2017

Residential Tenancy Branch