



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLLYWELL PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNSD, FF, MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- 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 recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Issue to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to an order compelling the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to a monetary order for compensation for loss or damage under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The tenants' testimony is as follows. The tenancy began on October 1, 2015 and ended on November 30, 2016. The tenants were obligated to pay \$2300.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$1150.00 security deposit and \$1150.00 pet deposit. The tenant testified that the landlord returned the pet deposit but withheld \$200.00 from the security deposit without the tenants consent or without filing for arbitration. The tenants testified that the doubling provision should apply. The tenants testified that they have dealt with this property management company for several years. The tenants testified that in order for them to obtain the subject unit they had to pay \$1000.00 from a previous tenancy with this company which they don't feel is fair and seek to recover that.

The tenants testified that they are seeking the equivalent of four months' rent; \$9200.00 as compensation for having to live in home with a faulty septic system and smell. The tenants testified that they are seeking an additional two months' rent as compensation because the landlord did not use the property as they had indicated. The tenants also seek the recovery of \$1200.00 for elevated hydro costs incurred as a result of the septic system.

The tenants are applying for the following:

1.	Damages from previous tenancy	\$1000.00
2.	Return of double the deposit \$4600-2100.00=	\$2500.00
3.	Compensation for septic smell	\$9200.00
4.	Two month penalty – landlords use	\$4600.00
5.	B.C. Hydro	\$1200.00
6.	Filing Fee	\$100.00
	Total	\$18,600.00

The landlord gave the following testimony. The landlord testified that the tenants' application should be dismissed in its entirety. The landlord testified that a considerable amount of money was spent in trying to satisfy the tenants concerns. The landlord testified that the septic system hasn't been a problem since the tenants left despite no further work on the system was completed. The landlord testified that the addendum to the tenancy agreement states that the tenant must have the carpets "professionally cleaned".

Analysis

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 arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below. The relationship between these two parties is an acrimonious one. Both parties made comments that the other wasn't being truthful. 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. The applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I address the tenants claim and my findings as follows.

1. Previous Tenancy Charges \$1000.00.

The tenant has included a charge from a previous tenancy from a different civic address as part of this claim because the same property manager is involved. As this issue is not related to the subject tenancy or subject address, I hereby dismiss this portion of the tenants' application.

2. Return of Double the Deposits - \$2500.00.

The tenant testified that the landlord returned \$2100.00 of the \$2300.00 they provided as deposits. The tenant testified that the landlord withheld \$200.00 for carpet cleaning despite the fact the tenants rented a machine and shampooed the carpets. The tenants testified that the landlord did not have the permission to retain any portion and that as of this date; the landlord has still not filed an application seeking any portion of their deposit.

The landlord testified that the tenants were bound by the addendum to have the carpets "professionally" cleaned. The landlord testified that the owner of the home wasn't satisfied with the level of cleanliness and had the carpets cleaned by a professional company at a cost of over \$200.00.

Residential Tenancy Policy Guideline 1 states:

The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

I note that condition inspection report submitted by the landlord doesn't make any notations of deficiencies in the carpet; i.e. stains or markings. At the time of the inspection the landlord was content with the condition and made no mention of having the carpets professionally cleaned. The issue was brought up 13 days later when the tenants made inquiries about their deposits. Based on all of the landlords own documentation I am satisfied that the unit left in good condition and that the landlord had no justification to withhold any of the deposit.

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.

Although the tenant was seeking the doubling of both deposits, the tenants confirmed that they received the full amount of their pet deposit within fifteen days of their end of tenancy and therefore the doubling issue is in relation to the security deposit only. Based on the above I find that the landlord has not complied with Section 38 of the Act and that the tenants are entitled to the return of double the security deposit minus what

they have already received; $\$1150.00 \times 2 = 2300.00$ minus $\$950.00$ already received = $\$1350.00$. The tenants are entitled to $\$1350.00$.

3. Compensation for Septic Tank - $\$9200.00$.

The tenants are seeking $\$9200.00$ for what they allege is a faulty septic system and foul smell throughout their tenancy. The tenants testified that the septic system was problematic from the outset of their tenancy. The tenants testified that they obtained an opinion from who they submit was the best company in the area, and were advised that the system should be replaced in its entirety. The tenants testified that they did not damage the system in any way and dispute the landlord allegations that they mistreated or misused the system.

The tenants testified that the landlord did not want to spend the $\$25,000.00$ to replace the system. The tenants testified that the septic tank was without a lid; the system had a crack in the main line, and had venting issues. The tenants testified that their system had numerous deficiencies but the result was that the tenants had to endure a foul smell almost daily throughout almost all of the tenancy. The tenants submit that $\$9200.00$ is a very conservative amount of compensation of having to have the smell in their home.

The landlord disputes this claim. The landlord testified that the owner spent over $\$4000.00$ just prior to the tenants moving in and a subsequent $\$10,000.00$ during their tenancy in attempts to satisfy them. The landlord testified that the tenants have failed to show that the landlord was in breach of the Act. The landlord testified that all efforts were taken to address this problem. The landlord testified that the tenants "expert" was just seeking a large payday to replace the entire system but was unable to diagnose the problem. The landlord testified that the tenants did not maintain the septic system as per the instructions provided to them at the outset of the tenancy.

Both parties provided extensive documentation that had many conflicting opinions and reports submitted about the odor. After thoroughly reviewing both parties documentation and considering their testimony, I find that the tenants have failed to provide sufficient evidence to show that the septic issue stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party, or the actual amount of loss to justify the amount as sought. As the tenants have not met the criteria for a monetary order outlined in Section 67 of the Act due to their insufficient evidence, I dismiss this portion of their claim.

4. Two Months Compensation - $\$4600.00$.

The tenants testified that the landlord told them that they had to move out as they were going to use the property. The tenants testified that the landlords have rented the property out to other tenants. The tenants were not served a notice under Section 49 of the Act, but were only verbally asked to move out, as such, as there was no notice issued, the tenants are not entitled to any compensation and I dismiss this portion of their application.

5. B.C. Hydro - \$1200.00.

The tenants testified that due to the septic tank smells that wafted through the house, the tenants were forced to keep the windows open during the winter months, as a result they incurred elevated electricity bills to heat the home. The landlord disputed this claim as the tenants did not provide any documentation to support it. I agree with the landlord that without detailed documentation the tenants have not provided enough evidence to prove their claim. Based on the insufficient evidence before me, I dismiss this portion of the tenants claim.

6. Filing Fee - \$100.00.

As the tenants have been partially successful in their application, they are entitled to the recovery of the \$100.00 filing fee.

Conclusion

The tenants have established a claim for \$1450.00. I grant the tenants an order under section 67 for the balance due of \$1450.00. 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: June 26, 2017

Residential Tenancy Branch