



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with a tenant's application for return of double the security deposit and compensation for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Are the tenants entitled to return of double the security deposit?
2. Have the tenants established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement in the amount claimed?

Background and Evidence

The tenancy started on September 1, 2015 and ended on October 31, 2016. The tenants were required to pay rent of \$975.00 on the first day of every month. The tenants were required to pay a security deposit equivalent to one-half of the month's rent.

The parties were in dispute as to whether the tenants actually paid the full amount of the security deposit or a lesser amount of \$460.00 as submitted by the landlord. The female tenant testified that a cheque for \$1,500.00 or thereabouts was written so there would have been no shortfall. The landlord testified that the security deposit was not paid by cheque and the male tenant paid \$460.00 in cash but the landlord did not issue a receipt. The landlord stated that the tenant was to pay the shortfall but he never did.

It was undisputed that the landlord has not refunded the security deposit and did not have the tenant's written consent to make deductions. The tenants provided a forwarding address to the landlord at the time of the move out inspection and the l

landlord wrote the address down at that time. The landlord has not filed an Application for Dispute Resolution to claim against the security deposit. The landlord explained that he had not refunded the security deposit because there were outstanding hydro bills owed by the tenants, totalling \$412.47. The landlord offered to pay the tenants the balance of the security deposit of \$47.53 and waive any other claims against the tenants; however, the tenants were not agreeable to the landlord's offer. The landlord was informed of his right to make his own Application for Dispute Resolution against the tenants for any damages or loss the landlord may have suffered as a result of the tenant's violations of the Act, regulations or tenancy agreement but that the time to claim against the security deposit has passed.

The second component of the tenant's claim pertains to loss of a functioning fridge and spoiled food during the tenancy. It was undisputed that the fridge stopped working after there was an electrical surge stemming from an electrical connection at the street for which BC Hydro was responsible. I heard that BC Hydro had compensated affected occupants for damaged electronics or equipment but that since the fridge was not the tenants' property they could not make a claim to BC Hydro for compensation with respect to the loss of the fridge. The landlord acknowledged that he was aware of the BC Hydro compensation plan but he did not make a claim for damage to the fridge.

The tenants submit that they went 7 or 8 days without a fridge before the landlord provided them a replacement fridge which they submit is an unreasonable amount of time. The tenants claim they notified the landlord that the fridge did not seem to be working properly the day following the electrical surge and that they lost approximately \$300.00 of food as a result. The tenants point out that it was Thanksgiving weekend and they have a considerable amount of food in the fridge. The tenants claim they asked other people to store food for them but they were unsuccessful since those fridges were full too. The tenants also state that their roommate works at a restaurant and would often bring leftovers home, which were also lost.

The landlord testified that he learned of the malfunctioning fridge from the tenants a few days after the power surge and that it took another four days to get a replacement fridge because it is difficult to walk into a store and buy a fridge on the spot. The landlord was of the position he took reasonable action to replace the fridge once he knew it was a problem. The landlord pointed out the tenants could have done more to preserve their food, such as use a cooler or ask other people to store their food for them. The landlord doubted the tenants had that much food in their fridge as they appeared to be struggling for funds and pointed out that the tenants did not provide evidence such as receipts for food purchases.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons with respect to the two components of this claim.

Double security deposit

As provided in section 38 of the Act, a landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

Based upon the unopposed evidence before me, the landlord was provided the tenants' forwarding address during the move-out inspection and it was put it in writing at that time, whether it be by the tenants or the landlord I am satisfied the landlord had the tenant's forwarding address in writing as of October 31, 2016. Accordingly, I find the landlord had until November 15, 2016 to get the tenant's written consent to make deductions from the deposit, refund the security deposit to the tenants or file an Application for Dispute Resolution to claim against it. Since the landlord did not do any of these things I find the landlord violated section 38(1) of the Act and must now pay the tenants double the security deposit as provided under section 38(6) of the Act.

The parties were in dispute as to the amount paid for the deposit. The tenants claim they paid rent and the security deposit by cheque but the cancelled cheque was not produced as evidence. Since the tenants are the applicants they bear the burden of proof. Since the landlord acknowledged receiving \$460.00 from the tenant for the security deposit that is the amount I have doubled in providing the tenants an award of \$920.00.

Loss of fridge/food

It was undisputed that the tenants were provided a fridge as part of their tenancy agreement. Accordingly, a failure to provide the tenants with a working fridge would be a breach of the tenancy agreement by the landlord, even if the failure was due to an unforeseen circumstance. While appliances are subject to break down from time to time, the landlord is expected to take reasonable action to repair or replace the appliance, and tenants are generally not entitled to compensation for temporary

inconvenience. However, the tenants submit that they suffered more than a temporary inconvenience in waiting for a replacement fridge for one week.

I reject the landlord's submission that a fridge cannot be purchased in the City where the rental unit is located without waiting several days as being unlikely. That may be the case if the landlord was looking for a very specific type of fridge but I am of the view that a fridge may be purchased much more quickly than having to wait four days. Therefore, I accept the tenant's position that they suffered loss of use of the fridge for an unreasonably long period of time and the tenants are entitled to compensation from the landlord for that loss.

Also at issue is the value of the tenants' loss with respect to the fridge. The tenants claim they lost food as a result of the broken down fridge and the landlord's unreasonable delay in replacing the fridge; however, the tenants did not produce receipts to show the purchase of the food that was spoiled or the purchase of replacement food. Nor, did the tenants produce photographs of the spoiled food. As the tenants are the applicants, they bear the burden of proof and I find their evidence does not satisfy me that they suffered a loss of \$300.00. However, I find the tenants entitled to compensation for the loss of the use of the fridge given the landlord's unreasonable delay in replacing it. I find a reasonable approximation of the value of the loss of a fridge for one week to be \$100.00 based on the monthly rent and that is the amount I award the tenants.

Filing fee and Monetary Order

Since the tenants' application had merit, I further award the tenant's recovery of the filing fee they paid for this application.

In light of all of the above, the tenants are provided a Monetary Order to serve and enforce upon the landlord, calculated as follows:

Double security deposit	\$ 920.00
Loss of fridge/food	100.00
Filing fee	<u>100.00</u>
Monetary Order for tenants	\$1,120.00

Conclusion

The tenants are provided a Monetary Order in the sum of \$1,120.00 to serve and enforce upon the landlord.

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 16, 2017

Residential Tenancy Branch