



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

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

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

Both parties appeared and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord GAC appeared on behalf of both named landlords (the "landlord"). The co-tenant EDJ appeared for both tenants (the "tenant").

As both parties were in attendance I confirmed that there were no issues with service. The tenant confirmed that he received the landlords' application for dispute resolution and evidentiary materials. The tenant testified that he did not submit any evidence. Pursuant to sections 88 and 89 of the Act, I find that the tenants were duly served with the landlords' application and evidence.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid utilities and damages as claimed?
Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?
Are the landlords entitled to recover the filing fee for this application from the tenants?

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 landlords' claims and my findings around each are set out below.

The parties agreed on the following facts. This tenancy began in March, 2016 and ended March 1, 2017. The rental unit is the main floor of a detached home. Initially, there were other occupants in the downstairs unit but they moved out shortly after the tenancy started. The monthly rent was \$850.00, which included water, heat and electricity. A security deposit of \$425.00 and a pet damage deposit of \$425.00 were paid at the start of the tenancy and is still held by the landlords.

The landlords apply for a monetary award of \$1,235.29 under the following heads:

Item	Amount
Repairs to Rental Unit	\$139.35
Compensation for Power Consumption	\$1,095.94
TOTAL	\$1,235.29

The parties completed a move-out inspection on March 1, 2017 and prepared a condition inspection report. A copy of the condition inspection report was submitted into written evidence. The tenant gave written authorization for the landlord to retain the amount of \$139.35 for repairs to the rental unit. The tenant testified that he does not dispute the landlord's claim to retain this amount from the security deposit. The tenant testified that he did not give written authorization that the landlord may retain any other amount from the deposits for this tenancy. The tenant provided a forwarding address on the condition inspection report of March 1, 2017.

The landlord testified that the power consumption in the rental building was excessive during the course of the tenancy. The landlord submitted into written evidence detailed information comparing the cost of utilities compared to previous years. The landlord testified that the tenants were the only occupants of the rental building for the majority of the tenancy. The landlord submitted into written evidence information regarding the average historic temperature in the region to support their position that excess heating was not required during the tenancy. The tenant testified that he was not aware of the amount of power consumed in the household.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find that the landlord has not shown on a balance of probabilities that the tenants have breached the Act, regulations or tenancy agreement so as to give rise to the landlords' monetary claim. While I accept the evidence of the parties that electricity was consumed by the tenants during the tenancy, the tenancy agreement clearly indicates that utilities are included in the rent. There is no provision in the tenancy agreement allowing the landlords to retroactively charge an additional amount for utilities if they feel the consumption was high.

The landlords are in the business of providing rental accommodations for profit. There is an element of risk in a business venture and this risk is knowingly borne by the landlords. I do not find that there is any basis in the Act, regulations or tenancy agreement that allows the landlords to shift this risk onto the tenants after the fact. A residential tenancy agreement is a binding contract and as such cannot be disregarded because the landlords feel it is inconvenient when their profits are less than anticipated.

I accept the evidence of the parties that the landlords and tenants entered a tenancy agreement wherein the monthly rent included electricity. I therefore find that there is no obligation for the tenants to contribute to the utility bills. I dismiss this portion of the landlords' claim.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit and pet damage 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 or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit and pet damage deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit and pet damage deposit as per section 38(4)(a).

I accept the evidence of the parties that the tenants provided the landlords written permission to retain \$139.35 of the security deposit. Accordingly, I find that the landlords are authorized to retain that amount.

I accept the evidence that the tenants did not authorize the landlords to retain any additional amount of the security deposit or pet damage deposit for this tenancy.

Based on the undisputed evidence before me, I find that the landlords have failed to return the tenants' security deposit and pet damage deposit in full within the 15 days of March 1, 2017, provided under section 38(1)(c) of the *Act*. I accept the tenants' evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlords' failure to abide by the provisions of that section of the *Act*.

Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to a \$1,421.30 Monetary Order, double the value of the security deposit and pet damage deposit paid for this tenancy, less the amount the landlords are authorized to retain. No interest is payable over this period.

As I have dismissed the bulk of the landlords' application I find they are not entitled to recovery of their filing fee.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,421.30 under the following terms:

Item	Amount
Double Security Deposit $([\$425 - 139.35] \times 2)$	\$571.30
Double Pet Deposit $(\$425 \times 2)$	\$850.00
TOTAL	\$1,421.30

The landlords must be served with this Order as soon as possible. Should the landlords 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: July 24, 2017

Residential Tenancy Branch