Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction
This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* ("the Act"). The landlords applied for: a monetary order for unpaid rent 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.

The tenants applied for authorization to obtain a return of all or a portion of their security deposit pursuant to section 38 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

One landlord represented both landlords at the hearing. Both tenants attended the hearing. All attendees were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other party's Application for Dispute Resolution package as well as additional documentary evidence packages.

Issue(s) to be Decided
Are the landlords entitled to a monetary order for unpaid rent?
Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested or are the tenants entitled to the return of their security deposit?
Are the tenants entitled to recover the filing fee for this application?

Background and Evidence
This tenancy began on April 8, 2016 as a one year fixed term tenancy. After one year, the tenancy was to convert to month to month. The tenants paid $1000.00 in monthly rent due on the 1st of each month. The landlord continues to hold the $500.00 security deposit paid by the tenants at the outset of the tenancy. The tenants vacated the rental unit on February 28, 2017 after providing one month notice to end the tenancy. The

tenants provided their forwarding address to the landlord on February 28, 2017. Both parties agree that the landlord has not returned the tenants' security deposit.

The tenants testified that, after having a baby, they decided to move to a new home. They provided undisputed testimony that they provided notice to the landlord on February 1, 2017 and moved out of the rental unit on February 28, 2017. Tenant A testified that there was a condition inspection with the landlord both before and after the tenancy. She testified that the landlord told her to leave the holes in the walls as the landlord intended to repaint and clean the carpets.

Tenant M testified that the forwarding address was provided to the landlord on more than one occasion but the tenant pointed out that the forwarding address can be found on the move-out condition inspection report that was submitted for this hearing. Tenant M testified that the rental unit was left in better condition than they found it.

The landlord submitted; photographs of damage to be repaired at the rental unit at the end of tenancy as well as quotes for repair jobs as evidence for this hearing. She submitted that she was entitled to retain the deposit because there was substantial work to be done to the unit at the end of the tenancy. The tenant argued that the landlord did not file in sufficient time to retain their security deposits in accordance with section 38 of the *Residential Tenancy Act*. The landlord submitted her application to retain the tenants' security deposit on July 27, 2017. She testified that she was unaware of any timelines related to making a claim for a security deposit and said she wanted to obtain several quotes for work to the unit before determining how much she intended to seek from the security deposit. The landlord testified that she was not aware that she was required to return or apply to keep the tenants' security deposit within 15 days.

While the tenants sought recovery of their $500.00 security deposit, the landlord sought $2343.58 for repairs to the unit. She claimed that the bathroom and other portions of the home required extensive repair including but not limited to; shower repairs; an electrical inspection; new locks, screws and knobs; her time for repairs, cleaning and painting; a storage fee for items left behind; as well as general 'damage'. She also sought to recover her filing fee for this application. She testified that she spent a substantial amount of time cleaning and repairing the unit at the end of this tenancy.

The landlord submitted two very distinct estimates; one was titled "basement reno" and outlined construction of bedroom closets, a makeover of the kitchen including electrical work, and other cosmetic work – painting and finishing. Another estimate proposes an entire shower renovation with new glass, shower insert and other renovation work. A

financial document was submitted entirely redacted but for $682.50 for a payment to a glass company. An email addressed to the landlord was also included in her materials. The email indicates that “a touch up of the damaged areas on the shower surround will be $125.00 + gst”: this was the amount initially provided to the tenants in discussions regarding the shower damage. The email notes that this repair is only temporary. The landlord submitted photographs showing some scratches or marks inside the shower, and the condition inspection report indicating chips and scratches in the shower panel.

Analysis

With respect to the tenants’ application for the return or retention of a security deposit, section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant’s forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposits, and the landlord must return the tenant’s security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the Act). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant’s provision of the forwarding address. In this case, the landlord was informed of the forwarding address on February 28, 2017. The landlord had 15 days after February 28, 2017 to take one of the actions outlined above.

Section 38(4)(a) of the Act also allows a landlord to retain an amount from a security deposit if “at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.” The tenants testified that they did not agree to allow the landlord to retain any portion of their security deposit. As there is no evidence that either of the tenants gave the landlord written authorization at the end of this tenancy to retain any portion of their deposit, section 38(4)(a) of the Act does not apply to the tenants’ security deposit.

The tenants seek the return of their security deposit. While the landlord applied to the Residential Tenancy Branch to retain the tenants’ deposits, she did so after the 15 day timeframe to make such an application. Given that the landlord acknowledged her failure to apply to retain the tenants’ deposits within the required time-frame, I find that the tenants are entitled to a monetary order including $500.00 for the return of the full amount of their security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application: Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Based on the evidence of both of the tenants before me (which I accept), I find that the landlord has neither applied for dispute resolution nor returned the tenants' security deposit in full within the required 15 days. The tenants gave sworn oral testimony that they had not waived their right to obtain a payment pursuant to section 38 of the Act owing 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 therefore entitled to a total monetary amount from the landlord equivalent to double the value of their security deposit combined with any interest calculated on the original amount only ($500.00 amount x 2 = $1000.00 total owed by landlords to tenants) No interest is payable for this period.

With respect to the landlords' application for other monetary compensation, I refer the landlord to section 67 of the Act. Section 67 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 (in this case, the landlord) bears the burden of proof.

To be entitled to a monetary amount from the tenants, the landlord must prove the existence of the damage/loss. Within her application for $2343.58, the landlord listed far more extensive repairs than those indicated in the condition inspection report. She also estimated a very substantial amount of her own time for cleaning and renovating the

rental unit. She testified that she rented the unit out again and has, therefore been unable to complete the repairs as of yet. This suggests that the repairs are not necessary ones and perhaps not repairs that are beyond reasonable wear and tear at the end of the tenancy. I accept the testimony of the tenants that the unit was left reasonably clean and tidy, and in good condition overall.

I find that the landlord's estimates for a “basement reno” or shower renovation are beyond the scope of the tenant’s responsibility. The landlord did not provide me satisfactory evidence to explain the tenant’s obligation to pay the glass company amount. I accept the undisputed testimony of the tenants, supported by the landlord’s photographs that the landlord’s original request for $125.00 + gst to repair the scratch in the shower is the most accurate reflection of the amount of their responsibility to repair of the rental unit. I note that the email does not expand on the longevity of the “temporary repair” and therefore I find that it is a satisfactory repair in the circumstances.

I find that the landlord has not proven loss as a result of any general clean up at the end of tenancy. Pursuant to section 67, the landlord must prove that the damage/loss stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Again, the condition inspection report is clear in that only one item (the shower) was raised at the time of the condition inspection and that that damage was disputed by the tenants at the time of the condition inspection. According to Residential Tenancy Regulation No. 21 as laid out below, the condition inspection report is the best evidence of the condition of the unit unless proven otherwise,

> **Evidentiary weight of a condition inspection report**
> In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The landlord must provide evidence that can verify the actual monetary amount of the loss/damage. She has provided estimates but not expenditures. I find that the landlord has provided insufficient evidence to support her claim of damage by the tenants. Therefore, I find that the landlord is not entitled to recover the $2343.58 she sought at this hearing. I allow the landlord to retain $125.00 for the shower repair (patch) out of the security deposit that she continues to hold. I find that the landlord is not entitled to recover her filing fee.

I note that it is incumbent upon the landlord to be aware of her rights and obligations under the Act. Her failure to be informed with respect to her position at landlord does not allow the Act to be disregarded in determining the tenants' claim. Therefore, I find that the tenants are entitled to a monetary order, as indicated above, in the amount of $1000.00 for the return of their security deposit and an amount equivalent to that deposit for the landlords' failure to return the deposit or file an application in accordance with section 38 of the Act.

I find that the tenants are also entitled to recover the $100.00 filing fee for this application.

Conclusion

I grant a monetary order in the amount of $1100.00 to the tenant.

Item	**Amount**
Return of Tenants' Security Deposit	$500.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the *Act*	500.00
Landlords' Amt for Shower Repair	-125.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	**$975.00**

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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.

I dismiss the landlord's application in its entirety without leave to reapply.

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: September 7, 2017

Residential Tenancy Branch