



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC 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 and/or pet damage 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 pursuant to the Act for: authorization to obtain a return of all or a portion of their security and pet damage deposit pursuant to section 38; and authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and 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 hearing package. The tenant confirmed receipt of the landlord's additional materials submitted as evidence for this hearing.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for rental loss or damages to the unit?
Are the tenants entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested or are the tenants entitled to the return of their security deposit?
Are the landlords or the tenants entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began on February 1, 2016 as a one year fixed term tenancy. Before the expiry of the first fixed term, the tenants agreed to a second fixed term ending August 31, 2017. The tenants paid \$2600.00 as monthly rent on the 1st of each month. The landlord continues to hold the tenants' \$1300.00 security deposit and \$650.00 pet damage deposit paid to the landlords at the outset of this tenancy.

The tenants provided notice to the landlords that they intended to vacate the rental unit on February 28, 2017. The tenants vacated the rental unit on March 31, 2017 (prior to the expiry of their fixed term tenancy). The landlord and tenant agreed that the landlord was provided with the tenants' forwarding address by March 31, 2017. The landlord testified that there was no formal condition inspection done at the start or the end of the tenancy. Further, the landlord testified that there was no condition inspection report created with respect to the condition of the tenancy at the start and end of this tenancy.

The landlord submitted photographic evidence showing; a deep scratch in the wall in the rental unit; an assortment of garbage left behind by the tenants at the end of the tenancy; a garage floor with feces; a laundry sink that had been turned purple as a result of paint rinsed in the sink; a sloppy paint job in one of the bedrooms; and dark green paint on the walls of the kitchen.

The landlord testified that the rental unit was painted immediately prior to this tenancy and requires extensive painting now, as a result of the dark paint colours the tenants put on the walls. The tenant testified that the landlords allowed the tenants to paint the rental unit and did not require them to repaint at move-out. The landlord submitted an estimate totalling \$1100.00 for the paint job but testified that the painting has not yet been done. The landlord testified that a new tenant is living in the rental unit.

The landlord testified that the tenants left an assortment of garbage and recycling outside the rental unit. The landlord testified that she was required to sort and dispose of the garbage pile. The tenant testified that the majority of the items were left in a garbage bin. He pointed out that the bin was in the photograph and that he believes the landlords empty the garbage can. He admits there was some recycling in the garbage he disposed of. The landlord testified that the garbage left by the tenants was put out with the regular garbage pick-up.

The landlord testified that they believe the tenants' dog defecated in the garage and that the tenants rinsed their bright paint colours in the laundry sink leading to the colourful

stains. The landlord did not dispute the testimony of the tenant that the landlords allowed them to paint the rental unit at move-in.

The landlord also sought to recover two (2) weeks' rent from the tenants submitting that they broke the fixed term lease terms and ended the tenancy without sufficient notice to do so. The tenant did not dispute that both tenants had agreed to a further fixed term tenancy. The landlord testified that, despite efforts including advertising and showings, the landlord was unable to have a new tenant in the unit for April 1, 2017.

The tenant requested an amount double to his deposits as the landlord did not apply to retain the deposits in accordance with the Act. The landlord testified that she was not aware of the timelines to make an application to retain the tenants' deposits.

Analysis

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 and pet damage 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 and pet damage deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security and pet damage deposit (section 38(6) of the *Act*).

With respect to the return of the security and pet damage deposits, 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 in writing on or about March 31, 2017. The landlord had 15 days after March 31, 2017 (the end of the tenancy and the date that the landlord states she received notice of their new address from the tenants) 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 and pet damage 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 tenant present at this hearing testified that neither he nor his co-tenant agreed to allow the landlord to retain any portion of their security or pet damage deposits. As there is no evidence that the tenants have given the landlord written authorization at the end of this tenancy to retain any portion of their deposits, section 38(4)(a) of the *Act* does not apply to the tenants' security or pet damage deposit.

The tenants sought the return of both their security and pet damage deposit. While the landlords applied to the Residential Tenancy Branch to retain the tenants' deposits on May 19, 2017, they did not do so within 15 days of March 31, 2017. Given that the landlord did not apply to retain the tenants' security deposits in the correct amount of time and given that the landlord indicated she was not aware of the timeline to make their application, I find that the tenants are entitled to a monetary order including \$1950.00 for the return of the full amount of their security (\$1300.00) and pet damage (\$650.00) deposits.

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 before me, I find that the landlord has neither applied for dispute resolution nor returned the tenants' security or pet damage deposits in full within the required 15 days. The tenant in attendance at this hearing testified that neither he nor his co-tenant had waived their right to obtain a payment pursuant to section 38 of the Act owing as a result of the landlord's 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 order amounting to double the value of their security and pet damage deposits with any interest calculated on the original amount only. No interest is payable for this period.

Having been successful in this application, I find further that the tenants are also entitled to recover the \$100.00 filing fee paid for this application.

With respect to the landlord's application to recover \$2950.00 from the tenants as a result of damage and other money owed after the end of the tenancy, consequences for a landlord if report requirements not been met are described at section 24(2) and 36(2) of the Act,

- 24** (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 23 (3) *[2 opportunities for inspection]*,
 - (b) having complied with section 23 (3), does not participate on either occasion, or
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.
- ...36** (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 35 (2) *[2 opportunities for inspection]*,
 - (b) having complied with section 35 (2), does not participate on either occasion, or
 - (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

In this case, based on the testimony of both parties at this hearing and the lack of condition inspection report, the landlord did not provide any opportunities for a condition inspection at the end of the tenancy nor did the landlord participate in a condition inspection or complete a report, providing a copy to the tenant. Therefore, the landlords' claim against the tenants' security and/or pet damage deposits are extinguished.

I find that the landlord has provided insufficient evidence to show that the tenants caused the deep scratch in the wall in the rental unit. Without evidence of the condition of the rental unit prior to this tenancy, the landlord is unable to prove that; the unit's walls had not been scratched, that the laundry sink was previously pristine or that the garage floor feces was as a result of their dog. Without any condition inspection report,

the landlord cannot show the condition of the walls and paint prior to this tenancy. Therefore, I dismiss the landlord's claim with respect to damage to the rental unit.

I note that the tenant conceded in his testimony that the tenancy was set for a fixed term ending August 31, 2017. Therefore, there is evidence, in the testimony at this hearing and in the form of the residential tenancy agreement submitted by the landlord for this hearing that this tenancy had a predetermined expiry date of August 31, 2017.

Residential Tenancy Policy Guideline No. 30 provides direction on the definition and terms of a fixed term tenancy:

A fixed term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date...

Section 44 of the Act includes information on how a fixed term tenancy ends,

44 (1) A tenancy ends only if one or more of the following applies:
...(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy...

The landlord testified that, despite efforts including advertising and showings, the landlord was unable to have a new tenant in the unit when the tenants vacated the unit. The tenant testified that he had no information to refute this claim by the tenant. In this form of tenancy, a term is fixed for the assurance of both parties. With few exceptions, this tenancy will continue to the end of its term, allowing the tenant and landlord the security that comes with this fixed period of time.

I accept the documentary evidence of the landlord with respect to the start date of the subsequent tenancy. The landlord was candid in other testimony including a lack of awareness of the timeline for filing to retain the tenants' security deposit. Although the landlord failed in her application for damages, I find her testimony generally candid and credible. Given that I accept the testimony and evidence of the landlord regarding the start of the subsequent testimony and given that the tenant did not dispute the testimony of the landlord with respect to this issue, I find that the landlord is entitled to recover two (2) weeks' rent as a consequence for the tenants' breach of the fixed term tenancy.

Pursuant to section 72(2) of the Act that allows an amount owed by a tenant to a landlord to be deducted from a tenants' security or pet damage deposit, I find that the landlord is entitled to retain \$1300.00 (the equivalent of two weeks' rent) from the tenants' security deposit.

As both parties were partially successful in their applications, I find that each party is responsible to bear the cost of their own filing fee. The tenant is entitled to a monetary order as follows,

Item	Amount
Less Pet Damage & Security Deposits (\$650.00 + \$1300.00= \$1950.00)	1950.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the Act	1950.00
Rental Loss (April 1-15, 2017)	-1300.00
Total Monetary Amount owed to Tenants	\$2600.00

Conclusion

I issue a monetary order to the tenants in the amount of \$2600.00.

The tenants are provided with this Order in the above terms and 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: September 15, 2017

Residential Tenancy Branch