



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF, MNDC, MNSD, OLC, FF

Introduction

This hearing dealt with applications from both the landlords and tenant pursuant to the *Residential Tenancy Act* (“*Act*”).

The landlords applied for:

- a Monetary Order for damages and loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant named four individual landlords in the application and applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order that the landlords comply with the *Act*, regulations or tenancy agreement pursuant to section 62; 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 affirmed testimony, to make submissions and to call witnesses. The landlord IF attended and confirmed she represented all named landlords (the “landlord”).

As both parties were in attendance I confirmed that there were no issues with service. The parties testified that they were in receipt of the respective applications for dispute resolution and evidence from the other party. In accordance with sections 88 and 89 of

the *Act*, I find that the parties were duly served with copies of the applications and their respective evidence.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for damages and loss arising out of this tenancy?

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*?

Is either party entitled to recover the filing fee for this application from the other?

Background and Evidence

The parties agreed on the following facts. This tenancy began in May, 2016. A security deposit of \$850.00 was paid by the tenant at the start of the tenancy and is still held by the landlords. A condition inspection report was prepared by the parties at the start of the tenancy.

The tenancy ended on April 30, 2017. The tenant testified that he vacated the rental unit earlier and provided a forwarding address to the landlord in an email written April 6, 2017. The parties testified that they had originally scheduled a move-out inspection on April 6, 2017 at 1:00pm but the landlords felt that as the tenant's belongings were still in the suite they cancelled that time. The landlord testified that because they were aware that the tenant was no longer in the province after April 7, 2017 they did not attempt to schedule another time for a condition inspection. The landlord said that they did a condition inspection without the tenant on April 26, 2017 and found that the rental unit was unclean with personal items and furniture left behind. The landlord said that they understood that the tenant had arranged for a friend to remove the tenant's items and clean the unit but that did not occur until April 29, 2017.

The landlord claims the amount of \$720.80 for the following items:

| Item | Amount |
|----------------------|-----------------|
| Cleaning Costs | \$560.00 |
| Closet Door Repair | \$125.00 |
| Carpet Cleaning | \$30.80 |
| Carpet Cleaning Soap | \$5.00 |
| TOTAL | \$720.80 |

The tenant testified that he agrees that the closet door requires repair and he agreed to pay the landlord the amount of \$100.00 for the cost.

The parties testified that the tenant has not provided the landlord with written permission to deduct any amount from the security deposit. The parties clarified that a copy of the condition inspection report submitted into written evidence with the tenant's signature agreeing to a deduction from the security deposit was signed in error at the start of the tenancy and is not enforceable.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security 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. 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 as per section 38(4)(a).

I find that the tenancy ended on April 30, 2017. The tenant had paid the full rent for the month of April and the tenant was entitled to exclusive possession for that month pursuant to the tenancy agreement. The tenant provided the landlord with a written forwarding address on April 6, 2017 prior to the tenancy ending. Therefore, the landlord had 15 days from April 30, 2017 to refund the security deposit or file an application to retain it. The landlord did neither. I accept the evidence of the parties that the tenant did not provide valid written authorization that the landlord may retain any portion of the security deposit. I find that the landlord's application for dispute resolution filed on May 9, 2017 seeks a relief for damages and compensation but does not make an application to keep all or a part of the security deposit.

Furthermore, I accept the parties' evidence that no condition inspection report was prepared at the end of the tenancy. The landlord testified that they believed the tenant was out of the province and therefore did not attempt to arrange a date for the tenant to inspect the rental unit together with the landlord. I find there is insufficient evidence that the tenant was unavailable to participate in an inspection. Even if the tenant was ultimately unable to attend, pursuant to section 35(2) of the *Act*, the landlord must offer the tenant at least 2 opportunities for the inspection. I accept the undisputed evidence

that the landlord did not make any offers to the tenant to participate in an inspection after April 6, 2017. Consequently, pursuant to section 36(2) of the Act I find that the landlord has extinguished their right to claim against the security deposit.

Based on the undisputed evidence before me, I find that the landlord has not filed an application to retain the security deposit within the 15 day time limit and has failed to return the tenant's security deposit in full. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* 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 tenant is entitled to a \$1,700.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

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 on a balance of probabilities, 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.

I find that the landlord has provided insufficient evidence in support of their full monetary claim. I accept the evidence of the parties that the tenant had paid rent for the month of April and find that the tenancy was ongoing on April 23, 2017 when the landlord entered the rental unit. The cleaning undertaken by the landlord occurred when the tenancy was ongoing and the tenant still had the right to clean and repair any damage to the rental unit. Based on the written evidence and testimony of the landlord all of the landlord's work in the rental unit occurred during the tenancy. As such I find that this is not damage or loss that arises due to the tenant's violation of the Act, regulations or tenancy agreement.

The tenant testified that he does agree to a deduction of \$100.00 for a closet door that was damaged during the tenancy. I accept the tenant's testimony and find that the landlord is entitled to recover \$100.00 for damage to the rental unit closet.

I find that there is insufficient evidence to show that the cleaning costs incurred by the landlords are a result of the tenant's violation. Consequently, I dismiss the balance of the landlords' application.

As the tenant's application was successful the tenant is entitled to recover the \$100.00 filing fee for the application from the landlords.

Conclusion

The landlords' application is dismissed.

I issue a Monetary Order in the tenant's favour in the amount of \$1,700.00 against the landlords on the following terms:

| Item | Amount |
|--|-------------------|
| Double Security Deposit (\$850.00 x 2) | \$1,700.00 |
| Less Damages for Closet Door | -\$100.00 |
| Filing Fees | \$100.00 |
| Total | \$1,700.00 |

The tenant is provided with a Monetary 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: October 24, 2017

Residential Tenancy Branch