



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 landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent, loss and damages pursuant to section 67;
- authorization to retain the security deposit for this tenancy pursuant to section 38; and
- recovery of the filing fees from the tenants 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 tenant, BG (the "tenant") testified that the other named tenant is her minor child and she spoke for both named tenants.

As both parties were in attendance I confirmed that there were no issues with service of the landlord's application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the landlord's application and their respective evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

Is the landlord entitled to recover the filing fee for the application from the tenants?

Background and Evidence

The parties agreed on the following facts. This tenancy began in July, 2014, originally for a fixed term and as a periodic tenancy thereafter. The rent at the end of the tenancy was \$1,300.00 payable on the last day of each month. A security deposit of \$600.00 was paid at the start of the tenancy. The tenancy agreement provides that "30-Day Notice Prior to Move-Out" is required. This clause is initialled by both the landlord and the tenant.

The tenant gave written notice of her intention to end the tenancy on April 12, 2017. The parties agree that the tenant paid rent up to May 13, 2017. The landlord said that the tenant is required to pay the full rent for the month of May and the arrear is \$797.00. The tenant said that based on the 30-Day Notice clause in the tenancy agreement she believes that she is only required to pay until May 12, 2017.

The parties participated in a move-out inspection of the rental unit on April 24, 2017. A copy of the condition inspection report prepared at that time was submitted into written evidence. The condition inspection form is not signed by either party, and does not contain any information about who completed the form. The parties testified that they were present when it was prepared. The form identifies the rental building address but not the specific suite.

The tenant said that she disagrees with the landlord's assessment of the condition of the rental unit. The tenant said that she cleaned the rental unit prior to the end of the tenancy and there were no damages that require the work the landlord is claiming. The landlord testified that the rental unit was dirty, in disrepair and damaged. The landlord submitted into written evidence photographs of the rental unit. The landlord submitted into evidence quotes for replacement of doors, painting of walls and replacement appliances. The landlord said that the total cost of cleaning and repairs is \$3,788.47.

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).

In the case at hand the parties testified that the tenant provided a written forwarding address by a letter sent by registered mail on May 5, 2017. The tenants did not provide written authorization that the landlord may retain any amount of the security deposit. Pursuant to section 88 and 90 of the *Act*, I find that the letter providing a forwarding address was deemed served on the landlord on May 10, 2017, five days after mailing. Therefore, in accordance with section 38 of the *Act*, the landlord had 14 days from May 10, 2017 to file an application to retain the security deposit. The landlord filed the application for dispute resolution, which includes an application for an order to retain the security deposit, on May 23, 2017, within the 14 days provided under the *Act*.

However, while the parties participated in a move-out inspection of the rental unit on April 24, 2017 I find that the document submitted into written evidence titled Condition Inspection Report does not meet the requirements of a report set out in the Residential Tenancy Regulations. The

document does not identify the suite, does not provide the name of the landlord, the address for service of the landlord, the amount to be deducted from the tenant's security deposit, appropriate space for the tenant to indicate agreement or disagreement, or any space for signature by the landlord or tenant. I find that simply titling a document "Condition Inspection Report" when it does not contain much of the information that must be included means that the form cannot be considered to be a true condition inspection report as required under the *Act*.

Therefore, I find that the landlord has not met the reporting requirement of section 38(2) of the *Act*. Section 36 sets out the consequences if reporting requirements are not met. The section reads in part:

36 (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

...

(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.

Based on the undisputed evidence before me, I find that the landlord had extinguished their right to apply to retain the security deposit for this tenancy 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 \$1,200.00 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 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.

The parties agree that the tenant has only paid rent up to May 12, 2017. The parties calculate that the amount that would be owing for the period of May 13 to May 31, 2017 is \$797.00.

Section 5(2) of the *Act* states that:

5(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Section 45 of the *Act* provides that a tenant may end a periodic tenancy by giving a notice which will be effective on the day before the date in the month when the rent is payable under the tenancy agreement.

The parties may have intended for the tenancy agreement to allow them to end the tenancy anytime provided that the party ending give 30-Days Notice. However, I find that this portion of the tenancy agreement is in contravention of the *Act*. Therefore, pursuant to section 5(2) of the *Act* I find that the 30-Day Notice clause in the tenancy agreement is of no effect. By giving written notice on April 12, 2017, the effective date of the tenant's notice was May 30, 2017, the day before the date in the month when the rent is due. I accept the parties' calculation that the rent arrear is \$797.00 and issue a monetary award in the landlord's favour accordingly.

I find there is insufficient evidence to find that the landlord is entitled to a monetary award for damages as claimed. While the landlord has submitted photographs and testimony regarding the condition of the rental unit, I find there is little evidence of damage that I would characterize as substantive. While the photographs show some scratches on surfaces, it is no more than what one would expect from wear and tear. I do not find the landlord's testimony that restoration and repairs are required to be convincing. Furthermore, I find there is insufficient evidence to show that the appliance is broken, or that it is as a result of the tenant's violation of the *Act*, regulations or tenancy agreement. I find that the landlord has not shown on a balance of probabilities that there is damage to the rental unit, or that there is damage caused by the tenant's violation of the *Act*, regulations or tenancy agreement. Accordingly, I dismiss this portion of the landlord's claim.

As the landlord's claim was partially successful I allow the landlord to recover a part of the filing fee for the application in the amount of \$50.00.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$353.00 under the following terms:

Item	Amount
Double Security Deposit (\$600.00 x 2)	\$1,200.00
Less Rent Arrears (May 13-May 31)	-\$797.00
Less Filing Fee to Landlord	-\$50.00
TOTAL	\$353.00

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.

The balance of the landlord's application is dismissed.

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 30, 2017

Residential Tenancy Branch