



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear the tenant's application for:

- a return of the security deposit pursuant to section 38 of the *Act*, and
- a monetary award pursuant to section 67 of the *Act*.

Tenant A.M. appeared at the hearing for the tenants, while the landlords were both present. Both parties were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

While tenant A.M. was unable to recall how she served the landlords with the tenants' Application for Dispute Resolution and evidentiary package, the landlords acknowledged receipt of these documents by way of Canada Post Registered Mail on July 26, 2017. I find that the landlords' were duly served with the tenants' application for dispute resolution and evidentiary package pursuant to section 88 & 89 of the *Act*.

Following opening remarks, the tenant stated that she wished to amend her application for a Monetary Award to represent a new figure of \$1,140.00 from \$1,175.00. The tenant said that she had inadvertently included a \$35.00 bank charge which was not actually withdrawn. Pursuant to section 64(3)(c) of the *Act*, the tenants application for a Monetary Award is amended to reflect this request.

Issue(s) to be Decided

Are the tenants entitled to a return of the security deposit? If so, should it be doubled?

Are the tenants entitled to a further monetary award for damages?

Background and Evidence

The tenant gave undisputed testimony that this tenancy began in February 2016 and ended on May 24, 2017. Rent was \$900.00 per month and a security deposit of \$450.00 was paid at the outset of the tenancy and continues to be held by the landlords.

The tenant explained that she was applying for a Monetary Award of \$1,175.00. This amount was in reflection of a doubling of the security deposit under section 38 of the *Act*, because the landlords continued to hold the tenants' security deposit. Additionally, she explained the tenants were seeking a return of \$240.00 worth of rent that the tenants did not use. The tenant said that her and her roommate moved out on May 24, 2017 but had paid rent for the entire month of May 2017, and should therefore be returned the portion of rent which was paid but not used.

The tenant stated that she had sent the landlords a forwarding address in writing on July 26, 2017 by Registered Mail when she delivered her hearing and evidentiary package to the landlords. The landlords acknowledged receipt of this address.

During the course of the hearing the landlords acknowledged that they had failed to return the tenants' security deposit, but explained that there had been damage to the rental unit and that they had faced significant costs making repairs. Additionally, they said that they had been preparing invoices which they had hoped to discuss with the tenants following the conclusion of the tenancy. They said these were never addressed by the tenants when they moved out. The landlords continued by explaining that there was no verbal or written notice regarding the tenants' desire to vacate the premises without proper notice.

Analysis

Section 38 of the *Act* requires a landlord to either return a tenant's security or pet deposit in full or file for dispute resolution for authorization to retain these deposits 15 days after the *later* of the end of a tenancy, or upon receipt of a tenant's forwarding address in writing. If that does not occur, the landlord is required to 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 a tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). Under section 38(3)(b) a landlord may also retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of being sent a copy of the tenants' forwarding address by Canada Post registered mail on July 26, 2017, or following the conclusion of the tenancy on May 24, 2017. Furthermore no evidence was presented that they received the tenants' written authorization to retain the security deposit, nor was an Order made by an Arbitrator.

While I understand and appreciate the landlords' testimony that they suffered a loss as a result of the damage that occurred in the premises and because of the tenants' failure to provide them with proper notice of their intention to vacate the rental unit, the landlords' had a responsibility under the *Act* to apply to retain the tenants' security deposit within 15 days from the end of the tenancy or within 15 days of receiving the tenants' address in writing.

Under section 38(6)(b) of the *Act*, a landlord is required to pay a monetary award equivalent to double the value of the security deposit if a landlord does not comply with the provisions of section 38 of the *Act*. The tenant is therefore entitled to a monetary award in the amount of \$900.00, representing a doubling of the security deposit that has not been returned.

The tenants have also applied for a monetary award of \$240.00 representing the time in the month of May 2017 that they did not occupy the rental unit. A tenant is only entitled to a monetary order under section 67 of the *Act*.

Section 67 of the *Act* 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 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 of the *Act* 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. In this case, the onus is on the tenants to prove their entitlement to a monetary award.

I do not find that the tenants supplied adequate evidence to establish that they suffered a loss of \$240.00 related to the tenancy. The tenants moved out of the rental unit on May 24, 2017 under their own accord. There is no indication that the landlords forced them to move out, nor was any evidence presented that they faced undue pressure from the landlords to vacate the premises before the end of the month. The tenants'

application for compensation related to the time they did not spend in the rental unit is dismissed.

Conclusion

I issue a Monetary Order of \$900.00 in favour of the tenants as follows:

Item	Amount
Return of Security Deposit (2 x \$450.00)	\$900.00
Total =	\$900.00

The tenants are 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: November 7, 2017

Residential Tenancy Branch