



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC OLC

Introduction

This hearing was convened in response to applications by the tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act*;
- a return of the security deposit pursuant to section 38 of the *Act*
- an Order directing the landlord to comply with the *Act*.

Both the tenants and the landlords appeared at the hearing. The landlords were represented at the hearing by landlord P.H., while tenant K.V. presented submissions on behalf of the tenants. Both parties were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenants’ application for dispute resolution by way of Canada Post Registered Mail. Pursuant to section 89 of the *Act* the landlords are found to have been duly served with the tenants’ application.

Issue(s) to be Decided

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

Are the tenants entitled to monetary award?

Should the landlords be directed to comply with the *Act*?

Background and Evidence

Testimony presented at the hearing by the tenants confirmed that this tenancy ended on August 1, 2017. Rent was \$1,150.00 and a security deposit of \$550.00 continues to be held by the landlords.

Tenant K.V. explained that the tenants were seeking a monetary award of \$1,125.00 in satisfaction for a return of double their security deposit, along with \$600.00 for expenses related to bed bug treatment.

At the hearing, both parties acknowledged that the tenants vacated the rental unit on August 1, 2017. Both parties agreed that the tenants failed to provide 30 days written notice to the landlords of their intention to vacate the rental unit. The landlord stated that because she had not received adequate notice as per the terms of their tenancy agreement, that she withheld the tenants' security deposit. The landlord said that the rental unit was re-rented for August 1, 2017 but she suffered a loss because of the time and effort that was required to re-rent the suite.

The tenants informed that they met with the landlords on July 29, 2017 to perform a condition inspection of the rental unit. The tenants stated that they did not provide the landlords with written permission to withhold any part of their security deposit following completion of the condition inspection report.

On August 16, 2017, with a witness present, the tenants placed a copy of their forwarding address in the landlords' mailbox. Pursuant to sections 88 & 90 of the *Act*, the landlord is found to have been served with the tenants' forwarding address on August 19, 2017, three days after its placement in the mailbox.

In addition to a return of their security deposit, the tenants have applied for a return of \$600.00 related to medication they required following a series of bed bug attacks. As part of their evidentiary package, the tenants submitted receipts showing that prescriptions were filled in April and May 2017 for treatment related to bed bug attacks. The landlords agreed that they were made aware of a bed bug issue in the rental unit but argued that the bed bugs arrived in the rental unit as a result of the tenants' own actions. The parties presented conflicting testimony with landlord P.H. stating that the rental unit in question was the only unit which contained bed bugs, while the tenants argued that other units in the building had suffered attacks. The landlord said that she did not feel that the landlords were responsible for the expenses related to bed bug treatments as the tenants failed to inform them of the treatments they were seeking, nor did the tenants seek compensation at the time of their treatments.

Analysis

Section 38 of the *Act* requires the landlord to either return a 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 and, or upon receipt of the 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 the 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). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

At the hearing the landlord acknowledged that she withheld the security deposit because of loss related to a broken term of the parties' tenancy agreement.

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of receiving a copy of the tenant's forwarding address, or following the conclusion of the tenancy. If the landlord had concerns arising from the loss that arose as a result of this tenancy, the landlord should have applied for dispute resolution to retain the security deposit. It is inconsequential if a breach of the tenancy agreement has taken place, if the landlord does not take action to address these matters through the dispute resolution process. A landlord cannot decide to simply keep the security deposit as recourse for loss. The landlord would have to apply to arbitration before the *Residential Tenancy Branch* in order to have a determination made regarding the tenant's breach of a material term of the tenancy agreement.

No evidence was produced at the hearing that the landlord received the tenants' 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) of the *Act*, nor did the landlord receive an order from an Arbitrator enabling her to do so.

Pursuant to 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 tenants are therefore entitled to a monetary award in the amount of \$1,100.00, representing a doubling of the tenants' security deposit that has not been returned.

In addition to a return of the security deposit, the tenant said has applied for a return of \$600.00 for medication that was required to treat bed bugs.

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.

After considering the oral testimony and the evidentiary package submitted to the hearing by the tenants', I find that insufficient evidence was presented demonstrating that the landlord was responsible for the damage claimed. Section 67 of the *Act* only allows me to grant damages when it can be shown that the existence of the damage/loss, stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. The tenants failed to do this, and I dismiss this portion of the tenants' application.

Conclusion

I issue a Monetary Order of \$1,100.00 in favour of the tenants as follows:

Item	Amount
Return of Security Deposit under section 38 (2 x 550.00)	\$1,100.00
Total =	\$1,100.00

The tenants are provided with a Monetary 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.

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: December 5, 2017

Residential Tenancy Branch