



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC RR AAT MNDC MNSD

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to allow access to or from the rental unit or site for the tenants or the tenant's guests pursuant to section 70; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

While the tenant KU ('tenants') attended the hearing on behalf of the applicants by way of conference call, the landlord did not. I waited until 2:15 p.m. to enable the landlord to participate in this scheduled hearing for 2:00 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant KU provided sworn, undisputed testimony that she had served the landlord with this application for dispute resolution hearing package ("Application") and evidence by way of Registered Mail on June 6, 2017. The tenants included the tracking information in her evidence. The tenant testified that the landlord was personally served with the amendment on October 16, 2017. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord was deemed served with the tenants' application and evidence on June 11, 2017, five days after mailing. In accordance with sections 89 and 90 of the *Act*, I find the landlord duly served with the amendment on October 16, 2017. The landlord did not submit any written evidence for this hearing.

The tenant testified that this tenancy had ended as of May 15, 2017. As this tenancy has come to an end, I dismiss the remainder of the tenants' application for access to the rental home, and for the landlord to comply with the *Act* and tenancy agreement.

Issues(s) to be Decided

Are the tenants entitled to the return of their security deposit?

Are the tenants entitled to an order to reduce rent for repairs, services, or facilities agreed upon but not provided?

Are the tenants entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

Background and Evidence

This tenancy began on August 15, 2014 as a fixed-term tenancy which was to end on August 15, 2015. This tenancy continued past this period, with monthly rent set at \$900.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$450.00 at the beginning of the tenancy, and continues to hold this deposit. The tenant testified that this tenancy ended on May 15, 2017. The tenants provided the landlord with her forwarding address on May 15, 2017.

The tenant KU testified that both parties had verbally agreed to a mutual agreement to end this tenancy, and for the landlord to reimburse the tenants for rent for the period of May 4, 2017 through to May 15, 2017 in the amount of \$240.00, as the tenants had to stay in a transition house due to a serious roof leak. The tenant testified that the landlord refused to sign a mutual agreement, but the tenant KU's 16 year old daughter was present.

The tenant gave undisputed testimony that on May 13, 2017 the landlord had informed the tenants that this tenancy was to end as of May 15, 2017, and removed their belongings without their permission to do so, and without any notices issued to end this tenancy. The tenant testified that the monthly rent was paid up until the period of May 15, 2017.

The tenants provided, in evidence, a confirmation statement by a clinical counsellor, dated May 19, 2017, for ending a fixed-term tenancy because of family violence, or because the tenant has been accepted into a long-term care facility. The tenants did not provide any testimony in the hearing, or in their evidence, in regards to section 45.1(1) and (2) of the *Act*, which allows a tenants to end a fixed-term tenancy early due to family violence or long-term care.

The tenants confirmed that this tenancy ended on May 15, 2017, as the “unit was not liveable”. The tenants are requesting the return of their security deposit, and compensation for the landlord’s failure to comply with section 38 of the *Act*. The tenants are also requesting \$240.00 in compensation for the period of May 4, 2017 to May 15, 2017 as the tenants lived in a transition home due to the roof leak.

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 deposit 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 deposit, and the landlord must return the tenant’s security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant’s provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or 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.”

In this case, I find that the landlord had not returned the tenants’ security deposit in full within 15 days of receipt of the tenants’ forwarding address in writing. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenants’ security deposit. The tenants gave sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any portion of the tenants’ security deposit.

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security deposit.

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 or 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.

Although I sympathize that this tenancy ended abruptly on May 15, 2017, I am not satisfied that the tenants had provided sufficient evidence to support that the landlord had failed in their obligations during the period of May 4, 2017 through to May 15, 2017, rendering the tenant homeless. The tenants did not provide any witness testimony or reports to support that they had

no choice but to vacate the rental home due to the landlord's failure to comply with the *Act* or tenancy agreement, nor did they provide a mutual agreement signed by both parties to support that the landlord had agreed to provide compensation or end the tenancy. I find that the tenants vacated the rental property on May 15, 2017, and did not file an application to dispute the landlord's notice, or lack of notice, to end this tenancy, nor did they provide a copy of a signed mutual agreement from the landlord agreeing to the reimbursement of rent. As the tenants failed to provide sufficient evidence to support that the landlord failed in their obligations to comply with the *Act* and tenancy agreement, and that they suffered a loss due to this failure, I am not allowing the tenants' application for monetary compensation or a reduction in rent for the period of May 4, 2017 through to May 15, 2017.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$900.00 as set out in the table below:

Item	Amount
Return of Security Deposit	\$450.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	450.00
Total Monetary Order	\$900.00

The tenant(s) 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.

The remainder of the tenants' application is dismissed without leave to reapply.

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 7, 2017

Residential Tenancy Branch