



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDC-L, FFL, MNSD, FF

Introduction

This hearing dealt with application from both the landlord and tenants under the *Residential Tenancy Act* (the *Act*).

The tenants applied for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord applied for

- a monetary order for unpaid rent and compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant AS primarily spoke for both co-tenants (the “tenant”).

Both parties confirmed receipt of one another’s application for dispute resolution and evidence. I find that the parties were served with the respective application package in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Tenants’ Monetary Claim

The tenant said that they are seeking a monetary claim for damages and loss. The tenants did not file an Amendment to their application for dispute resolution adding a claim for a monetary award. The tenants included in their written evidence package a Monetary Order worksheet where they wrote the monetary amount sought.

Rule of Procedure 4.1 provides that an applicant may amend a claim by completing an Amendment form and filing the completed Amendment with the Branch. I find that the tenants have not filed the completed Amendment in accordance with the Rules.

Parties are entitled to know the claim against them and including a new head of claim within the pages of evidence is not a reasonable manner to make a party aware of a claim. As I find that it would be prejudicial to the landlord and a breach of the principles of natural justice to allow the tenants to amend their application to add a new head of claim I dismiss the tenants' application to add a claim for a monetary award.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Are the tenants entitled to recover security deposit for this tenancy?

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 June, 2016 and ended on May 20, 2017. The monthly rent was \$1,000.00. A security deposit of \$500.00 was paid at the start of the tenancy and is still held by the landlord. A copy of the tenancy agreement was submitted into written evidence.

The parties did not prepare a condition inspection report at the start of the tenancy. The landlord submitted into written evidence a letter to the tenant detailing the condition of the rental unit when the landlord inspected the unit on May 19, 2017. The landlord referred to this letter as the move-out condition inspection report. In the letter the landlord states that the tenant was present at the start of the inspection but left before it was completed.

The parties agreed that the tenant provided a forwarding address to the landlord in writing in June or July, 2017. The tenants filed their application for dispute resolution on July 11, 2017 when their security deposit was not returned. The landlord filed his application for dispute resolution on November 23, 2017 but has not applied to retain the security deposit. The tenants gave evidence that they have not provided written authorization that the landlord may retain any portion of the security deposit.

The landlord seeks a monetary award of \$1,770.70 for the following items.

Item	Amount
Garbage Bin Replacement	\$40.00
Repaint Living Room	\$200.00
Repaint Kids' Room	\$400.00

Replace Countertop	\$600.00
Cleaning Costs	\$90.00
Install Shower	\$100.00
TV Bill	\$29.70
Internet Bill	\$11.00
Time and Effort	\$300.00
TOTAL	\$1,770.70

The landlord said that all amounts are estimates and work has not been performed. The landlord submitted into written evidence explanation of why he believes that the tenant should be held liable for the items. The landlord believes that the tenant left the items in a state of disrepair requiring maintenance and renovations.

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 present case the parties agree that the tenants provided a forwarding address in writing in or about June or July, 2017. The landlord filed their application for dispute resolution on November 23, 2017 but the application does not include an application to retain the security deposit.

I accept the undisputed testimony of the tenant that they have not provided written permission that the landlord may keep any portion of the security deposit.

Based on the undisputed evidence before me, I find that the landlord has failed to return the tenants' security deposit in full within the 15 days of receiving a forwarding address nor have they applied to retain the security deposit within the timeframe provided under section 38(1)(c) of the *Act*. I accept the tenants' 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 tenants are entitled to a \$1,000.00 Monetary Order, double the value of the security deposit 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.

I find that there is insufficient evidence in support of the landlord's claim for a monetary award. The landlord's written submissions are rambling accounts of what he perceives to be deficiencies caused by the tenant. Much of the landlord's complaints are of minor issues which would be expected as part of the regular wear and tear from a tenancy. the landlord's submissions also include accusations against the tenant's character and behaviour which I find to be irrelevant to the issue of damages to the suite. I find that the photographs submitted into evidence do not support the landlord's assertion of damages and show nearly imperceptible scratches and discoloration. I find the landlord's claim for a monetary award to be wholly out of proportion with the condition of the rental unit and not supported in the evidence.

I find that the written tenancy agreement submitted into evidence shows television and internet as included in the monthly rent. The landlord now claims for extra usage by the tenants but I find that there is no provision in the tenancy agreement allowing the landlord to retroactively charge the tenant.

The tenants dispute that they used the utilities in a manner that contravenes the tenancy agreement. I find the landlord has failed to show on a balance of probabilities that there has been a breach of the *Act*, regulations or tenancy agreement on the part of the tenants that would give rise to a claim for damages or loss.

The landlord is in the business of providing rental accommodations for profit. There is an element of risk in a business venture and this risk is knowingly borne by the landlords. I do not find that there is any basis in the *Act*, regulations or tenancy agreement that allows the landlords to shift this risk onto the tenants after the fact. A residential tenancy agreement is a binding contract and as such cannot be disregarded because the landlords feel it is inconvenient when their profits are less than anticipated.

I accept the evidence of the parties that the landlord and tenants entered a tenancy agreement wherein the monthly rent included television and internet usage. The written tenancy agreement does not restrict the usage of these utilities. I therefore find that there is no obligation for the tenants to contribute to these utility bills.

I dismiss the landlord's claim in its entirety.

As the tenants' application was successful the tenants are entitled to recover the \$100.00 filing fee for this application.

Conclusion

The landlord's application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$1,100.00 under the following terms:

Item	Amount
Double Security Deposit (\$500.00 x 2)	\$1,000.00
Filing Fee	\$100.00
TOTAL	\$1,100.00

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.

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: January 11, 2018

Residential Tenancy Branch