



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC MNSD

Introduction

This hearing was convened in response to an application from the tenant pursuant to the *Residential Tenancy Act* (“*Act*”) for:

- a monetary order pursuant to section 67 of the *Act*;
- a return of the filing fee pursuant to section 72 of the *Act*; and
- an order directing the landlords to return the security and deposits pursuant to section 38 of the *Act*.

Only the tenant and his witness, A.S. appeared at the hearing. The tenant was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The tenant explained that he had served the landlords and the landlords’ lawyer with his application for dispute resolution by way of Canada Post Registered Mail. The tenant provided copies of Canada Post Registered Mail receipts to the hearing showing that three separate packages were sent on September 18, 2017. The tenant said that he reviewed the Canada Post tracking information online and this website indicated that the items were received. While I decline to allow service of the documents sent to the landlords’ lawyer; pursuant to sections 88, 89 & 90 of the *Act*, the landlords are deemed to have been served with the documents sent to their known mailing addresses on September 23, 2017, five days after their posting.

Issue(s) to be Decided

Is the tenant entitled to a return of his pet and security deposits? If so, should they be doubled?

Can the tenant recover a monetary award?

Can the tenant recover the filing fee?

Background and Evidence

Undisputed testimony was presented to the hearing by the tenant that this tenancy began on July 1, 2014 and ended on approximately May 15, 2016. Rent was \$2,200.00 per month, and pet and security deposits of \$1,100.00 each collected at the outset of the tenancy continue to be held by the landlords.

The tenant explained that he performed a condition inspection report with the landlords' agent on May 21, 2016. A copy of this condition inspection report was provided to the hearing as part of the tenant's evidentiary package. The tenant said that he placed a copy of his forwarding address in the mailbox of the rental home on the day of move out, as this had previously been an accepted means of communication with the landlords. The tenant continued by explaining that in addition to leaving his address in the mailbox, he emailed the landlords on May 15, 2016 with his forwarding address. A copy of this email was provided to the hearing as part of the tenant's evidentiary package. The tenant argued that the landlords most definitely had his forwarding address as it was contained on the first page of the tenancy agreement signed between the parties.

The tenant said that following the condition inspection report, he did not agree to allow the landlord to retain any part of his deposits.

In addition to a return of his pet and security deposits, the landlord is seeking a monetary award of \$500.00 for work performed on the property. Specifically, the tenant said that he was forced to repair a gate which had been broken and to which the landlords did not attend. In addition, the tenant said that he and his wife were forced to remedy an algae-covered backyard pond which was very foul smelling. As part of his evidentiary package, the tenant provided a description of the work which was required to rectify the problem. He said that this work took over two days to complete and he was seeking an award of \$400.00 for the associated labour.

Analysis

Section 38 of the *Act* requires a 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.

No evidence was produced at the hearing that the landlords applied for dispute resolution within 15 days of receiving a copy of the tenant's forwarding address on May 21, 2016, or following the conclusion of the tenancy on May 15, 2016. The tenant provided the landlords with his address in writing on three occasions, most notably at the start of the tenancy in the tenancy agreement signed between the parties. I find it unreasonable to conclude that the landlords would not have had the tenant's forwarding address. Pursuant to section 71(2)(c) I find the landlords were served with the tenant's forwarding address.

If the landlords had concerns arising from the damages that arose as a result of this tenancy, the landlords should have applied for dispute resolution to retain the security deposit. It is inconsequential if damages exist, if the landlords do not take action to address these matters through the dispute resolution process. A landlord cannot decide to simply keep the deposits as recourse for loss.

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 and pet deposits 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 \$4,400.00, representing a doubling of the tenant's pet and security deposits.

In addition to a return of his pet and security deposits, the tenant sought a monetary award of \$500.00 for repairs to the rental unit property. 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 tenant to prove his entitlement to a monetary award.

The tenant provided undisputed testimony, along with detailed written submissions documenting the extent of the repairs and work that were required on the property. I find that the tenant has suffered a loss as a result of the landlords' failure to maintain their

duties under section 32 of the *Act* which require them to ensure that the rental property is in a state of decoration and repair that complies with the health, safety and housing standards required by law and which makes it suitable for occupation by a tenant. I find that the amount of money requested as compensation by the tenant to be reasonable and will allow him to recover the entire amount sought for loss under section 32 of the *Act*.

As the tenant was successful in his application, he may pursuant to section 72 of the *Act*, recover the \$100.00 filing fee from the landlords.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$5,000.00 against the landlords. The tenant is 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.

Item	<u>Amount</u>
Return of Security Deposit w penalty under section 38 of the <i>Act</i> (2 x 1,100.00 [pet] & 2 x 1,100.00 [security])	\$4,400.00
Monetary Award under section 67 of the <i>Act</i>	500.00
Return of Filing Fee	100.00
Total =	\$5,000.00

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: February 2, 2018

Residential Tenancy Branch