



Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FF MND MNR MNSD OPC OPN

Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order of Possession for unpaid rent pursuant to section 55 of the *Act*;
- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*;
- and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the landlord attended the hearing. The landlord was given a full opportunity to be heard, to present testimony and to make submissions.

Following opening remarks, the landlord said that the tenants had vacated the rental unit on August 3, 2017 and that he was no longer seeking an Order of Possession.

The landlord explained that individual copies the landlord's application for dispute resolution and evidentiary package were sent to the tenants by way of Canada Post Registered Mail on August 31, 2017. As part of the evidentiary package, copies of the Canada Post Registered Mail receipts were provided to the hearing. Pursuant to section 88, 89 & 90 the *Act*, the tenants are deemed to have been served with these documents on September 4, 2017, five days after their posting.

Issue(s) to be Decided

Can the landlord retain the tenants' security deposit?

Is the landlord entitled to a monetary award?

Can the landlord recover the filing fee from the application?

Background and Evidence

Undisputed testimony provided to the hearing by the landlord explained that this tenancy began on June 1, 2017 when he took over ownership of the rental property. The landlord said that the tenants had failed to pay rent in July 2017 for the time period running from the 15th to the 31st of the month, and then overhauled in the rental unit for three days in August 2017.

The landlord sought a monetary award as follows:

Item	Amount
Unpaid rent for July 15-31, 2017	\$640.00
Unpaid rent for August 1-3, 2017	123.87
Materials for repairs to walls	100.00
Labour required to clean/fix rental unit (10 hrs @ \$25.00)	250.00
Return of Filing Fee	100.00
Total =	\$1,213.87

As part of his evidentiary package, the landlord provided a USB stick which contained images of the damage which the tenants are purported to have done to the rental unit. On August 4, 2017 the parties performed a condition inspection of the rental unit together where the landlord received the tenants' forwarding address. On August 26, 2017 the landlord applied for dispute resolution.

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; however, an application **must** be made within 15 days of receipt of a tenant's forwarding address.

At the hearing the landlord acknowledged that he withheld the security deposit because of loss related to items which were broken in the rental unit and because of work that was required to clean and tidy the unit.

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 on August 4, 2017, or following the conclusion of the tenancy on August 3, 2017. 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 within this 15 day period, in this case, the landlord had until August 19, 2017 to apply to retain the deposit. It is inconsequential if damage has been done to the rental unit, if the landlord does not take action to address these matters through the dispute resolution process within 15 days of receipt of the tenants forwarding address.

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 previously 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 they do not comply with the provisions of section 38 of the *Act*. The tenants are therefore entitled to a monetary award in the amount of \$1,800.00, representing a doubling of their security deposit that has not been returned.

While this decision will no doubt come as a shock to the landlord, the landlord is directed to consult *Residential Tenancy Policy Guideline #3* which states, "Unless the tenant has specifically waived the double of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit; If the landlord has not filed a claim within 15 days of the later of the end of the tenancy date or the date the tenant's forwarding address is received in writing; If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the *Act*." (in this case beyond the 15 days.)

In addition to an application to retain the security deposit, the landlord has applied for a monetary award for damage done to the rental unit, and for the accompanying work which was required to rectify the damage.

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 landlord to prove his entitlement to a monetary award.

After considering the oral testimony and the evidentiary package submitted to the hearing by the landlord, I find that sufficient evidence was presented demonstrating that the tenants were responsible for the damage claimed by the landlord. I accept the landlord's undisputed testimony that a significant amount of damage was done to the unit and that he required 10 hours of labour to clean and fix the rental property. In addition, I accept the costs put forward by the landlord for the related damage. I award the landlord the entire amount sought in his application for a monetary award.

I will offset the landlord's monetary award against the tenants' monetary award. As the landlord was partially successful in his application, he may recover the \$100.00 filing fee from the tenants.

Conclusion

I issue a Monetary Order of \$486.13 in favour of the tenants as follows:

Item	Amount
Return of Security Deposit under section 38 (2 x 900.00)	\$1,800.00
Monetary Award to the Landlord	(-1,213.87)
Return of Filing Fee	100.00
Total =	\$486.13

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: March 2, 2018

Residential Tenancy Branch