



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a monetary order for money owed or compensation under the Act, for the return of the security deposit and the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing and an order to retain the security deposit in partial satisfaction of the claim.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issues to be Decided

Are the tenant's entitled to a monetary order for money owed or compensation?
Are the tenant's entitled to the return of the security deposit?

Background and Evidence

The tenancy began December 2002. Current rent in the amount of \$1,800.00 was payable on the first of each month. A security deposit of \$700.00 was paid by the tenants. The tenancy ended on July 31, 2017.

The tenants claim as follows:

a.	Door	\$ 470.00
b.	Loss of quiet enjoyment	\$1,800.00
c.	Return of security deposit	\$ 700.00
d.	Filing fee	\$ 100.00
	Total claimed	\$3,070.00

The tenants testified that they asked the landlord during their tenancy they asked the landlord if they could replace the front door. The tenants stated that the landlord told them that it was okay and they replaced the door. The tenants acknowledged that landlord did not state they would pay for the door.

The tenants testified that they lost quiet enjoyment when the landlord was selling the home. The tenants stated that they never notified that landlord that there was a problem. The tenants stated that they were only claiming this because they were mad at the landlord for not returning their security deposit.

The tenants testified that they provided the landlord with their written forwarding shortly after the tenancy ended. The tenant stated then landlord did not return their deposit.

The landlord testified that they had the tenants' forwarding address. The landlord acknowledged that they did not return the security deposit or make an application claiming against the security deposit within the required 15 days.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenants have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Door

The evidence of the tenants was that the landlord gave them permission to install a new door. The evidence was there was no agreement that the landlord would pay for the door. I find the tenants have failed to prove a violation of the Act, as a tenant can make changes to the rental unit, with the consent of the landlord, and there is no requirement that the landlord pay for these changes unless agreed upon. Therefore, I dismiss this portion of the tenants' claim.

Loss of quiet enjoyment

I find the tenants' claim for loss of quiet enjoyments was done out of anger because the landlord did not return the security deposit. The tenants did not notify the landlord that there was a problem. I find the tenants have failed to prove a violation of the Act. Therefore, I dismiss this portion of the tenants' claim.

Security Deposit

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must do one of the following:**

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) 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, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this case, the undisputed evidence of the parties was that the tenants provided the landlord with their forwarding address and that the security deposit was not returned or an application was not made claiming against the deposit within 15 after that address being received.

The security deposit is held in trust for the tenants by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenants the sum of **\$1,524.77.00**, comprised of double the security deposit (\$700.00) on the original amounts held, interest of \$24.77, and to recover the \$100.00 fee for filing this Application.

At the conclusion of the hearing the tenants agreed that the landlord could keep the amount of \$504.81 for utilities that were owed from their monetary award.

I find the tenants are granted a monetary order for the balance due of **\$1,019.96**, pursuant to section 67 of the Act.

Conclusion

The tenants are granted a monetary order in the above noted amount.

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 21, 2018

Residential Tenancy Branch