



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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- 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 landlords pursuant to section 72.

Both parties attended the hearing and were given full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord MB (the "landlord") confirmed she represented both named co-landlords.

As both parties were present service of documents was confirmed. The parties confirmed they were in receipt of one another's materials. I find, based on the testimony of the parties that the landlords were served with the tenant's application for dispute resolution, amendment and evidence and that the tenant was served with the landlord's evidence in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the tenant's claims and my findings around each are set out below.

The parties agreed on the following facts. This tenancy began in October, 2016 and ended in September, 2017. A security deposit of \$600.00 was paid at the start of the tenancy. A condition inspection report was prepared at both the start and end of the tenancy. The tenant's brother, acting as her agent, attended the move-out inspection in her place and signed the condition inspection report. The tenant's forwarding address was provided on the move-out inspection dated September 16, 2017.

The landlords deducted \$150.00 from the security deposit for cleaning and returned \$450.00 to the tenant by e-transfer on September 28, 2017.

There was another proceeding under the file number on the first page of this decision. The earlier proceeding dealt with the landlords' application for an order of possession and monetary order based on unpaid rent. The landlords were issued a monetary order in the amount of \$1,200.00 for unpaid rent. The landlords submit that the earlier decision authorizes them to retain the full amount of the security deposit in partial satisfaction of their monetary award. The landlord testified that they did not receive the earlier decision until after they had returned the security deposit less the \$150.00 deduction.

The tenant testified that she did not agree to any deduction being made from the security deposit. The tenant seeks a monetary award in the amount of \$4,358.00 for the following items:

Item	Amount
Service on landlords	\$82.60
Filing Fees	\$150.00
Return of Double Damage Deposit (2 x \$600.00 - \$450.00)	\$750.00
Loss of Quiet Enjoyment	\$3,375.00
Total Monetary Order	\$4,358.00

The tenant testified that she was forced to reside in a rental unit that had severe problems with leakage and mould. The tenant said that she is of limited means and could not move out of the rental unit. The tenant said that she suffered discomfort and health issues due to the condition of the rental unit. The tenant also said that the landlords entered into the rental suite without authorization and in one instance attacked the tenant's guest.

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).

The parties agree that the landlord has withheld \$150.00 of the \$600.00 security deposit. The parties agree that the tenant has not provided written authorization that the landlord may retain any portion of the security deposit. The landlord submits that because they were issued a Monetary Order in an earlier decision they are entitled to retain the full security deposit amount.

Section 38(3) of the *Act* provides that:

A landlord may retain from a security deposit or a pet damage deposit an amount that,

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

The earlier decision grants the landlord a Monetary Order in the amount of \$1,200.00. While the decision does not make an express order that the landlord may retain the security deposit in satisfaction of the monetary order the *Act* allows the landlord to retain an amount from the security deposit that remains unpaid at the end of the tenancy. Therefore, the landlords were entitled to retain the full amount of \$600.00 in partial satisfaction of their monetary award. The landlords discovered their entitlement to retain the deposit after they had returned a portion of the deposit.

I will note that pursuant to section 38 and the offsetting provisions of section 72 of the Act the landlord is authorized to retain the security deposit in partial satisfaction of the monetary award issued. The Act does not allow the landlords the ability to retain the security deposit for expenses such as cleaning and damages without the proper authorization.

I find that the landlords were entitled to retain the security deposit of \$600.00 as there was an earlier monetary order in the landlord's favour which was unpaid at the time the tenancy ended. I find that the \$150.00 deducted from the security deposit by the landlords was done in partial satisfaction of the earlier monetary order. Therefore, as the landlord has complied with section 38 of the Act, the tenant is not entitled to a monetary award for a return of the security deposit.

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.

The tenant submits that the landlord caused her stress and anxiety throughout the tenancy and seeks a monetary award in the amount of \$3,375.00, the equivalent of rent and utility payments for two and a half months.

I find there is insufficient evidence in support of the tenant's claim for a monetary award. The tenant has failed to meet their burden of proof on a balance of probabilities. The tenant's evidence includes subjective complaints, some correspondence between the parties, photographs and documents. I find that both individually and cumulatively the evidence submitted does not show that there has been a breach by the landlords from which any loss has arisen. While there is evidence that there was an incident causing damage to the rental unit, I find that there is insufficient evidence to show that the damage was caused or exacerbated by the landlord. Furthermore, I find that the tenant has failed to show that the rental unit condition has caused specific harm or loss. I find that the tenant has not shown that there has been a loss suffered due to the landlord's negligence or breach and consequently dismiss this portion of the tenant's application.

As the tenant's application was not successful the tenant is not entitled to recover the filing fees for this application.

Conclusion

The tenant's application is dismissed in its entirety 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: April 4, 2018

Residential Tenancy Branch