



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF, MNDCT, FFT

Introduction

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

The landlords applied for:

- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- a monetary order for damages and loss 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 a full opportunity to be heard, to present affirmed testimony, to make submissions, present evidence and call witnesses. The co-tenant BC (the "tenant") primarily spoke on behalf of both named co-tenants.

As both parties were present I confirmed service of documents. The parties testified that they were each in receipt of the other party's application for dispute resolution and evidence. Based on the undisputed testimonies I find that the parties were duly served with the respective applications and evidence in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is either party entitled to a monetary award as claimed? Are the landlords entitled to retain all or a portion of the security deposit for this tenancy? Are the tenants entitled to a return of all or a portion of the security deposit? Is either party entitled to recover the filing fee for the application from the other?

Background and Evidence

The parties provided the following evidence. This tenancy began approximately 3 years ago. There is no written tenancy agreement. The tenant believes that the tenancy began in or about May, 2014. The monthly rent at the end of the tenancy was \$800.00. The parties agree that a security deposit was paid at the start of the tenancy but dispute the amount of the deposit. The landlord believes it was \$300.00 while the tenants submit it was \$650.00.

The tenants submitted a copy of a bank statement from May, 2014 into documentary evidence. They say that a withdrawal of \$1,500.00 made on May 2, 2014 was used for the first month's rent of \$650.00 and the security deposit of \$650.00.

The landlords seek a monetary award in the amount of \$3,100.00. The landlord testified that the amount includes 2 months' unpaid rent and the cost of repairs and cleaning for the rental unit.

The tenant testified that on August 17, 2017 the landlord, without authorization or prior notice, shut off the electricity to the rental unit and the tenants were forced to vacate the suite. The tenants seek a monetary award in the amount of \$4,786.22 for damages and loss as a result of the tenancy ending. The tenants claim the amount incurred for moving costs, redirecting mail, lost wages and accommodations for the days they were unable to reside in the rental unit. The landlord disputes the tenant's claim that the electricity to the rental unit was shut off.

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).

While the parties each testified that a security deposit was paid for this tenancy the parties are unable to agree on the amount of the deposit. The landlord testified that the deposit was \$300.00. The tenant said that the deposit was \$650.00 and points to a bank record showing a withdrawal of \$1,500.00 as evidence that half of that amount was used for the deposit. I do not find the tenant's submission to be persuasive. A withdrawal from a bank is insufficient evidence that the funds were used for a security deposit. I find it equally likely that funds were withdrawn for a purpose entirely unrelated to this tenancy. There is little evidence showing that the funds withdrawn were used for the security deposit.

I find the landlord's testimony that the security deposit was \$300.00 to be more credible. The figure is approximately half of \$650, the monthly rent at the start of the tenancy. I find that a security deposit of \$300.00 was paid at the start of the tenancy and is still held by the landlord.

The parties provided no evidence on whether a condition inspection report was prepared at either the start or the end of the tenancy. Section 24 of the Act provides that the right of a landlord to claim against a security deposit for damages is extinguished if they do not complete a condition inspection report in accordance with the regulations. Based on the evidence I find that no condition inspection report was prepared at the start of the tenancy and the landlord has extinguished their right to claim against it.

I accept the evidence that the tenants did not provide written authorization that the landlords may retain any portion of the security deposit. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to a \$600.00 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. While the landlord claims that there is a rental arrear the tenant disputes this and I find that there is no documentary evidence in support of the landlord's claim. The landlord submits that the rental unit required work after the tenancy ended but I find that there is insufficient evidence showing that any costs incurred were a result of the tenants. In the absence of a condition inspection report I find that there is little evidence of the state of the rental unit at the start and end of the tenancy. Consequently, I dismiss the landlord's application.

I find that there is little evidentiary support of the tenant's monetary claim. The tenants submit that they were forced to vacate the rental unit as the landlord shut off electricity to the unit. I find that there is little evidence of that event. The tenant has not shown on a balance of probabilities that there has been any action or negligence on the part of the landlord from which damages and loss arose. Accordingly, I dismiss the tenant's claim for a monetary award.

As neither party was wholly successful in their application I decline to issue an order regarding the filing fee for these applications.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$600.00 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.

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 11, 2018

Residential Tenancy Branch