



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDCL-S, FFL, FFT, MNDCT, MNSD

Introduction

This hearing, conducted by a conference call, dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- a monetary award for damages and loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- a monetary award for damages and loss pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit and pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to give affirmed testimony, present evidence, and call witnesses.

As both parties were present service of documents was confirmed. The parties testified that they were each in receipt of the other's application for dispute resolution and evidentiary materials. Based on the undisputed testimonies I find that the landlord was served with the tenant's application and evidence and the tenants were served with the landlord's application 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 tenants entitled to a monetary award equivalent to double the value of the security deposit and pet damage deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is either party entitled to recover the filing fee for this application from the other?

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 parties' claims and my findings around each are set out below.

This tenancy began in April, 2016 and ended June 30, 2017. The monthly rent was \$2,900.00. A security deposit of \$1,450.00 and pet damage deposit of \$1,450.00 was collected at the start of the tenancy and is still held by the landlord.

No condition inspection report was prepared by the landlord at the start or the end of the tenancy. The landlord completed a condition inspection report well after the end of the tenancy and a copy was submitted into written evidence. The tenants testified that they did not give written authorization that the landlord may retain any portion of their deposit.

The tenants seek a monetary award of \$6,160.00 for the following items:

Item	Amount
Double Security Deposit (\$1,450.00 x 2)	\$2,900.00
Double Pet Damage Deposit (\$1,450.00 x 2)	\$2,900.00
Cost of Washing Exterior Windows	\$210.00
Cost of Serving Application	\$50.63
Filing Fees	\$100.00
Total	\$6,160.00

The tenants said they washed the exterior windows of the rental unit at the landlord's request and submit an invoice for \$210.00 for the cost of the cleaning.

The tenants submit that they incurred costs for serving the landlord with the application and evidence and seek an award of \$50.63 for their losses.

The landlord seeks a monetary award in the amount of \$15,969.00 for the following items:

Item	Amount
Lost Rent March-July, 2018	\$2,792.00
Lost Rent July-Oct 2017	\$10,794.00
Insurance Deductible	\$1,000.00
Cost of Serving Application	\$50.63
Cleaning Costs	\$230.38
Printing and Screenshots	\$224.11
Postage for Service on Tenants	\$53.40
Filing Fees	\$100.00
Total	\$6,160.00

The landlord submits that the monthly rent charged to the tenant was significantly lower than their mortgage costs or similar rents in the neighborhood. The landlord said that they could have charged a higher rent, suffered an opportunity cost because they did not do so and are seeking a monetary award for the discrepancy.

The landlord said that there was damage to the rental unit caused by the tenants. The landlord said there was an incident where the plumbing backed up. The landlord attributes the plumbing incident to the tenants and the fact that the tenants disposed of cat litter through the toilet. The landlord submitted into written evidence opinion letters from plumbers and insurance professionals regarding the possible cause of the malfunction. The tenants gave evidence that the cat litter they used was a flushable variety which is intended to be disposed of through the plumbing system.

The landlord seeks the cost of the insurance deductible and cleaning costs incurred as a result of the plumbing incident.

The landlord also seeks to recover the cost of printing materials and serving the present application on the tenants in preparation for the hearing.

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 and pet damage 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 and pet damage deposit as per section 38(4)(a).

I accept the undisputed evidence of the parties that the tenancy ended on June 30, 2017 and a forwarding address was provided by the tenants prior to the tenancy ending. The landlord did not request authorization to retain the security deposit and pet damage deposit in their application for dispute resolution. I accept the evidence of the tenants that they did not provide written authorization that the landlord may retain any portion of the security deposit or pet damage deposit.

Furthermore, the parties gave evidence that the landlord did not prepare a condition inspection report at the start of the tenancy. The parties gave undisputed evidence that the condition inspection report submitted into written evidence was prepared by the landlord after the tenancy ended.

Section 24 of the Act outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I accept the undisputed evidence of the parties that the landlord did not prepare a written condition inspection report at the start of the tenancy. Consequently, I find that the landlord has extinguished any right to claim against the security deposit and pet damage deposit for damages to the rental unit by failing to prepare a written report in accordance with the *Act*.

Based on the undisputed evidence before me, I find that the landlord had extinguished their right to apply to retain the security deposit and pet damage deposit for this tenancy and has failed to return the tenant's deposits in full. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to a \$5,800.00 Monetary Order, double the value of the security deposit and pet damage deposit paid 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 tenant seeks a monetary award in the amount of \$210.00 for the cost of cleaning the windows of the rental unit and \$50.63 for the cost of serving documents on the landlord. I find that neither of these costs are attributable to a violation by the landlord. While the tenant has submitted into written evidence correspondence with the landlord where the landlord confirms the tenant performed the cleaning there is no evidence that the landlord was obligated to pay the costs for the cleaning. There is no evidence that the tenant performed the cleaning with the expectation that they would be reimbursed. There was no obligation on the tenants to incur the

cost of cleaning and I find that there is no evidence that there was a breach of the Act, regulations or tenancy agreement which gave rise to losses for the tenant for cleaning.

Similarly, I find that the cost of pursuing and serving an application are not recoverable as they are not borne as a result of a party violating the Act, regulations or tenancy agreement. I dismiss this portion of the tenants' claim.

The landlord seeks a monetary award for the lost rent and mortgage payments they incurred. The landlord submits that they entered into an agreement with the tenants for a monthly rent lower than what could have been charged. The landlord submits that their mortgage payments significantly exceeded the rent charged and seek a monetary award for the difference.

I find this portion of the landlord's claim to be without merit. The parties entered into a tenancy agreement with a monthly rent of \$2,900.00. Whether the rent covers the costs of the landlord is utterly irrelevant. There is no evidence that the parties did not enter this agreement knowingly or were induced by fraudulent representations. The parties entered a valid tenancy agreement and the landlord may not, after the fact, make a claim for their losses. I dismiss this portion of the landlord's claim.

I find that there is insufficient evidence to support the landlord's claim for repairs, cleaning and their insurance deductible. The landlord submits that the tenants caused the damage to the rental unit by flushing cat litter down the toilet. The tenants submit that they used a flushable cat litter and the plumbing issues were not caused by their actions. Both parties reference written reports from plumbers and insurance investigators which were submitted into written evidence.

Based on the totality of the evidence I find that the landlord has not established that the tenants are the cause of the damage to the rental unit. The onus to prove a claim on a balance of probabilities rests with the applicant. I find that the landlord has not met this onus. The explanation provided by the tenants is reasonable and consistent. I find the written opinions to be inconclusive. Taken in its totality I find the evidence, including the testimonies of the parties, the documentary evidence and the submissions, do not meet the onus of showing on a balance of probabilities that there has been negligence or action on the part of the tenants from which damages flow. Consequently, I dismiss this portion of the landlord's claim.

As stated above, the cost of pursuing an application including printing photographs and screenshots and postage is not a recoverable loss. I dismiss this portion of the landlord's application.

As the tenants were partially successful in their application I allow the tenants to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary award in the tenants' favour in the amount of \$5,900.00. 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.

The landlord's application is dismissed 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 25, 2018

Residential Tenancy Branch