



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT, MNDCL-S, FFL

Introduction

This hearing involved cross applications made by the parties. On April 19, 2018, the Tenant made an Application for Dispute Resolution seeking a Monetary Order for a return of double the security deposit pursuant to section 38 of the *Act* and seeking to recover the filing fee pursuant to section 72 of the *Act*.

On May 8, 2018, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for unpaid utilities and to apply the security deposit towards this debt, pursuant to section 67 of the *Act*. The Landlord is also seeking to recover the filing fee pursuant to section 72 of the *Act*.

The Tenant attended the hearing and K.O. and C.O. attended the hearing as the Landlords. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package to the Landlords on April 21, 2018 by registered mail and the Landlords confirmed receipt of this package. The Landlords advised that the Notice of Hearing package was served to the Tenant in person and the Tenant confirmed receipt of this package. Based on this testimony, and in accordance with sections 89 and 90 of the *Act*, I am satisfied that both parties were served with the Notice of Hearing packages.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

-
- Is the Tenant entitled to a return of double the security deposit?
- Is the Tenant entitled to recovery of the filing fee?

- Is the Landlord entitled to compensation for utilities owed?
- Is the Landlord entitled to apply the security deposit towards the unpaid utilities?
- Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Landlord stated that the tenancy started on January 1, 2017 as a month to month tenancy. Rent was established at \$1,000.00 per month, due on the first of each month. The Tenant was also responsible for 40% of the utilities. A security deposit of \$500.00 was also paid. The tenancy ended on March 31, 2018 and the Tenant confirmed all of these details.

With respect to the Tenant's Application, she submitted that her forwarding address was provided to the Landlords on March 25, 2018 via email and she provided a screenshot of the email and a confirmation message that this was sent. She stated that they communicated by email sometimes.

The Landlords confirmed their email addresses during the hearing. They also advised that the Tenant ended her tenancy via email and that they did communicate with the Tenant in this manner, especially towards the end of the tenancy. However, the Landlords advised that they did not receive this particular email from the Tenant and they provided technical documentation in their evidence outlining why an email may not have been received. The Landlords stated that they only received the Tenant's forwarding address in writing when they received the Notice of Hearing package on April 24, 2018.

During the hearing, the Landlords advised that they electronically transferred \$360.00 to the Tenant on April 24, 2018 as they felt returning this balance of the deposit was the right thing to do. They then subsequently filed their Application on May 4, 2018.

With respect to the Landlords' Application, they referenced written submissions in their evidence outlining what they believed the Tenant owed for utilities. They stated that an outstanding bill of \$78.35 was not paid and that there was an arrears notice owing of \$78.32, but they could not account for why there was a difference in these totals. The Landlords then outlined another outstanding utility bill of \$57.04 for the period of mid-February to the end of the tenancy. Finally, the Landlords referenced written submissions in their evidence outlining the amount of \$6.13 for what they believed the Tenant owed for gas utilities up until the end of the tenancy. The Landlords also referenced written submissions in their evidence demonstrating that they paid all the

utilities and then sought reimbursement from the Tenant. The Landlords were seeking a total monetary award of \$141.49 to recover the cost of utilities owed by the Tenant.

The Tenant advised that she does not agree with the amounts in arrears. She advised that when she moved out, she was presented with a utility bill of \$65.97 and she paid \$66.00 directly to the city to settle this debt. The Tenant then referenced an email from the Landlords dated April 11, 2018 outlining the amounts for the outstanding utilities; however, there was conflicting information on what had or had not been paid by the Tenant already.

The Landlords advised that the amounts owing in this email were not correct because they were calculated on the Tenant having paid the arrears. The Landlords stated that the Tenant would sometimes pay the Landlords directly and sometimes pay the utility company directly. The Landlords also referenced written submissions in exhibit T demonstrating their requests for outstanding utilities from the Tenant. The Landlords also apologized for the email with respect to the incorrect amounts owing and they tried to email the Tenant back to explain the corrected amounts.

Analysis

Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposit. If the Landlords fail to comply with section 38(1), then the Landlords may not make a claim against the deposit, and the Landlords must return the Tenant's security deposit and must pay the Tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the Tenant's provision of the forwarding address.

Policy Guideline 17 is of relevance to the consideration of this Application and states:

Unless the tenant has specifically waived the doubling 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 against the deposit within 15 days of the later of the end of the tenancy 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;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

While the Landlords allege that they did not receive the Tenant's forwarding address in writing via email on March 25, 2018 and only received this address when they received the Tenant's Notice of Hearing package on April 24, 2018, I find it important to note that section 38 of the *Act* clearly outlines that once a forwarding address in writing is received, the Landlord must either return the deposit in full **or** make an application to claim against the deposit. There is no provision in the *Act* which allows the Landlord to retain a portion of the deposit without the Tenant's written consent and then make a claim against the balance. As the undisputed evidence is that the Landlord illegally withheld a portion of the deposit contrary to the *Act*, and did not comply with the requirements of section 38, I find that the Tenant has established a claim for a Monetary Order amounting to double the original security deposit. Under these provisions, I am awarding the Tenant \$1,000.00; however, as the Tenant has received an electronic transfer of \$360.00, I am reducing this monetary award to \$640.00. As such, I grant the Tenant a Monetary Order in the amount of **\$640.00** in full satisfaction of this claim.

With respect to the Landlords' Application, they submitted a substantial amount of bills and correspondence regarding these outstanding utilities. The Tenant submitted emails questioning the calculations of these amounts and requesting copies of the bills to audit these figures. While the Landlords had complied with this request, in viewing the totality of the evidence before me, I do not find that the Landlords have made it sufficiently clear to any party that they are certain of the exact amounts owed by the Tenant. I find that this is emphasized by the Landlords' statement made in an email dated April 11, 2018 of "I think everything is sorted out correctly." In addition, the Landlords indicated that they could not account for minor discrepancies in amounts owed and that the Tenant would occasionally pay the Landlords directly and sometimes pay the utility company directly. I find that this further complicated the matter and compounded the confusion with respect to exactly how much the Tenant was responsible for. As I am not satisfied that the Landlords outlined their claim precisely, with clarity, I do not find that the Landlords have sufficiently established a claim for a Monetary Order. As such, I dismiss the Landlords' Application.

As the Tenant was successful in her application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

As the Landlords were unsuccessful in their application, I find that the Landlords are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$740.00** 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.

Furthermore, I dismiss the Landlords' Application for Dispute Resolution 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: June 15, 2018

Residential Tenancy Branch