



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRLS MNDCLS FFL MNSD

Introduction

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

The landlords applied for:

- a monetary order for compensation for unpaid rent, damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- a return of the security deposit for this tenancy pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant SS (the “tenant”) primarily spoke on behalf of both co-tenants. The landlord DW (the “landlord”) primarily spoke on behalf of the two named landlords.

As both parties were present service of documents was confirmed. The tenant confirmed receipt of the landlord’s application for dispute resolution dated November 8, 2017 and the evidentiary materials on or about that date. The landlord testified that they had been served with the tenant’s application for dispute resolution dated January 19, 2018 and the evidence on or about that date. Based on the undisputed testimonies, I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed? Are the landlords entitled to recover the filing fee for their application?

Are the tenants entitled to a return of double the security deposit for this tenancy?

Background and Evidence

The parties agreed on the following facts. This fixed term tenancy began in June, 2017 and was scheduled to end in July, 2018. The monthly rent was \$2,100.00 payable on the first of each month. A security deposit of \$1,050.00 was collected at the start of the tenancy and is still held by the landlords.

The parties agree that the tenants failed to pay the full monthly rent for September and October, 2017. The parties testified that the arrears for this tenancy is \$3,650.00. The landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent dated October 13, 2017. The tenants vacated the rental unit ending this tenancy on October 20, 2017. The parties participated in a move-out inspection and a condition inspection report was prepared on October 20, 2017. A copy of the condition inspection report, signed by the parties and providing a forwarding address for the tenants, was entered into documentary evidence.

The landlords seek a monetary award in the amount of \$20,900.58 for the following items:

Item	Amount
Unpaid Rent	\$3,650.00
Rent for Duration of Fixed Term Tenancy	\$16,800.00
Cost of Traveling to Rental Unit	\$450.58
TOTAL	\$20,900.58

The landlord testified that the rental unit was re-rented in December, 2017. The tenant disputed the landlord's evidence and said that she saw new occupants when she went by the rental unit in November, 2017.

The landlord testified that they had to travel to the rental unit on a number of occasions to re-rent the suite and the cost of travel was \$450.58. The landlord submitted receipts in support of their monetary claim.

The tenant testified that they did not give authorization that the landlord may retain the security deposit for this tenancy.

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).

In the present case the application by the landlord is for a monetary award for unpaid rent, damages and loss. While they have indicated that they are holding the security deposit they have not made an express application to retain the deposit. The tenants provided a forwarding address in writing on the condition inspection report dated October 20, 2017. I accept the tenant's testimony that they have not given written authorization that the landlord may retain any portion of the security deposit.

I find that the landlords have not returned the security deposit in full nor have they filed an application for dispute resolution which includes a claim for authorization to retain the deposit within the 15 days provided under the *Act*. Consequently, I find that the tenants are entitled to a monetary award of \$2,100.00, double the amount of the security deposit paid for this tenancy. No interest is payable in 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.

The parties agree that the arrears for this tenancy is \$3,650.00. Based on the undisputed evidence I find that the landlord is entitled to recover this amount for unpaid rent.

Residential Tenancy Policy Guideline 5 provides that a landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit. A party seeking

damages must show that reasonable efforts to reduce or prevent the loss claimed were made.

In the present circumstance the landlord testified that they were able to re-rent the suite starting December, 2017. A claimant cannot claim an award for damages and loss where no loss has been suffered. Based on the evidence, I find that the landlord has re-rented the suite and is receiving rental income. The landlord provided little evidence of the steps they took to re-rent the suite; there is no information about when they first listed the rental unit as available, how they listed the suite, how many applications they received, the number of showings or any information about the process for re-renting. The landlords have also given no information regarding the rent they are charging for the new tenant. The landlords have not shown that they have suffered a loss due to the tenant's actions. I find that there is little evidence in support of the landlords' claim and it is therefore dismissed.

The landlord claims the cost of travel to the rental unit but I find that there is insufficient evidence to indicate why this travel was necessary or caused by the tenants. The landlord included in their expenses cost of meals and beverages which I find to be unrelated to the efforts of re-renting the suite. It is expected that the landlords would have needed to eat regardless of the tenants. I find that there is little evidence showing that the costs claimed by the landlords are a direct result of a violation on the part of the tenants. Consequently, I dismiss this portion of the landlords' claim.

As the landlord was not wholly successful in their application I decline to issue an order allowing them to recover the filing fee for their application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' \$2,100.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary award in the landlord's favour in the amount of \$1,550.00 on the following terms:

Item	Amount
Unpaid Rent (Sept, Oct, 2017)	\$3,650.00
Less Double Security Deposit (2 x \$1,050.00)	-\$2,100.00
TOTAL	\$1,550.00

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The tenants must be served with this Order as soon as possible. Should the tenants 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: June 21, 2018

Residential Tenancy Branch