



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, MNSD, FFL, MNDL-S, MNRL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain 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 its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

While the tenants attended the hearing by way of conference call, the landlords did not. I waited until 1:45 p.m. to enable the landlords to participate in this scheduled hearing for 1:30 p.m.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. The landlords initiated the dispute resolution process by filing

an application first and were fully aware of today's date and time. As the landlords chose not to attend this hearing I hereby dismiss their application in its entirety without leave to reapply. The tenants gave affirmed testimony that they served the landlords their notice of hearing document and application in person on December 27, 2017. Based on the above, the hearing proceeded and completed on that basis.

Issue to be Decided

Is the tenant entitled to a monetary order as compensation for loss or damage under the Act?

Is the tenant entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The tenant's undisputed testimony is as follows. The tenancy began on September 29, 2017 and ended on October 20, 2017. The tenants were obligated to pay \$1600.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$800.00 security deposit. The tenants testified that the tenancy was a verbal month to month agreement. The tenants testified that since the landlord hasn't returned their security deposit within fifteen day's they are entitled to the return of double. The tenants testified that the landlords were so aggressive and difficult to deal with they decided on October 19, 2017 to move out the following day as they felt their health and safety were at risk and seek one month's rent as compensation.

Analysis

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **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 of the Act on the part of the other party.** The applicant must also show that they followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Compensation \$1600.00

The tenant testified that the landlords made this living arrangement very uncomfortable but was not anymore specific beyond that. The tenant gave vague testimony that could not be relied upon. The tenant has failed to satisfy me that she has provided sufficient evidence to satisfy the four grounds listed above as required under section 67 of the Act. Based on the insufficient evidence before me, I must dismiss the tenants claim for \$1600.00 compensation.

I address the tenants request for the return of double the security deposit as follows:

The tenant said she is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The tenant testified that they provided the landlord an email of their forwarding address, which they have not submitted for this hearing. In addition, email is not a prescribed method of service as required under section 88 of the Act. The tenant did provide their forwarding address in writing on November 13, 2017. The landlord filed an application to retain the deposit and a monetary claim on November 27, 2017. As the landlord has filed an application within 15 days of receiving the tenants forwarding address, I find that

the doubling provision does not apply. However the tenants are entitled to the return of their security deposit of \$800.00.

As the tenants have only been partially successful in their application, they must bear the cost of the filing fee.

Conclusion

The tenant has established a claim for \$800.00. I grant the tenant an order under section 67 for the balance due of \$800.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlords' 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: July 11, 2018

Residential Tenancy Branch