



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDL-S

Introduction

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

- a monetary order for damages pursuant to section 67 of the *Act*,
- authorization to retain all or a portion of the tenant's security and/or pet deposit in partial satisfaction of the monetary order requested pursuant to section 67 of the *Act*, and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

The landlord appeared at the date and time set for the hearing of this matter. The tenants did not attend this hearing, although I left the teleconference hearing connection open until 2:30 p.m. to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

As only the landlord attended the hearing, I asked the landlord to confirm that he had served the tenants with the Notice of Dispute Resolution Proceeding for this hearing. The landlord testified that he had served each of the tenants individually with the Notice of Dispute Resolution Proceeding and evidentiary materials by Canada Post registered mail on December 29, 2017, 2018, and provided two Canada Post registered mail tracking numbers as proof of service, which I have noted on the cover sheet of this decision. The landlord testified that he sent the packages to the tenants at the

forwarding address they had provided to him on December 12, 2017. As such, I find that the tenants were served in accordance with section 89 of the Act.

Preliminary Issue – Late Submission of Receipt Accepted

The landlord had included a quote as documentary evidence in support of his claims for the costs of cleaning and garbage disposal in the amount of \$850.00, however he had not uploaded the receipt into evidence to prove actual payment had been made for the amount of the quote. I allowed the landlord the opportunity to fax in his receipt during the hearing. I received the receipt confirming that the amount of \$850.00 had been paid for the cleaning and disposal costs, which concurs with the amount of the original quote submitted by the landlord. The receipt included an additional cost for Goods and Services Tax (GST) in the amount of \$42.50. However, I decline to consider this additional amount for GST as it was not included in the landlord's application for damages originally served on the tenants in the evidentiary package.

Preliminary Issue - Disconnection from Teleconference

Shortly before the hearing concluded, the landlord was disconnected from the teleconference at approximately 2:19 p.m. due to an unknown technical issue. The teleconference remaining opened for another 10 minutes to enable the landlord to call back into the teleconference. The landlord called the Residential Tenancy Branch and I spoke with the landlord to allow him an opportunity to ask any final questions and advise him that the hearing was now concluded.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damages?

Is the landlord entitled to keep all or part of the security deposit in full or partial satisfaction of the claim?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A copy of the written tenancy agreement was submitted into evidence. The landlord confirmed that this month to month tenancy began on November 15, 2015. Monthly rent of \$995.00 was payable on the first of the month. The tenants paid a security deposit of \$500.00 at the beginning of the tenancy, and the landlord continues to hold the security deposit. I note that the security deposit required by the landlord exceeded the allowable limit of one-half of one month's rent per section 19 of the *Act*.

The landlord stated that the rental unit consisted of two bedrooms and one bathroom for a total of about 900 square feet.

The landlord testified that the tenancy ended on December 12, 2017 when the tenants moved out and the landlord regained possession of the rental unit, after the landlord had sought an Order of Possession against the tenants for unpaid rent.

The landlord stated that a condition inspection was conducted with the tenants at move-in and was signed by the tenants. On December 12, 2017, Tenant S.C attended for the move-out condition inspection but the landlord testified that the tenant refused to sign the report. He stated that Tenant S.C. did agree in writing to a deduction of "at least" \$350.00 for the cost of cleaning, light bulbs, yard clean-up, and recycling disposal, and that this was noted on the condition inspection report. The landlord submitted a copy of the condition inspection report which indicates Tenant S.C.'s signature in agreement to this deduction. The landlord stated that at the time, he had not yet received a quote for the cleaning and disposal costs. On December 19, 2017, the landlord obtained a quote for these services and submitted a copy of the quote into documentary evidence.

The landlord has claimed compensation for the following:

Item	Amount Claimed
Cleaning of rental unit and garbage/recycling disposal (receipt provided)	\$850.00
Replace light bulbs and curtain rod (no receipt provided)	\$50.00
Total	= \$900.00

In support of his claim, the landlord submitted the following documentary evidence:

- a condition inspection report;
- photographs to show the condition of the rental unit inside and outside when the tenants moved out;
- a Monetary Order Worksheet listing the costs claimed; and
- quotations for the costs of cleaning and disposal, as well as the receipts to confirm payment was made for these services.

Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to section 7(2) of the *Act*.

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

- 37(2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,...

In this matter, I find that, on a balance of the probabilities, and based on the documentary and photographic evidence submitted, as well as the unchallenged testimony presented, the landlord has proven his claim for damages stemmed directly from the tenants' failure to leave the rental unit "reasonably clean" and "undamaged" upon vacating, as required by section 37 of the *Act*.

The landlord has provided sufficient evidence in the form of photographic evidence and documentary evidence, such as a quote and a receipt, to establish the monetary amount of the damages related to the cleaning and disposal costs. Therefore, I award the landlord the costs for cleaning and disposal in the amount of \$850.00.

The landlord has submitted a claim for the costs of light bulbs and a curtain rod. I award the landlord nominal damages for these items in the amount of \$50.00. The landlord failed to provide a receipt to establish the actual cost of these damages, however, the damage was established by the landlord's photographic evidence of a damaged curtain rod and it is also noted on the condition inspection report. Further to this, the light bulb replacement was one of the items acknowledged by Tenant S.C. as comprising part of the \$350.00 agreed upon deduction from the security deposit.

Set-off of Landlord's Claim Against Security Deposit

The landlord continues to retain the tenants' \$500.00 security deposit. No interest is payable on the deposit during the period of this tenancy.

The landlord confirmed that the tenants participated in the move-in and move-out condition inspections, therefore the tenants have not extinguished their rights to the security deposit, pursuant to sections 24 and 36 of the *Act*. The tenants did agree in writing to allow the landlord to retain \$350.00 of their security deposit towards the costs of cleaning and light bulbs.

Section 38 of the *Act* requires that, within 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing, the landlord either:

- return the tenant's security deposit in full;
- reach written agreement with the tenant to keep some or all of the security deposit; or
- file for dispute resolution for authorization to retain the security deposit.

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.

The landlord confirmed that the tenancy ended on December 12, 2017. On the same date, he received the tenants' forwarding address in writing and obtained the tenants' written agreement to retain \$350.00 of their security deposit. Therefore, I find that December 12, 2017 is the date which triggers the 15-day time limit provided by section 38 of the *Act*.

On December 28, 2017, the landlord filed his Application for Dispute Resolution to claim against the remainder of the tenants' security deposit for damages. As this is past the 15-day time limit, I find that the landlord failed to comply with section 38 of the *Act*.

As I have found that the tenants did not extinguish their rights to the security deposit, and the landlord did not return the remainder of the tenants' security deposit or file an Application for Dispute Resolution within 15 days from the date he received the tenants forwarding address, I find that the tenants are entitled to a monetary award equivalent to the value of double the remainder of the security deposit retained by the landlord, which in this case is \$300.00, as explained below:

Item	Amount Claimed
Security deposit paid by tenants at start of tenancy	\$500.00
LESS: Amount of security deposit agreed to in writing by tenants to be retained by the landlord	(\$350.00)
Amount of security deposit retained by landlord without agreement of tenants (subject to section 38(6) doubling provision award)	\$150.00
Monetary Award to tenants equivalent to amount of security deposit retained by landlord without their written agreement	+ \$150.00
Total Monetary Award in Favour of the Tenants	= \$300.00

In summary, I find that the landlord is entitled to a monetary award for compensation for damages in the amount of \$900.00. In partial satisfaction of this monetary award, I order the landlord to retain the \$350.00 security deposit agreed to by the tenants in writing to be provided to the landlord as compensation for the cleaning costs.

Further to this, as the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants.

In accordance with the offsetting provisions of section 72 of the *Act*, I set-off the \$900.00 of compensation owed by the tenants to the landlord, and the recovery of the \$100.00 filing fee to be paid by the tenants to the landlord, against the monetary award in favour of the tenants' in the amount of \$300.00 for the landlord's non-compliance with the security deposit provisions of section 38 of the *Act*, and less the \$350.00 of the tenants' security deposit agreed to in writing to be retained by the landlord.

As such, I issue a Monetary Order in the landlord's favour in the amount of \$350.00, as explained in the following breakdown:

Item	Amount
Monetary Award to landlord for compensation (cleaning, disposal and damages costs)	\$900.00
Recovery of filing fee awarded to landlord	+ \$100.00
LESS: Amount of security deposit agreed to by tenants to be retained by landlord for cleaning costs	(\$350.00)
LESS: Monetary Award to tenants for return of remainder of the security deposit (\$150.00) and doubling provision (\$150.00)	(\$300.00)
Total Monetary Order in Favour of Landlord	\$350.00

Conclusion

In compensation for damages and the recovery of the filing for this application, I order the landlord to retain \$350.00 of the security deposit and I issue a **Monetary Order in the landlord's favour against the tenants in the amount of \$350.00.**

The landlord is provided with this Order in the above terms and 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: July 24, 2018

Residential Tenancy Branch