



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlords under the *Residential Tenancy Act* (the “Act”) for monetary compensation for damages, to retain the security deposit towards compensation owed and for the recovery of the filing fee paid for this application.

Both Landlords and both Tenants were present for the duration of the hearing. The Landlord also had two witnesses present that were dismissed until later in the hearing when they joined to present testimony and answer questions from both parties.

The parties confirmed that the Notice of Dispute Resolution Proceeding package and copies of each party’s evidence was served on the other party in accordance with Sections 88 and 89 of the *Act*.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Are the Landlords entitled to compensation for damages?

Should the Landlords be allowed to retain the security deposit towards compensation owed?

Should the Landlords be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlords provided testimony that the tenancy began on November 1, 2016 and ended on March 1, 2018. A security deposit of \$900.00 and a pet damage deposit of \$900.00 was paid at the outset of the tenancy. Monthly rent was \$1,800.00. The Landlord confirmed that they are still in possession of the deposits in a total amount of \$1,800.00.

The Tenants agreed with the details of the tenancy, except for their move-out date. They provided testimony that they moved out of the rental unit on February 7, 2018 and returned the keys to the Landlords on February 28, 2018. The Tenants confirmed that they did not provide permission for the Landlords to withhold any amount from their deposits and that they have not received any amount of either deposit back.

The parties participated in a move-in inspection on October 26, 2016 and a move-out inspection on February 28, 2018. The Condition Inspection Report was submitted into evidence and was unsigned by the Tenants at move-out. The Landlord stated that the Tenant present at the move-out inspection refused to sign the Condition Inspection Report. The Tenant stated that she was not comfortable signing the report as the Landlord had advised her that he would add further information to the report afterwards.

The parties were in agreement that the Tenants provided their forwarding address in writing at the time of the move-out inspection on February 28, 2018.

The Landlords have claimed \$160.23 for an unpaid utility bill. The utility bill was submitted into evidence and during the hearing the Tenants agreed to have this amount deducted from their security deposit.

The Landlords have also claimed for the cost of sending registered mail to the Tenants in the amounts of \$25.10 and \$23.89. One registered mail receipt for \$23.89 was submitted into evidence.

The Landlords testified that there was damage to the home after the Tenants moved out that included a broken mirror in the bathroom, scratches on the floor and many dents in the walls. They stated that their friends helped with the repairs, so they did not pay for the labour. They purchased some supplies, including paint and cleaning supplies, and spent their own time cleaning the rental unit.

The two witnesses for the Landlords provided testimony regarding the work they completed in the home. This included cleaning the bathrooms and the kitchen, as well as clearing up items left outside. The witnesses also testified as to repairing small dents in the drywall throughout the home and painting. One of the witnesses estimated the work he completed at \$4,000.00, although he confirmed that he did not charge the Landlords.

Both parties submitted photos of the home. The Tenants clarified that their photos were taken at the time they moved out of the rental unit.

The Tenants stated that they spent two weeks cleaning the home before they moved out. They did not want to move out but stated that they had concerns over the presence of mould in the home that was causing health concerns for themselves and their family.

The Tenants submitted a statement into evidence requesting \$1,800.00 in compensation for the last month of rent, due to having to vacate the home early over concerns with mould. It was explained to the parties that only the claims on the Landlords' Application before me would be considered and a decision made. The Tenants confirmed that they had not filed an Application for Dispute Resolution.

Despite being asked several times, the Landlords were unable to clarify the amount of compensation they were seeking. They applied for \$1,800.00, but stated that they were not asking to keep the entire security deposit and pet damage deposit amounts. They testified that they had to apply quickly so didn't have exact amounts at the time, which is why they noted \$1,800.00; the amount of both deposits that have not yet been returned.

The Landlords confirmed that there were no receipts for the repair of any damages or cleaning, as well as no receipts for cleaning supplies, paint or other supplies provided. They also stated that estimates were difficult to provide as they completed the work,

along with their friends, and used some of their existing supplies, such as paint that they already had.

Analysis

In accordance with Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the onus to prove a claim is on the party making the claim. As such, I find that the onus is on the Landlords to prove, on a balance of probabilities, that they are owed compensation for damages from the Tenants.

During the hearing the Tenants agreed that they owe the Landlords \$160.23 for a utility bill. This amount will be deducted from the security deposit that the Landlords are in possession of.

While the Landlords requested reimbursement for registered mail costs, I decline to award this amount to the Landlords. Registered mail costs are not compensable under the *Act*, and instead, are costs that may be incurred by both parties through the Dispute Resolution Process.

The Landlords have also claimed for damages and cleaning, although were unable to specify the amount of compensation they were seeking. In order to determine if compensation is due, the *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* outlines a four-part test as follows:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

As the Landlords did not provide a monetary amount, and due to a lack of sufficient evidence regarding a monetary loss, I find that they did not meet the four-part test. Therefore, I determine that I cannot award compensation when the amount is not specified and without sufficient evidence to establish a value. It is up to the party making the claim to state the value of their loss and provide proof of the established value. As such, I decline to award any compensation for damages to the Landlords.

To determine if the Landlords were within their rights to retain the deposits after the tenancy, I refer to Section 38(1) of the *Act* which states the following:

38 (1) 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.

Although the parties were not in agreement as to when the tenancy ended, as the keys were returned on February 28, 2018, the same day that the move-out inspection was completed, I find that the tenancy ended on this date.

As the Tenants' forwarding address was also provided on February 28, 2018, I determine that the Landlords had 15 days from this date in which to return the deposits or file a claim against them. As they filed an Application for Dispute Resolution on March 14, 2018, I find that they applied within the 15 days allowable under the *Act*.

As the Landlords were in compliance with Section 38(1) of the *Act*, I find that the doubling provision of Section 38(6) does not apply. However, as the Landlords did not prove their monetary claim, beyond the amount that the Tenants agreed to pay, the Tenants are entitled to the return of the remainder of their security deposit and pet damage deposit.

As the Landlords were partially successful in their claim, pursuant to Section 72 of the *Act*, I award the recovery of half of the filing fee paid for the Application for Dispute Resolution, in the amount of \$50.00. This amount will be deducted from the deposits. The Tenants are awarded a Monetary Order for the return of their deposits, in the amount outlined below.

Security deposit	\$900.00
Pet damage deposit	\$900.00
<i>Less utility bill</i>	<i>(\$160.23)</i>

<i>Less half of filing fee</i>	<i>(\$50.00)</i>
Total owing to Tenants	\$1,589.77

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$1,589.77** for the return of their security deposit and pet damage deposit, after deductions for an unpaid utility bill agreed upon during the hearing and half of the filing fee paid for this application. The Tenants are provided with this Order 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.

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: October 10, 2018

Residential Tenancy Branch