



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT MNSD FFL MNDCL-S MNDL-S

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary order for damage to the unit, site, or property, or for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for money owed pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant were duly served with the Applications and evidence.

Issue(s) to be Decided

Are either of the parties entitled to the monetary orders they applied for?

Is the tenant entitled to the return of their security deposit?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Background and Evidence

This month-to-month tenancy began on June 1, 2016 with monthly rent set at \$2,200.00. The landlord collected a security deposit in the amount of \$1,100.00 and a pet damage deposit in the amount of \$400.00, which they still hold. The tenant moved out on February 28, 2017. The tenant provided her forwarding address to the landlord by leaving it with the landlord's 8 year old son. The tenant admitted that she had given notice on February 2, 2017 to end this tenancy, but testified that this was accepted by the landlord as he was a friend. The landlord confirmed receipt of the tenant's forwarding address, which he found on March 2, 2017 inside their home on the stairs. The tenant testified that no move-in or move-out inspections were completed, nor did she receive any reports. The landlord confirmed that no reports were provided to the tenant.

The tenant is requesting the return of her deposits as the landlord did not return them to her, nor did the landlord file an application for dispute resolution until March 8, 2018. The tenant is also seeking reimbursement of the \$100.00 filing fee, as well as \$42.12 for the cost of printing the photos for her application.

The landlord submitted a monetary claim for \$2,516.00 in order to recover their losses associated with the tenancy as listed in the table below:

Item	Amount
Unpaid Gas Bill	\$111.00
Unpaid Hydro Bill	105.00
Cost of repairing damage to floors (material and labour)	300.00
Loss of Rental Income	1,800.00
Filing Fee for this application	100.00
Filing Fee for previous application	100.00
Total Monetary Order Requested	\$2,516.00

The tenant indicated in the hearing that she is not disputing the outstanding hydro and gas bill.

The landlord is seeking a monetary order for the loss of rental income he suffered due to the tenant's failure to give 30 days' notice to end this tenancy. Both parties confirmed in the hearing that the tenant gave her notice on February 2, 2017, and moved out on February 28, 2017. The tenant testified that the landlord had agreed to the notice, which the landlord disputes. Both parties confirmed that no Mutual Agreements were signed to end the tenancy on the specified date. Both parties confirmed in the hearing the tenant rented the upstairs portion of the home, while the landlord lived downstairs. The landlord testified that when the tenant moved out, the landlord posted both units for rent immediately in order to increase his chances of filling the vacancy. The landlord was able to rent the downstairs portion for \$1,300.00, \$900 less than the previous tenancy, and he moved upstairs. The landlord is seeking a monetary loss of \$1,800.00.

The landlord is also seeking compensation for the damage to the flooring caused by a flood in the home. The landlord testified that the toilet had overflowed upstairs due to too many flushed baby wipes, which damaged the floors which were 3-4 months old. The landlord testified that it cost him \$300.00 to repair this damage. The tenant disputes that she had caused the damage.

Analysis

Section 45 of the *Residential Tenancy Act* reads in part as follows:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

It was undisputed by both parties that the notice given by the tenant does not comply with the *Act*, as stated above. Despite the tenant's testimony that the landlord had agreed to an alternative arrangement, both parties confirmed that no Mutual Agreement

was signed to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of this tenancy.

The evidence is clear that the tenant did not comply with the *Act* in ending this tenancy, and I therefore, find that the tenant vacated the rental unit contrary to section 45 of the *Act*. The evidence of the landlord is that they were able to re-rent the suite, and the landlord is claiming \$1,800.00 in lost rental income for this tenancy.

I am satisfied that the landlord had made an effort to mitigate the tenant's exposure to the landlord's monetary loss of rental income, as is required by section 7(2) of the *Act*. Accordingly, I find that the landlord is entitled to the monetary claim of \$1,800.00 for lost rental income due to the tenant's failure to comply with section 45 of the *Act*.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear. Sections 23 and 35 of the *Act* require the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that "the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished", as noted in sections 24(2) and 36(2) of the *Act*. Although the landlord claims that he did comply with the *Act* by completing both inspections, he did not provide the tenant with both move-in and move-out reports as required by the *Act*.

I have reviewed the landlord's monetary claim for damages, and have taken in consideration of the evidential materials submitted by the landlord, as well as the sworn testimony of both parties. I find that the landlord has not met the burden of proof to show that the tenant had caused the damage to the floors due to negligent or deliberate actions on her part. On this basis, I dismiss the landlord's monetary claim for damages without leave to reapply.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest 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. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlord was provided with the tenant's forwarding address in writing, which he admitted to have found on his stairs on March 2, 2017. I found that the landlord was aware of the tenant's provision of the forwarding address as of that date. The landlord failed to return the tenant's deposits to her within 15 days of March 2, 2017, and he did not file his application for dispute resolution until March 8, 2018, over a year later. In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the original deposits.

As both parties were equally successful in their applications and obtained offsetting monetary awards, no order will be made in regards to the recovery of their filing fees for their cross applications.

The landlord applied to recover the filing fee for a previous application. As the filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of that application, and as I was not required to make a decision on the merits of the previous case, I find that the landlord not entitled to recover the \$100.00 filing fee paid for that application. The landlord must bear the cost of the filing fee.

The tenant applied to recover the cost of printing the photos for her application for dispute resolution. As section 72 of the *Act* only allows for the recovery of the filing fee, and not the other associated costs of filing an application, I dismiss this portion of the tenant's monetary claim without leave to reapply.

Conclusion

I find that the landlord is entitled to a monetary award for the unpaid utilities and for the loss of rental income due to the tenant's failure to comply with section 45 of the *Act*.

I find that the tenant is entitled to a monetary order equivalent to double her deposits for the failure of the landlord to comply with section 38 of the *Act*.

Accordingly, I issue a Monetary Order in the amount of \$984.00 in the tenant's favour as set out in the table below.

Item	Amount
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i> (\$1,500 + \$1,500)	\$3,000.00
Less Unpaid Gas Bill	-111.00
Less Unpaid Hydro Bill	-105.00
Less Loss of Rental Income	-1,800.00
Total Monetary Order to Tenant	\$984.00

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord 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.

The remaining portions of the landlord and tenant's applications are dismissed 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*.

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Dated: October 10, 2018

Residential Tenancy Branch