



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing involved cross applications made by the parties. On June 13, 2018, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking to retain the security deposit in partial satisfaction these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On June 25, 2018, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for a return of double the security deposit and pet damage deposit pursuant to Section 38 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlords and Tenant attended the hearing. All in attendance provided a solemn affirmation.

The Landlords advised that a Notice of Hearing package was served to each Tenant by registered mail on June 18, 2018 and the Tenant confirmed receipt of these packages. The Tenant advised that she served the Notice of Hearing packages to the Landlords by registered mail and the Landlord confirmed receipt of these packages even though the address was not entirely correct. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that both parties were served with the Notice of Hearing packages.

The Landlord advised that they served their evidence to the Tenants by registered mail on August 20, 2018 and the Tenant confirmed that she received this evidence. The Tenant advised that she included their evidence in the Notice of Hearing packages.

Based on this undisputed testimony, I am satisfied that both parties have been served evidence in accordance with the Act and I have considered all the evidence presented.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to compensation?
- Are the Landlords entitled to apply the security deposit and pet damage deposit towards this debt?
- Are the Landlords entitled to recovery of the filing fee?
- Are the Tenants entitled to a return of double the security deposit and pet damage deposit?
- Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

Both parties agreed that the tenancy started on October 2, 2017 and that the tenancy would end on May 31, 2018. Rent was established at \$950.00 per month, due on the first of each month. A security deposit of \$475.00 and a pet damage deposit of \$475.00 was also paid.

The Landlords stated that the Tenants did a walk through of the rental unit on October 2, 2017 with their agent, N.B.; however, a move-in inspection report was never completed. The Tenants did not advise the Landlords or N.B. that there were any issues after the tenancy started. Around May 5, 2018, the Tenants advised that the clock timer on the stove had broken. When the Landlords investigated, it was determined that the display's housing had been broken and that the wire attachments likely sparked against the metal stove and created a small burn mark on the enamel near the display. The Landlords ordered a new part, sent a copy of the bill to the Tenants, installed the part on May 21, 2018, and touched up the burnt enamel.

The Tenants advised the Landlords on May 30, 2018 that they would be vacating the rental unit by noon that day. The Landlords attempted to meet the Tenants the next day; however, the Tenants had already vacated the rental unit. The Landlords found the key

and the Tenants' forwarding address in writing on the kitchen table on May 31, 2018. The Landlords returned multiple times to view the rental unit and returned on June 8, 2018 with a cleaner. The Landlords advised that they cancelled future short-term rental bookings until June 16, 2018 as there were kitchen items missing or broken, and the rental unit was not clean. They requested that the stove repair be taken out of the security deposit; however, the Tenants did not agree.

On June 12, 2018, the Landlords electronically transferred \$700.00 to the Tenants; however, the electronic transfer of funds was not accepted, so they filed their Application on June 13, 2018. The Landlords are seeking compensation for the following items:

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| • Costs associated with repairing the stove | \$188.13 |
| • Costs associated with missing/broken kitchen/household items | \$78.77 |
| • Costs associated with cleaning the rental unit | \$100.00 |
| • Costs associated with future rental loss | \$1,500.00 |
| • Costs associated with registered mail | \$21.42 |

The Tenant advised that as they had their own kitchenware and they put much of the provided kitchen furnishings into a cabinet and left them there. She stated that what happened to the stove display was simply wear and tear. She stated that the stove was turned on one day when the display was touched and the display fell out of the back of the stove. This happened approximately mid-way through the tenancy. The Tenant stated that they continued to use the stove and manipulated the display back into the stove. She also stated that they deep cleaned the rental unit and then moved the furniture back in, before they vacated. The Tenants are seeking the return of double the security deposit and pet damage deposit in the amount of \$1,900.00, pursuant to Section 38 of the *Act*.

Both parties agreed that move-in and move out inspection reports were not completed.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 36(2) of the *Act* states that the right of the Landlords to claim against a security deposit is extinguished if the Landlords do not complete the condition inspection reports. As the undisputed evidence is that the Landlords neglected to complete a move-in or move-out inspection report, I find that the Landlords have extinguished their right to claim against the security deposit.

Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposits. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to section 38(6) of the *Act*.

The undisputed evidence is that the forwarding address in writing was received on May 31, 2018 after the Tenants vacated the rental unit, that the Landlords returned \$700.00 to the Tenants on June 12, 2018, that the Tenants refused this electronic transfer, and that the Landlords made their Application within the 15-day frame to claim against the balance. While the Landlords returned a portion of the security deposit and claimed against the balance within the 15-day time frame pursuant to Section 38 of the *Act*, their right to claim against the security deposit was extinguished because they did not complete a move-in or move-out inspection report. Consequently, as per Section 38(6) of the *Act*, the Landlords must pay to the Tenants double the security deposit in the amount of **\$950.00**.

As the Landlords did comply with Section 38(1) of the *Act* by attempting to return the pet damage deposit in full within the 15-day time frame, the doubling provision will not apply.

With respect to the Landlords' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

During the hearing, the Landlords were advised that the *Act* does not provide compensation for the cost of registered mail. As such, this portion of their claim was dismissed in its entirety. Regarding the Landlords' claim for one week of rental loss in June 2018, as the Landlords advised that they did not have confirmation of renting the rental unit during this time, this portion of their claim was dismissed in its entirety.

With respect to the Landlords' claims for missing or broken kitchen and household items, and for cleaning of the rental unit at the end of the tenancy, the undisputed evidence is that the Landlords did not have a move-in inspection report outlining what was provided and what the condition of the rental unit was like at the start of the tenancy. Furthermore, the Landlords did not have a move-out inspection report to document any deficiencies to compare to the initial inspection. As such, I do not find that the Landlords have substantiated their claims with respect to these issues, and these claims have been dismissed in their entirety.

Regarding the Landlords' claim for the damage to the stove, the undisputed evidence is that the stove had no issues at the start of the tenancy and that the display broke during the tenancy. While the Tenants stated that this was due to normal use of the stove, I do not find it reasonable that regular use of the stove would cause the damage and burn mark to the display. In addition, based on the photographic evidence before me, I do not find it reasonable that the Tenants would not "recall" seeing such a substantial burn spot on the stove display during the tenancy. As such, I am doubtful of the reliability of the Tenants' testimony with respect to this issue. Consequently, I am satisfied that the damage to the stove was more likely than not caused by the Tenants' negligence, and I find that the Landlord has established that they are entitled to a monetary award of **\$188.13** to rectify this issue.

With respect to the Tenants' Application seeking a doubling of the deposits, the Tenants have been granted a monetary award as already documented above.

As the Landlords and Tenants were both partially successful in their Applications, I find that they are entitled to recover the \$100.00 filing fee paid for these Applications; however, in effect, these figures cancel each other out.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlords to the Tenants

Doubling of the security deposit	\$900.00
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Pet damage deposit	\$475.00
Costs associated with stove damage	-\$188.13
TOTAL MONETARY AWARD	\$1,186.87

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$1,186.87** 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: September 27, 2018

Residential Tenancy Branch