



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL, MNSD, FFT

Introduction

This hearing involved cross applications made by the parties. On June 19, 2018, the Tenant made an Application for Dispute Resolution seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On June 20, 2018, the Landlords made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of 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*.

M.L. attended the hearing as an agent for the Tenant and the Landlords attended the hearing as well. All in attendance provided a solemn affirmation.

The Tenant’s agent advised that a Notice of Hearing package was served to the Landlords by registered mail and the Landlords confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlords were served with the Notice of Hearing packages.

The Landlords advised that a Notice of Hearing package was served to the Tenant at the address he provided in his letter dated June 15, 2018. This package was served by registered mail and the Tenant’s agent confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served with the Notice of Hearing package.

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

- Is the Tenant entitled to a return of double the security deposit?
- Is the Tenant entitled to recovery of the filing fee?
- Are the Landlords entitled to compensation?
- Are the Landlords entitled to apply the security deposit towards this debt?
- Are the Landlords entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on June 1, 2017 and that the tenancy ended on May 31, 2018 when the Tenant vacated the rental unit. Rent was established at \$2,000.00 per month, due on the first of each month. A security deposit of \$1,000.00 was also paid.

Both parties agreed that neither a move-in nor a move-out inspection report were completed. While M.L. advised that the Tenant provided his forwarding address via email on May 31, 2018, the Landlords advised that they did not receive this. As such, the Tenant provided his forwarding address in writing to the Landlords by registered mail on June 15, 2018.

The Tenant is seeking a return of double the security deposit, in the amount of **\$2,000.00**, because the Landlord did not comply with the *Act*.

The Landlords advised that there was a hole in the drywall inside the house and a hole in the exterior hardie board that the Tenant did not fix at the end of the tenancy. They stated that they consulted the previous owner of the house and he advised that he was not aware of what this hole in the drywall might be, but he speculated that the Tenant may have installed an alarm system and removed it prior to vacating the rental unit. As well, the previous owner stated that the hole in the hardie board was new and he

speculated that it was drilled for wires to a hot tub. The Landlords provided two quotes for repair of the drywall and the hole in the hardie board. One quote was for \$1,112 + GST, totalling **\$1,167.60** and a second quote for **\$963.69**.

M.L. advised that this hole in the drywall was there at the time the Tenant moved into the rental unit and she assumed that the previous tenant had an alarm system. As well, M.L. stated that a hot tub was installed outside by a certified electrician and that the hole in the hardie board was for the wiring. However, the hole for the wiring was closed off inside the house but the hole in the exterior hardie board was not fixed.

Both the Landlords and Tenant were aware that the Tenant had installed an alarm system in the rental unit and a hot tub outside during the tenancy.

The Landlords are also seeking **\$120.97** for outstanding utilities that the Tenant owes and M.L. confirmed that the Tenant owed this amount and was willing to pay for it.

Finally, the Landlords are seeking **\$100.00** for compensation due to a false alarm fee. The Landlords stated that they were never given a key or access code to the Tenant's alarm system to access the rental unit for repairs or any necessary entries. They advised that they gave the proper written notice for entries and that the Tenant would have his neighbour provide access to the Landlords to gain entry to the rental unit. On one particular occasion, the neighbour allowed the Landlords access into the house; however, the neighbour entered the alarm code incorrectly and set off the alarm. This incurred a \$100.00 charge that was billed to the Landlords.

M.L. advised that this false alarm charge is the responsibility of the Landlords as they went into the rental unit. As well, she indicated that this incident happened in 2015 during the Landlords' final walkthrough of the property prior to them purchasing the property.

The Landlords advised that they have no evidence proving that they owned the property when they entered the rental unit and triggered the alarm.

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.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlords to claim against a security deposit for damage is extinguished if the Landlords do not complete the condition inspection reports. However, these sections pertain to a Landlords' right to claim for damage, and as the Landlords also applied for utilities owing and a false alarm fee, which are not damage claims, the Landlords still retain a 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 Tenant's 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 deposit. 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 mailed to the Landlords by registered mail on June 15, 2018. Based on the deeming provisions of Section 90 of the *Act*, I am satisfied that the Landlords were deemed to have received this on June 20, 2018. Furthermore, the Landlords made their Application within the 15-day frame to claim against the deposit. As the Landlords were entitled to claim against the deposit still, and as they complied with Section 38 (1) of the *Act* by making a claim within 15 days, I find that they have complied with the requirements of the *Act* and therefore, the doubling provisions do not apply. Furthermore, as the Tenant made his Application on June 19, 2018 before the forwarding address in writing was deemed received and before the Landlords' 15-day frame to act, I find his Application to be premature and I dismiss it in its entirety.

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."

Regarding the Landlords' claim for the damage to the rental unit, both parties disagreed with who was responsible for putting the hole in the drywall initially. In the absence of move-in or move-out inspection reports, I am not sufficiently satisfied from the testimony

and evidence before me that the Tenant was responsible for creating this hole in the drywall. As such, I dismiss this portion of the Landlord's claims.

With respect to the hole in the hardie board, the Tenant admitted that he had a hot tub installed. Further, M.L. advised that only the hole for the wiring was closed off inside the house and that the hole in the exterior hardie board was not fixed. As such, I am satisfied that the Tenant is responsible for the cost to have this repaired.

In assessing the cost to have the damages fixed, the Landlords submitted two quotes for the repairs. In reviewing the quotes, I have determined that the lower quote of \$963.69 should be used. This quote indicates that the cost for materials and labour to repair the hardie board is \$600.00 plus GST and an additional \$87.00 plus GST and PST. As I am satisfied that this damage was caused by the Tenant's negligence, I find that the Landlords have established that they are entitled to a monetary award of **\$727.44** to rectify this issue.

With respect to the Landlords' claims for outstanding utilities, both parties agreed that \$120.97 was owed and M.L. acknowledged that the Tenant was responsible for paying the arrears. As such, I find that the Landlords have established that they are entitled to a monetary award of **\$120.97**.

With respect to the Landlords' claims for the false alarm fee of \$100.00, as the evidence before me is insufficient in establishing that the Landlords owned the property and were in fact the Landlords of the Tenant at the time of the incident, I dismiss this claim in its entirety.

As the Tenant was unsuccessful in this Application, I find that he is not entitled to recover the \$100.00 filing fee paid for this Application.

As the Landlords were successful in this Application, I find that they are entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlords to retain a portion of the security deposit in partial satisfaction of the debts outstanding.

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

Calculation of Monetary Award Payable by the Landlords to the Tenant

Costs associated with repairs to the hardie board	\$727.44
Outstanding utilities	\$120.97
Filing fee	\$100.00
Security deposit	-\$1000.00
TOTAL MONETARY AWARD	\$51.59

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$51.59** 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 19, 2018

Residential Tenancy Branch