



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- a monetary order for compensation for unpaid rent, damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain the security deposit for this tenancy pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- a return of all or part of the security deposit for this tenancy pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlords were represented by counsel (the “landlord”).

Initially, I was scheduled to hear only the tenant’s application today. The landlords’ application was originally scheduled to be heard by me on November 22, 2018. The landlord requested that I bring the matters together so that both could be heard at once. The tenant testified that she had not received the landlords’ application for dispute

resolution. Pursuant to 2.10 of the Rules of Procedure, as I find that both applications pertain to the same residential property, involve the same parties, and similar evidentiary matters would be considered for each application I ordered that the matters be brought together and heard at once.

As both parties were in attendance I attempted to confirm service of the respective applications and materials. The landlord confirmed receipt of the tenant's application for dispute resolution dated April 10, 2018 and the evidentiary materials. In accordance with sections 88 and 89 of the Act, I find that the landlord was served with copies of the tenant's application and evidence.

The landlord testified that their application for dispute resolution filed on October 11, 2018 and evidentiary materials were served on the tenant by registered mail to their address for service on or about that date. The landlord provided a Canada Post tracking number as evidence of service. The tenant disputed ever receiving anything from the landlord. Based on the evidence provided by the landlord including the valid Canada Post tracking number I am satisfied that the landlord served the tenant in accordance with the Act. Therefore, I find that the landlord's application and materials were deemed served in accordance with sections 88, 89 and 90 of the *Act* and are sufficiently served for the purposes of the *Act* in accordance with section 71.

Issue(s) to be Decided

Is either party entitled to a monetary award as claimed? Is either party entitled to the security deposit for this tenancy? Is the landlord entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the parties' claims and my findings around each are set out below.

The parties agreed on the following facts. This tenancy began in either February or March, 2017. The tenant paid a security deposit of \$300.00 at the start of the tenancy and it is still held by the landlords. The parties did not prepare a condition inspection report at either the start or the end of the tenancy.

The tenancy ended in accordance with a 2 Month Notice to End Tenancy for Landlord's Use dated November 29, 2017. The 2 Month Notice provides an end of tenancy date of January 31, 2018. The 2 Month Notice was upheld in a previous hearing under the file number on the first page of this decision heard on February 9, 2018. At the earlier hearing the presiding arbitrator issued an Order of Possession in the landlord's favour.

The parties agree that the tenant did not pay rent for January, 2018 in accordance with the 2 Month Notice. The parties agree that the tenant did not pay any rent for February, 2018. The parties say that the tenant vacated the rental unit on either February 9, 2018 or February 13, 2018. No condition inspection report was prepared. The landlord said that the relationship between the parties had eroded at that point where they did not feel that there would be merit in inviting the tenant to participate in a move-out inspection.

The tenant provided their forwarding address where the security deposit could be sent through their counsel in a letter dated February 15, 2018. The tenant testified that they did not give written consent that the landlord may retain any portion of the security deposit.

The tenant seeks a monetary award in the amount of \$5,000.00 for the following items:

Item	Amount
Movers	\$700.00
Movers	\$760.00
Double Damage Deposit (2 x \$300.00)	\$600.00
Intimidation from Landlords	\$2,940.00
TOTAL	\$5,000.00

The tenant gave evidence through testimony and written submissions about the behaviour, conduct, and character of the landlords which he finds objectionable.

The landlords seek a monetary award of \$14,791.85 for the following items:

Item	Amount
Unpaid Rent February, 2018	\$600.00
Legal Fees	\$1,856.93
Flooring	\$1,874.66
Replacement of Baseboards	\$35.74

Pest Control	\$210.00
Miscellaneous Items	\$290.61
Wood	\$128.68
Repairs Labour Costs	\$6,300.00
Flooring	\$2,929.10
Cleaning (8 hours x \$20.00)	\$160.00
Painting	\$403.91
Hardware	\$2.22
TOTAL	\$14,791.85

The landlord submits that the rental unit required considerable repairs and cleaning due to the tenant's occupancy and that they incurred costs. The landlords submitted into documentary evidence photographs of the rental unit and various invoices and receipts in support of their application.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. 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. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the evidence of the parties that this tenancy ended in February, 2018 and the tenant gave written notice of their forwarding address by a letter dated February 15, 2018. The landlords did not return the security deposit to the tenants. The present application by the landlords for authorization to retain the security deposit was filed on October 11, 2018, well outside of the 15 days provided under the *Act*.

Furthermore, the parties gave evidence that no condition inspection report was prepared at any time during the tenancy. Section 24 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if they do not comply with the requirements of section 23 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report. While the landlord testified that the relationship with the tenant had deteriorated at the end of the tenancy where they felt

that offering an opportunity for a move-out inspection would be futile there was no reason why the parties would be excused from preparing a report at move-in.

Based on the undisputed evidence before me, I find that the landlords have neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. The tenant did not provide written authorization that the landlords may retain any portion of the security deposit for this tenancy. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlords' failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to an \$600.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find that there is no basis for the tenant's claim for the costs of moving. This tenancy ended by way of a 2 Month Notice issued by the landlord and upheld at an earlier hearing by an arbitrator. I find that there has been no violation of the *Act*, regulations or tenancy agreement that would give rise to the tenant's right to claim the costs of vacating the rental suite. Consequently, I dismiss this portion of the tenant's claim.

I find there is insufficient evidence in support of the tenant's claim for damages for intimidation from the landlord. The tenant's submissions consist of racist remarks, self-aggrandizing proclamations and irrelevant details of unrelated matters. I find that the tenant's accusations of threats and violent encounters to not be supported in independent documentary evidence and has little air of reality. Accordingly, I dismiss this portion of the tenant's claim.

I accept the evidence of the parties that the tenant did not pay rent for February, 2018 and occupied the rental unit for some days during that month. The parties disagree on when the tenant vacated the rental unit. The tenant testified that they vacated the suite

by February 9, 2018 while the landlord submits that the suite was occupied until February 13, 2018. The onus is on the party making a claim to show on a balance of probabilities the basis for their claim. I find that the landlords have not provided evidentiary basis to show the suite was occupied until the 13th. I accept the evidence that the suite was occupied by the tenant until February 9, 2018.

Pursuant to section 57(3) of the Act, a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended. Accordingly, I find that the landlords are entitled to a monetary award in the amount of \$192.86, the per diem equivalent of 9 days of occupancy.

I find that there is no basis for the landlords' claim to recover the legal fees. The legal costs incurred by the landlords relate to filing applications, drafting correspondence and representing the landlords at the earlier hearing. I find that there has been no violation of the Act, regulations or tenancy agreement that has resulted in the legal expenses. The tenant disputed the landlords' Notices to End Tenancy as was their statutory right. Their filing an application for dispute, even if the results were not in their favour, does not mean that the tenant was in violation by applying for dispute resolution. Consequently, I dismiss this portion of the landlords' application.

I find that in the absence of a condition inspection report prepared at the start of the tenancy there is insufficient evidence that the repairs and cleaning required were the result of the tenant's occupancy. I find that the photographs submitted into evidence to be insufficient to show that the rental unit was in such a state of disrepair because of the tenant or that the extent of repairs incurred by the landlords was required. I dismiss this portion of the landlords' claim as I find there is insufficient evidence that the costs incurred by the landlords were a result of the tenant's violation.

As the landlords' application was not wholly successful I issue an order allowing the landlords to recover half of the filing fee in the amount of \$50.00.

Conclusion

I issue a monetary award in the tenant's favour in the amount of \$357.14 on the following terms:

Item	Amount
Double Security Deposit (2 x \$300.00)	\$600.00
Less Rent February 1-9, 2018	-\$192.86
Less Filing Fee	-\$50.00
TOTAL	\$357.14

The tenant is provided with a Monetary 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.

The balance of both 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*.

Dated: October 23, 2018

Residential Tenancy Branch