



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON ADVANTAGE PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- authorization to obtain a return of all or a portion of their security deposit and pet deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, 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. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to a monetary award for loss and damages arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security and pet deposits in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award equivalent to the amount of their pet damage and security deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on July 1, 2016 and ended on June 27, 2018. The tenants were obligated to pay \$2400.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1200.00 security deposit and a \$1200.00 pet deposit. Written condition inspection reports were conducted at move in and move out with both parties participating. GH testified that the carpets in the three bedrooms and the family room had to be replaced due to the extensive staining and smell of urine from the tenants' pets. GH testified that the tenants failed to maintain the yard as agreed to and resulted in having to re-seed and re-soil the yard. GH testified that the tenants still have a water bill outstanding. RL testified that the landlords filed their application within fifteen days of the end of the tenancy.

The landlord is applying for the following:

1.	Water Bill	\$62.39
2.	Carpets	3099.81
3.	Lawn Repair	1155.00
4.	Filing Fee	100.00
5.	Minus Pet and Security Deposit	-\$2400.00
6.		
	Total	\$2017.20

The tenants gave the following testimony. TH testified that she disputes the landlords' entire claim. TH testified that based on information she received from the "Rental Board", she is asking for the return of double her security and pet deposits for a total claim of \$4800.00.

Analysis

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 arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Water Bill - \$62.39

TH testified that she has paid this since the landlord had filed an application. GH testified that was a possibility and did not have an issue with this claim being dismissed, accordingly; I dismiss this portion of the landlords' application.

Carpets \$3099.81

The tenant submitted that the carpets were old and that they did not stain them. The landlord provided extensive documentation to support this claim. I find that the landlord is entitled to an amount for the carpets but not the one applied for. The landlord advised that the carpets are six years old. Policy Guideline 40 addresses the "useful life" of building elements and lists carpet at 10 years. I find that the landlord is entitled to 40% of the \$3099.81 for an award of \$1239.92.

Lawn Repair- \$1155.00

The tenant testified that they made all reasonable attempts to maintain the lawn but as it was in the middle of an extremely dry season they were unable to maintain it to the standard to which the landlord wanted. The tenant testified that she asked for help to maintain the lawn from the landlord, but didn't receive it. As noted above, to be successful under section 67 an applicant must be able to satisfy all four elements;

including that it stemmed directly from a violation of the agreement or contravention of the Act. In the matter before me, the landlord has not provided sufficient evidence to show on a balance of probabilities that the tenant was negligent or reckless in causing damage to the yard or what steps they took to mitigate the damage or loss, accordingly; I dismiss this portion of the landlords claim.

The tenants sought the return of double the security and pet deposits.

Section 38 (1) says that 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.

The tenants moved out on June 27, 2018. The landlord filed their application on July 12, 2018; fifteen days later. I find that the doubling provision does not apply as the landlord has acted in accordance with section 38 of the Act.

The landlords' total award is \$1239.92. I order that the landlord is entitled to retain that amount in full satisfaction of the claim. The landlord is to return the remaining \$1160.08 to the tenants.

As neither party was completely successful in their application, they must each bear the cost of their own filing fee.

Conclusion

The landlord has established a claim for \$1239.92. I order that the landlord retain that amount from the deposits in full satisfaction of the claim. The landlord is to return the remaining \$1160.08 of the deposits to the tenants. I grant the tenants an order under section 67 for the balance due of \$1160.08. This order may be filed in the Small Claims 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: November 19, 2018

Residential Tenancy Branch