



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

On June 27, 2018, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package and evidence to the Landlord by registered mail and the Landlord confirmed that he received this package. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlord was served the Notice of Hearing package and evidence.

The Landlord advised that he served his evidence to the Tenants by registered mail on August 15, 2018 and the Tenant confirmed that she received this. As this complies with the service requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and considered it when rendering this decision.

All parties 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 Tenants entitled to a return of double the security deposit?
- Are the Tenants entitled to monetary compensation?
- Are the Tenants entitled to recover 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.

All parties agreed that the tenancy started on May 1, 2015 and that rent was currently established at \$1,200.00 per month, due on the first day of each month. A security deposit of \$600.00 was also paid. Both parties agreed that neither a move-in nor a move-out inspection report was completed.

The Tenant advised that there was an understanding that they would eventually be purchasing the manufactured home from the Landlord; however, they realized that they could not do so in January 2018, so they decided to leave as quickly as possible. They advised the Landlord that they would be ending their tenancy and they paid February 2018 rent in full. She stated that she asked the Landlord if he would like written notice to end the tenancy and he advised her to put the notice in her own mailbox; however, she submitted that he did not ever come to collect the notice.

The Tenant stated that the Landlord contacted her multiple times in early February to have a realtor view the rental unit. She referred to pictures that she submitted into evidence demonstrating that she had been in and out of the rental unit throughout February, cleaning and moving. However, she entered the rental unit on February 18 and observed paint cans and then over the subsequent days, the Landlord had people in the rental unit repairing damage, repainting, and cleaning without her knowledge.

She advised that she met the Landlord on February 28, 2018, that she gave him the keys, and that she also provided him with her forwarding address in writing.

The Landlord advised that he “can’t recall getting notice” from the Tenants to end their tenancy, although he did indicate in his evidence that he received notice from the Tenants on February 1, 2018 and that he cashed their cheque for February 2018 rent “which was to be considered one month’s notice”. He stated that in early February, it

appeared as if the Tenants had vacated the rental unit and that the neighbours advised him that they saw a moving truck. He submitted that he watched the snow for footprints and that when he did not see any, he entered the rental unit and found it to be cleaned and empty, with the exception of a few boxes. As such, he determined that the Tenants abandoned the rental unit. He advised that the heat was off, and he was nervous that the rental unit would freeze. Due to his belief that the Tenants abandoned the rental unit, he decided that there was “no point waiting” so he arranged to have people enter starting February 18, 2018 to repaint, clean, and repair damage. He submitted that he “knew the tenants were not capable of fixing the damage themselves, so [he] hired professionals.”

The Landlord confirmed that he met the Tenant on February 28, 2018 to get his keys back. He stated that he cannot recall if he received the Tenant’s forwarding address in writing and advised that “if the tenant says I got it, then I might have”. He submitted that he was “not concerned with it”, that “it was not of much importance to him”, and in retrospect, he was so nonchalant about this because he did not realize that there were provisions in the *Act* that required him to deal with the security deposit. He advised that he did not have the Tenant’s written consent to keep any of the deposit.

In addition to seeking the return of double the security deposit, the Tenant is seeking a return of February rent as she feels like she was forced out of the rental unit. She advised that she paid the rent in full for February, that she disconnected the hydro and gas at the end of February, and that she gave no indication that she would be vacating the rental unit prior to February 28, 2018. She also advised that she is seeking compensation for the cost of movers.

Analysis

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.

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 38(1) of the *Act* requires the 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 in full 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 pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on a balance of probabilities, I am satisfied that the Landlord more likely than not had the Tenant's forwarding address in writing on February 28, 2018. As the tenancy ended on this date, I find that this is the date which initiated the 15-day time limit for the Landlord to deal with the deposit. The undisputed evidence before me is that the Landlord did not return the security deposit in full or make an Application to keep the deposit within 15 days of February 28, 2018. Furthermore, there is no provision in the *Act* which allows the Landlord to retain a portion of the deposit without authority under the *Act* or having the Tenant's written consent.

As the Landlord did not return the security deposit in full or make an Application to retain it within 15 days of February 28, 2018, the Landlord in essence illegally withheld the deposit contrary to the *Act*. Thus, I am satisfied that the Landlord breached the requirements of Section 38. As such, I find that the Tenant has established a claim for a monetary award amounting to double the original security deposit. Under these provisions, I grant the Tenant a Monetary Order in the amount of **\$1,200.00**.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the Tenant's claims for the cost of the movers, the Tenant was advised that there are no provisions within the *Act* to compensate the Tenant for this type of claim. As such, this claim was dismissed in its entirety.

With respect to the Tenant's claim for the return of February rent as the Landlord commenced repairs, repainting, and cleaning prior to her giving up vacant possession of the rental unit, the undisputed evidence before me is that the Landlord commenced this work on February 18, 2018 despite having notice that the Tenant would give up vacant possession of the property on February 28, 2018 and that the Tenant had paid rent for the entire month. Despite his belief that the Tenants had abandoned the rental unit, it is not clear to me why the Landlord decided to take over the rental unit and commence repairs before the end of the tenancy. As a result, I am satisfied that the Landlord breached the *Act* in this regard. In reviewing the totality of the evidence before me, I find that the Tenants are entitled to compensation in the amount of 10 days rent that they

did not have full access to the rental unit. Consequently, I grant the Tenants a monetary award in the amount of **\$428.57** ($\$1,200.00 \div 28 \times 10$).

As the Tenants were successful in their claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Item	Amount
Double the security deposit	\$1,200.00
Compensation for loss	\$428.57
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$1,728.57

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$1,728.57** in the above terms, and the Landlord must be served with **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.

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 5, 2018

Residential Tenancy Branch