



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application pursuant to section 72.

Landlord F.K. and the tenants attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. Landlord F.K. (the landlord) indicated that she was representing the interests of both tenants in this hearing.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (Application) and evidentiary package which were sent to the landlord by way of Canada Post registered mail on June 07, 2018. In accordance with sections 88 and 89 of the *Act*, I find that the landlord has been duly served with the Application and evidentiary package.

The landlord confirmed that they did not submit any evidence to the Residential Tenancy Branch (RTB) or to the tenant.

Issue(s) to be Decided

Are the tenants entitled to compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to a monetary award for the return of all or a portion of their security deposit?

Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

The landlord and the tenant agreed that this tenancy began on July 15, 2016, with a monthly rent of \$1,100.00 due on the first day of each month. The landlord and tenant confirmed that the tenant paid a security deposit in the amount of \$515.00 and that the landlord returned \$360.00 of it to the tenant.

The tenant also provided in evidence;

- Copies of various texts where the landlord requests utilities to be paid by the tenants;
- A copy of a notice to end tenancy from the tenants to the landlord dated April 17, 2018, with an effective date of May 31, 2018; and
- A copy of a text message from Tenant S.V. to the landlord advising that the rental unit is clean and that the tenants can return the key when required. Tenant S.V. indicates that they are ready to do the walkthrough in order to obtain the security deposit back from the landlord; and

The tenants' monetary claim is as follows:

Item	Amount
Early return of keys to landlord	\$70.96
Overpayment of rent by \$70.00 for three months	210.00
Return of remainder of Security Deposit	\$165.00
Requested Monetary Award	\$445.96

The tenant testified that their forwarding address was given to the landlord when they provided their notice to end tenancy to the landlord in writing. The tenant stated that the landlord has not returned part of their security deposit and did not obtain the tenants' permission to keep a portion of it in writing.

The tenant submitted that they are requesting a return of \$70.96 for returning the key earlier than the end date of their tenancy at the landlord's request. The tenant stated that the landlord asked for the keys for the new occupants and the tenants are of the

position that they had a right to possession of the rental unit until the end of the May 2018.

The tenant submitted that the landlord illegally increased the monthly rent by \$70.00 as the landlord did not provide notice on the approved form and raised the rent by more than the amount permitted by the regulations. The tenant stated that they did not dispute the rent increase with the landlord as they were afraid of being evicted. The tenant testified that they paid the illegal increase of \$70.00 for three months and they are requesting for \$210.00 to be refunded from the landlord.

The landlord stated that the tenants owed for utilities and that was the reason for holding a portion of the security deposit. The landlord testified that they needed the keys to get the rental unit ready for the next tenant and that the tenants were not occupying it anymore. The landlord maintained that the tenants voluntarily gave the keys to her for the rental unit. The landlord submitted that the tenants agreed with the rent increase and did not mention to her at all that they had a problem with the rent increase.

Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Having reviewed the evidence and testimony, I find that the tenants have not established that they have suffered any actual monetary loss for the return of the keys to the landlord earlier than the end date of the tenancy. I find that the tenants were already moved out of the unit and had offered to return the keys to the landlord in the text message when they advised the landlord that they were ready for a condition inspection. I find that the tenants could have refused to hand over the keys until the end date of the tenancy and they gave them back to the landlord voluntarily. For the above reason I dismiss the tenants' Application for \$70.96 for the early return of the keys to the landlord.

Having reviewed the evidence and testimony, I find that the tenants have not provided sufficient evidence that they did not agree to the landlord's rent increase. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. I find that there is no correspondence to the landlord indicating that the tenants did not agree with the rent increase and, although the tenants indicate that they were afraid of being evicted, they actually gave their notice to end the tenancy the following month in April 2018 and paid the rent increase from the time that the landlord requested it to the end of the tenancy.

Even if I had found that the rent increase was illegal and that the tenants suffered a loss due to the actions of the landlord in violation of the Act, Regulations or tenancy agreement, I find that the tenants did not minimize their loss. I find that the tenants should have either made an Application with the Residential Tenancy Branch to dispute the rent increase or submitted something in writing to the landlord to indicate that they did not agree to the rent increase or any other type of action to minimize the loss.

For the above reasons, I dismiss the tenants' Application for the return of \$210.00 for increased rent in the amount of \$70.00 paid to the landlord for March 2018, April 2018 and May 2018, without leave to reapply.

Section 38 (4) allows a landlord to retain from a security deposit if, at the end of the tenancy, the tenant agrees in writing the landlord may retain an amount to pay a liability or obligation of the tenant. I find that there is no evidence to show that the landlord had the tenant's agreement in writing to retain the security deposit.

If the landlord does not have the tenant's agreement in writing, section 38 (1) of the *Act* stipulates that within 15 days of either the tenancy ending or the date the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit. I find that there is no evidence that the landlord made any application for dispute resolution within 15 days of the end of the tenancy or at any point to retain a portion of the tenants' security deposit as required under section 38 (1).

Section 38 (6) of the *Act* stipulates that a landlord who does not comply with section 38 (1) of the *Act* may not make a claim against the security deposit or any pet damage deposit and must pay double the amount of the security deposit, pet damage deposit or both, as applicable.

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. Pursuant to sections 38(6) and 67 of the *Act*, I find that the tenants are entitled to a monetary award in the amount of \$670.00, comprised of double the security deposit less the amount already returned.
 $((\$515.00 \times 2 = \$1,030.00) - 360 = \$670.00)$.

The landlord may still file an application for damages; however, the issue of the security deposit has now been conclusively dealt with in this hearing. As the tenants have been successful in the return of their security deposit, I allow the tenants' request to recover their filing fee in the amount of \$100.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the tenants' favour in the amount of \$770.00, for double the security deposit, less the \$360.00 that was already returned to the tenant, and to recover the filing fee from the landlords.

The tenants are provided with this Order in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 27, 2018

Residential Tenancy Branch