



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: MNSD, FFT
For the landlord: MNCL-S, MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Applications for Dispute Resolution (“applications”) by both parties seeking remedy under the *Residential Tenancy Act* (“Act”). The tenants applied for a monetary order in the amount of \$1,750.00 for the return of double their security deposit and to recover the cost of the filing fee. The landlord applied for a monetary order in the amount of \$10,025.00 for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, to retain all of part of the tenants’ security deposit, and to recover the cost of the filing fee.

The tenants and the landlord attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. The hearing process was explained to the parties and an opportunity to ask questions was provided to both parties. A summary of that evidence is provided below and includes only that which is relevant to the hearing.

The landlord confirmed being served with the tenants’ documentary evidence and that the landlord had the opportunity to review that evidence prior to the hearing. I will deal with the landlord’s evidence below.

Preliminary and Procedural Matters

While the landlord requested an adjournment for five reasons, namely:

1. The landlord is requesting an extension of time to submit evidence for their application.
2. The landlord claims that the timelines to submit evidence are not sufficient.
3. The landlord is questioning his mental and physical health and needs time to seek legal counsel.
4. The landlord wants a transcript of the hearing.
5. The landlord plans to file criminal charges against the tenants.

I find that an adjournment would not remedy the fact that the landlord failed to serve the Residential Tenancy Branch (“RTB”) and the tenants with a monetary breakdown of their monetary claim. The tenant testified that they were not presented with any indication of what the landlord’s claim for \$10,025.00 was comprised of.

As a result, the landlord was advised that their application for an adjournment was denied as their application was being refused, pursuant to section 59(5)(c) of the *Residential Tenancy Act (Act)*, due to their application for dispute resolution failing to provide sufficient particulars of their monetary claim, as is required by section 59(2)(b) of the *Act*. I find that proceeding with the landlord’s monetary claim at this hearing would be prejudicial to the tenants, as the absence of full particulars including a monetary breakdown of the amount being claimed, makes it difficult, if not impossible, for the tenants to adequately prepare a response to a claim against them. As a result, the landlord’s application is **dismissed with leave to reapply**. As a result of the above, only the tenants’ application was considered during this proceeding.

In addition to the above, the parties confirmed their email addresses during the hearing. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Are the tenants entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants’ security deposit under the *Act*?
- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy agreement began on December 1, 2015 and reverted to a month to month tenancy after May 31, 2016. The tenants paid a security deposit of \$875.00, which the landlord continues to hold as the landlord admitted to cancelling the cheque he issued the tenants at the end of the tenancy.

The landlord testified that he cancelled the tenants' security deposit cheque of \$875.00 after discovering damage once the tenants left the property. The parties agreed that the tenants provided their written forwarding address to the landlord personally on May 5, 2018. The landlord did not file their application claiming against the tenants' security deposit until June 15, 2018.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenants' claim for the return of double the security deposit – I accept that the tenants vacated the rental unit on May 2, 2018 and that the tenants provided their written forwarding address personally to the landlord on May 5, 2018 as the parties agreed to those facts during the hearing. As the landlord admitted to cancelling the security deposit cheque issued to the tenants after they left the rental unit on May 5, 2018 and the landlord did not file their application claiming against the security deposit until June 15, 2018 I find the landlord breached section 38 of the *Act*. Section 38 of the *Act* applies which states:

Return of security deposit and pet damage deposit

38 (1) 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.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[My emphasis added]

In the matter before me, I find that the landlord failed to repay the \$875.00 security deposit or make an application for dispute resolution claiming against the security deposit within 15 days of May 5, 2018. I find that cancelling a security deposit cheque given to the tenants is the same as not returning the security deposit.

Given the above, I find the landlord breached section 38 of the *Act* by failing to return the security deposit in full to the tenants within 15 days of receiving the forwarding address of the tenants provided on May 5, 2018. Therefore, I find the tenants are entitled to the return of double the original security deposit of \$875.00 for a total of **\$1,750.00**. I note that the security deposit has accrued no interest since the start of the tenancy.

As the tenants' application had merit, I grant the tenants the recovery of their filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

Monetary Order – I find that the tenants have established a total monetary claim in the amount of **\$1,850.00**, comprised of \$1,750.00 for the doubled security deposit, plus the \$100.00 filing fee. I grant the tenants a monetary order pursuant to section 67 of the *Act* in the amount of **\$1,850.00**.

I caution the landlord not to breach section 38 of the *Act* in the future.

Conclusion

The landlord's application is refused as indicated above. The landlord is granted leave to reapply. I do not grant the landlord the recovery of the cost of the filing fee as the landlord's application provided insufficient particulars.

The tenants' application is fully successful. The tenants have established a total monetary claim of \$1,850.00 as indicated above. The tenants are granted a monetary order under section 67 of the *Act* in the amount of \$1,850.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 29, 2018

Residential Tenancy Branch