



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- 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; and
- authorization to recover the filing fee for its application from the landlord, 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

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act?

Are the tenants entitled to a monetary order as compensation for loss or damage under the Act, regulation or tenancy agreement?

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

Background, Evidence

The tenants gave the following testimony. IW testified that the tenancy began on August 1, 2013 and ended on July 31, 2016. IW testified that she advised PC that she would be moving her belongings out of the unit on July 18, 2016. IW testified that the monthly rent was \$1700.00 per month and that the security deposit was \$850.00. IW testified that when she returned to the unit on July 27, 2016 she found that the landlord had their contractor in the suite conducting repairs and painting the unit. IW testified that she had not been asked for or provided permission for the landlord to enter the unit and start conducting repairs or painting.

PS testified that the tenants were not able to use the suite for the last five days of the tenancy and should be compensated for it along with some other incidental costs. The costs that IW testified to were for using more gas to travel further because she was unable to use her suite, three hours of her own time to clean the unit, an estimate of electricity used by the contractor while he was in the unit and five days of pro-rated rent rebate for July 27-31, 2016. IW testified that the landlord returned the security deposit but not within the fifteen days of providing her forwarding address and now seeks the doubling provision.

The tenants are applying for the following:

1.	Gas	25.00
2.	Return of rent for July 27-31, 2016	274.19
3.	Cleaning	75.00
4.	Electricity estimate	20.00
5.	Security Deposit	850.00
6.	Filing Fee	100.00
7.		
8.		
9.		
10.		
	Total	\$1344.19

The landlords gave the following testimony. PC testified that the tenants verbally told him that the unit would be emptied on July 18, 2016. PC testified that he had given the go ahead to the contractor to commence work on July 27, 2016 as the tenants had verbally told him it would be empty and he had not seen them since they moved out. PC testified that when the tenant arrived the contractor stopped working and left the unit. PC testified that the tenant was not restricted or barred from using the unit in anyway. PC testified that the unit was empty. GB testified that the unit had none of the tenants' belongings in it and that she was free to keep possession of it until July 31, 2016. GB

and PC testified that they allowed the work to begin based on the tenants' actions and comments that the unit would be empty on July 18, 2016.

GB testified that the tenants returned the keys to the unit on July 31, 2016 and also provided their forwarding address at that time. GB testified that the security deposit was mailed out using regular mail and is post marked as August 15, 2016. GB testified that he feels that as long as the cheque was mailed out within fifteen days, they have met their obligations under the Act and that the tenant is not entitled to the doubling provision.

Analysis

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. I address the landlords claim and my findings as follows.

Gas, Electricity, Cleaning & Rent Rebate – total amount \$394.19

IW testified that she would have used the suite to sleep in and sleep on the floor for the final days of the tenancy. PS testified that “it would be like camping”. IW did not dispute the landlords' testimony that the unit was completely empty. Based on the above, I find that the tenant was not restricted from using the suite and that she could have used the suite, particularly if she planned to sleep on the floor on a mat as she had testified, but chose not to. As a result of her own refusal to use the suite, I dismiss the claim that she is entitled to gas money for driving the extra distance along with the pro-rated rent rebate. I also dismiss the cleaning claim as she has not provided sufficient evidence to support this. I also dismiss the claim for electricity as she has not provided sufficient documentation or justification for the amount. This entire portion of the tenants claim is dismissed.

Security Deposit – \$850.00

The tenants testified that they did not receive their security deposit within fifteen days of the end of tenancy of July 31, 2016 which was also the same day they provided their forwarding address in writing to the landlord. The tenants seek the doubling provision minus the original amount returned. The landlord acknowledged that the tenant returned the keys and provided their forwarding address on July 31, 2016. The landlords' position is that the cheque was mailed out and that it was post marked at the post office on August 15, 2016 and that should be sufficient to show that the landlord had met their obligation. Section 38 of the Act addresses the issue before me as follows:

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.

And Section 38 (6) says 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.

The tenants did not receive their security deposit until August 16, 2016; 16 days after the end of tenancy which was also the same day when they provided their forwarding address. Based on the above, I find that the tenants are entitled to the doubling provision and are entitled the return of double their security deposit minus the amount returned for an award of \$850.00.

The tenants are also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The tenants have established a claim for \$950.00. I grant the tenants an order under section 67 for the balance due of \$950.00. 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: December 03, 2018

Residential Tenancy Branch