



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDL-S

Introduction

This teleconference hearing dealt with the landlord's 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 retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended and were given a full opportunity to be heard, to present evidence, provide affirmed testimony and call witnesses. The co-tenant PC (the "tenant") primarily spoke on behalf of both tenants.

As the parties were in attendance service was confirmed. The tenant confirmed receipt of the landlord's application for dispute resolution dated September 30, 2018 and evidence. The tenant said they had not filed evidence of their own. Based on the testimonies I find that the tenants were duly served with the landlord's application and evidence in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damages and loss as claimed?
Is the landlord entitled to retain all or a portion of the security deposit for this tenancy?
Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in April 2012 and ended on May 25, 2018. The monthly rent was \$1,675.00 payable by the first of each month. A security deposit of \$775.00 was collected at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at the start of the tenancy. The parties prepared and signed a move out condition inspection report at the end of the tenancy. The tenants did not give written authorization that the landlord may retain any portion of the security deposit for this tenancy.

The landlord seeks a monetary award of \$1,380.06 consisting of unpaid utilities of \$96.35 and various maintenance and repairs to the rental suite. The landlord claims that the repairs were necessary due to the condition of the rental suite at the end of the tenancy. The landlord gave evidence that damage included general cleaning, fixing appliances and painting the suite. The landlord submitted estimates for the work and photographs of the suite.

The tenant acknowledged that there was a utility arrear of \$96.35. The tenant disputes the landlord's assessment of damages and says that the rental suite suffered no more than the expected wear and tear from a normal tenancy.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

Additionally, section 24 of the *Act* outlines the consequences if the parties fail to prepare a move-in condition inspection report. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I accept the evidence of the parties that no condition inspection report was prepared at the start of the tenancy. The landlord submits that there was an addendum to the tenancy agreement stating the suite was in new condition but I find that this is not a substitute for an inspection report prepared in accordance with the Act. I accept the evidence that no condition inspection report was prepared at the start of the tenancy. Consequently, I find that the landlord has extinguished any right to claim against the security deposit by failing to prepare a condition inspection report at the start of the tenancy in accordance with the *Act*.

As the landlord extinguished their right to the security deposit and they did not file an application to retain the deposit or return the deposit in full within 15 days of May 25, 2018, the date the tenancy ended, I find that the tenants are entitled to a monetary award in the amount of \$1,550.00, double the amount of the security deposit for this tenancy.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. 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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

The tenants were uncertain if the final utility bill was paid but testified that it appeared to have been left in arrears and paid by the landlord. I accept the landlord's evidence of a bank transfer to the tenant's account number as evidence that the amount paid by the landlord was \$96.35. Accordingly, I issue a monetary award in that amount in the landlord's favour.

The landlord claims that the rental suite was left in a state of disrepair requiring cleaning and maintenance. In the absence of a proper condition inspection report prepared at the start of the tenancy I find that there is insufficient evidence of the state of the suite prior to the tenancy. The photographs submitted by the landlord claiming to show the condition of the suite at the start of the tenancy are of limited value. Furthermore, the

documentary evidence submitted by the landlord shows some wear but I find that the condition to be no more than would be reasonably expected from a 6-year tenancy. I do not find the landlord's assessment of issues with the various appliances to be persuasive.

I find that the landlord has not met their evidentiary burden of showing on a balance of probabilities that the tenants breached the *Act*, regulations or tenancy agreement and damages and loss resulted. Consequently, I dismiss this portion of the landlord's application without leave to reapply.

As the landlord's application was partially successful I allow the landlord to recover \$50.00 of their filing fee from the tenants.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,403.65 against the landlord on the following terms:

Item	Amount
Double Security Deposit (2 x \$775.00)	\$1,550.00
Less Unpaid Utilities	-\$96.35
Less Filing Fee	-\$50.00
TOTAL	\$1,403.65

The tenants are provided with a Monetary Order 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: January 28, 2019

Residential Tenancy Branch