



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNSD FFL MNDCL-S**

Introduction

This hearing dealt with applications from both the landlord and tenants under the *Residential Tenancy Act* ("Act").

The tenants applied for:

- authorization to obtain a return of all or a portion of a security deposit pursuant to section 38; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

The landlord applied for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of a security deposit pursuant to section 38; and
- authorization to recover the filing fee from the tenants pursuant to section 72.

The landlord and both of the tenants attended the hearing. The tenants were represented by the tenant, YG ("tenant"). Both parties acknowledge receipt of each other's notice of dispute resolution proceedings and evidence. I find that both parties were duly served with the material in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to have the security deposit returned to them?

If not, is the landlord entitled to retain the security deposit?

Is the landlord entitled to a monetary order for damages or loss?

Should the filing fee be reimbursed by either party?

Background and Evidence

A copy of the tenancy agreement was entered into evidence by the tenants. The tenancy began on April 15, 2018 with a monthly rent of \$1,100.00 due on the first of the month. The agreement states that a security deposit in the amount of \$1,100.00 was collected and the parties agree the landlord still holds this deposit. No move-in condition inspection report was completed.

The tenants testified that they moved out of the rental unit on October 31, 2018. The tenants sent text messages to the landlord to schedule a move-out condition inspection, but the landlord refused, saying the tenants had to wait until December 1, 2018 to get their deposit back because the unit was not clean when prospective renters came to view the unit. Screen shots of the text message exchanges were supplied in both the landlord's and tenants' respective evidence packages.

The tenants dispute the landlord's claim that the rental unit was in an untidy and unclean condition during viewings to prospective tenants. They testified the landlord did not give them 24 hours notice and did not give them notice in writing. They did not have time to get the unit in a show worthy state for the landlord each time he wanted to show it.

On October 31, 2018, the tenants returned the keys to the rental unit to the landlord's brother at the landlord's address and gave the brother written notice of their forwarding address. The landlord acknowledges receiving the forwarding address on October 31, 2018, however he says his brother was not living with him at the time. His brother moved into the tenant's rental unit on December 1, 2018.

The landlord testified he lost \$2,200.00 in rent for the month of November. After receiving notice that the tenants were moving out, the landlord tried to show the unit. Each time he tried to show the unit, it looked unpresentable. According to his application, the landlord also has lost time from work and his spouse and children suffered, thus he seeks \$2,800.00 in compensation from the tenants. The landlord did not provide any testimony or documentary evidence regarding the lost work or spouse and child suffering.

Since being served with the notice of dispute resolution proceedings, he began to put into writing the verbal agreements he has with his other tenants.

Analysis – tenants' claim

Section 38 of the Act reads, in part:

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.

The landlord acknowledges receiving the tenants' forwarding address on October 31, 2018. If the landlord was intent on making an application for dispute resolution claiming against the security deposit, his application had to be filed within 15 days, or by November 15, 2018. The landlord filed his application on January 3, 2019.

Section 38(6) reads:

(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. (emphasis added)

Section 19 of the *Act* limits the amount of a security deposit to the equivalent of one half month's rent payable under the tenancy agreement. In this case, the landlord has taken a full month's rent, in the amount of \$1,100.00, contrary to section 19. The contravention of section 19 by the landlord does not limit the tenant's ability to seek a doubling of the security deposit. Consequently, I award the tenant a monetary award in the amount of \$2,200.00.

The tenants were successful in their application. The filing fee of \$100.00 is awarded to them.

Analysis – landlord's claim

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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* 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 landlord seeks \$2,200.00 for lost rent and \$2,800.00 for lost work and the suffering of his spouse and children.

The landlord claims that he lost rent for the month of November because the tenants did not allow him to show a clean rental unit to prospective tenants. Section 29 of the *Act* requires that the landlord give the tenant written notice at least 24 hours before the entry to the rental unit. Based on the undisputed evidence of the tenants, I find it reasonable that the tenants were not given 24 hours written notice of the landlord's entry into the unit and they were therefore unprepared for showings. The tenants did not violate the agreement or contravene the *Act* and I dismiss this the landlord's claim for compensation for November rent without leave to reapply.

With respect to the landlord's claim for lost work and suffering of his spouse and children, the landlord did not provide any documentary or testimonial evidence to establish that the tenants contravened the *Act* or the tenancy agreement. As there is no evidence the tenants contravened the *Act* or the tenancy agreement, I dismiss the landlord's claim compensation without leave to reapply.

The landlord was not successful in his claim and he may not recover the cost of filing the application from the tenants.

Conclusion

I issue a monetary order in the tenants' favour in the amount of **\$2,300.00**. 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: February 06, 2019

Residential Tenancy Branch