



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Tenant: MNSD, FFT
For the Landlords: MNDL-S, FFL

Introduction

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

- 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 from the landlords, pursuant to section 72.

This hearing also dealt with the landlords' application pursuant to the Act for:

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to sections 37 and 67; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72 of the Act.

The tenants and the landlords appeared at the hearing. All parties present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified that they served the Tenants' Application for Dispute Resolution hearing package ("dispute resolution hearing package"), along with their evidence, to the landlords by way of registered mail. The landlords confirmed receipt of the tenants' dispute resolution hearing package and the tenants' evidence. Therefore, I find that the landlords have been served with the tenants' notice of dispute resolution package, and accompanying evidence, in accordance with section 89 of the Act.

The landlords testified that they served the Landlord's Application for Dispute Resolution hearing package ("dispute resolution hearing package"), along with their evidence, to the tenants by way of registered mail. The tenants confirmed receipt of the landlords' dispute resolution hearing package and the landlords' evidence. Therefore, I find that the tenants have been served with the landlords' notice of dispute resolution package, and accompanying evidence, in accordance with section 89 of the Act.

Preliminary Issue – Amending Landlord's monetary claim

The landlord's initial monetary claim was \$567.32, however, the landlords amended the claim to the lower amount following recalculation of the costs. Accordingly, I permitted the amendment pursuant to section 64(3)(c) of the Act, as amending the claim to a lower amount would not prejudice the tenants.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for the return of all or a portion of their security deposit? If so, should it be doubled?

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

Are the landlords entitled to monetary compensation pursuant to sections 37 and 67 of the *Act*?

Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72 of the Act?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and /or arguments are reproduced here. I refer to only the relevant facts and issues in this decision. The principal aspects of the respective claims presented by the parties and my findings are set out below.

The parties agreed that the tenancy began on September 11, 2014, and that a security deposit of \$1,150.00 was provided to the landlords and continues to be held by the landlords. The monthly rent was set at \$2,400.00, and was payable on the first day of each month. A copy of a residential tenancy agreement was provided by the parties as evidence which confirms the information provided above.

The subject rental unit is a four-bedroom townhouse, consisting of three floors, and is approximately 15 years old. The landlord testified that there had been three different prior occupants of the townhouse before the current tenants had undertaken occupancy.

The parties agreed that a condition inspection was conducted at the start of the tenancy, with both parties in attendance. The parties agreed that a condition inspection report was completed subsequent to the condition inspection at the start of the tenancy.

The parties agreed that the tenancy ended on September 30, 2018. The parties agreed that after the condition inspection report at the end of tenancy, which was conducted on September 30, 2018, the tenants provided their forwarding address in writing to the landlords along with a request for the entire sum of the security deposit to be returned. The landlords confirmed that the tenants' forwarding address was received on September 30, 2018.

The tenants testified that they did not provide consent, either in writing or verbally, for the landlords to retain any portion of the security deposit. The tenants disagreed with the entirety of the landlords' claim with respect to compensation sought for purported damage caused by the tenants to the rental unit.

The tenants testified that they provisionally agreed, only verbally, that the landlords might be able to retain a portion of the deposit for damage caused to the baseboard heating unit, as they thought the amount sought by the landlords for that item would not exceed \$100.00. The tenants acknowledged that some cosmetic damage was present on the baseboard heater.

However, after the landlords sought a higher amount as compensation for the baseboard heater, the tenants rescinded any prior verbal consent with respect to a deduction from the deposit in respect of the baseboard heater and maintained that they sought return of the entire deposit.

The tenants testified that on October 15, 2018, the landlords returned a portion of the deposit, by way of a cheque in the amount of \$672.68. The tenants testified that the landlords had retained an amount of \$477.32 without authorization to do so. The tenants testified that the cheque in the amount of \$672.68 was never cashed, such that the funds were transferred to the tenants' account. The tenants testified that they simply held the cheque. The landlords testified to confirm that the cheque was never cashed.

The landlords have submitted an application seeking a monetary order in the amount of \$472.78, which is comprised of, as the landlords asserted, damage to the rental unit caused by the tenants. The landlords wish to retain the security deposit in satisfaction of the monetary claim for damages.

The landlords asserted that the tenants damaged an electric baseboard heater. The landlords seek monetary compensation in the amount of \$113.87 for this item. The landlord testified that there was damage to the top of the unit, which was described as cosmetic, as the discolouration resulted from possible burning of the top surface of the heater. The tenants agreed with the description of the damage. The landlord also cited that the heater presented with an unusual odour when

operated, which the landlord described as a toxic emission resulting from damage. The landlord provided as evidence a picture of the damage to the heater

The landlords provided an invoice of \$73.87 for the cost of purchasing a new baseboard heater, and testified that they installed the heater themselves, at a reduced cost of \$40.00, which the landlords cited is lower than the potential cost of having a tradesperson undertake the same task.

The landlords seek an amount of \$278.91 for the cost of purchasing and installing new blinds in the living room. The landlords asserted that the blinds in the living room had become bent, such that their functional capacity was not the same as it was when the blinds were new. The landlords testified that the blinds do not completely block-out sunlight from entering the room. The landlords provided as evidence a photograph, which depicts the blinds in the closed position. The landlords claim that the cost of purchasing the new blinds was \$198.91, with an installation cost of \$80.00. The landlords provided a copy of an invoice in the amount of \$198.91 for purchasing new blinds. The tenants testified to dispute this portion of the landlords' claim, as the tenants claim that the functional capacity of the blinds is normal, and that the blinds are not bent.

The landlords claimed \$40.00 for the cost of repairing a sliding shower door. The landlords asserted that the door had become detached from the sliding track mechanism. The landlords stated that the cost of purchasing parts and the cost of installation (with labour for half an hour) was determined to be a total of \$40.00. The landlords repaired the shower door themselves. The landlords did not provide any evidence, such as photos of the purported damage, nor did the landlords provide any invoices for the costs of the parts purchased.

The landlords asserted that a track light fixture consisting of three lighting units had been damaged, as one of the three lights had become discoloured. The landlords stated that they purchased a replacement track light fixture which they installed themselves. The landlords testified that the lighting unit still functioned, but that it "looked terrible". The landlords claimed that the cost of buying a new track light was \$49.00 (for which an invoice was not provided) and that they are seeking only the cost of installing the new light fixture, in the amount of \$40.00.

Analysis

While I have turned my mind to the accepted documentary evidence and the sworn testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in the section to follow.

Tenant's Claim

Based on the testimony provided by the parties, I find that the landlords received the tenants' written forwarding address on September 30, 2018. The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an arbitrator, or the written agreement of the tenant.

Section 38(1) of the Act requires the landlord to either return a tenant's security deposit and/or pet damage deposit in full or file for dispute resolution for authorization to retain the deposit(s) 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 is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit and/or the pet damage deposit. There are exceptions to this outlined in sections 38(2) to 38(4) of the Act. A landlord may also under sections 38(3) and 38(4) retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator or if the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant.

I find that a move-in condition inspection report was completed in accordance with section 23 of the Act. I also find that a condition inspection was completed at the end of the tenancy in accordance with section 35 of the Act. The tenants attended both inspections. Therefore, I find the tenants did not extinguish their rights in relation to the security deposit under sections 24 and 36 of the Act.

In the matter before me, I find the landlords did not have any authority under the Act to keep any portion of the security deposit. The landlords did not return the entire amount of the security deposit, in the amount of \$1,150.00, as requested by the tenants within 15 days of September 30, 2018 in accordance with the Act. The landlords continue to hold the security deposit. I also find that although the landlords provided a cheque, in the amount of \$672.68 as partial return of the deposit, both parties agreed that the cheque was not cashed. Therefore, the tenants have not reclaimed any portion of the funds associated with the security deposit, and the landlords continue to have the entire sum of the deposit.

Although the landlords did attempt return of an amount of \$672.68 on October 15, 2018, within the 15 days permitted under the Act, I find that an amount of \$477.32 was withheld by the landlords after the 15-day period had elapsed. If the tenant is entitled to any doubling of the deposit, the doubling provision will only apply to the amount the landlord failed to return after the 15 days, in the amount of \$477.32.

No evidence was produced at the hearing that the landlords applied for dispute resolution within 15 days of receiving a copy of the tenants' forwarding address on September 30, 2018. If the

landlords had concerns arising from the purported damages that arose as a result of this tenancy, the landlords should have applied for dispute resolution to retain the security deposit.

Although the landlords testified that they discovered additional damage to the rental unit after the tenants had vacated the rental unit, a landlord cannot decide to simply keep the security deposit and pet damage deposit as recourse for loss.

Although the landlords provided a cheque in the amount of \$672.68 on October 15, 2018, the cheque was not cashed, and almost five months have passed since the cheque was issued. Therefore, given the date on which the cheque was issued, the tenants may not be able to deposit the cheque if it is deemed by a financial institution to be "stale-dated". Therefore, in ordering return of the tenants' deposit, I order the landlord to pay the amount of \$672.68 as part of the deposit owed back to the tenants.

Pursuant to section 38(6)(b) of the Act, a landlord is required to pay a monetary award equivalent to double the value of the security deposit if a landlord does not comply with the provisions of section 38 of the Act. Therefore, with respect to the balance of the deposit, in the amount of \$477.32, which was not returned within the 15-day period in accordance with section 38 of the Act, I order that that amount be doubled, such that the landlords are ordered to return \$954.64 to the tenants for the amount of the deposit that was withheld beyond the 15-day period after receiving the tenants' forwarding address.

The tenants are therefore entitled to a monetary award in the amount of \$1,627.32, representing a doubling of the tenant's unreturned security deposit in the amount of \$954.64 ($\477.32×2) and the amount of \$672.68 which the landlords are ordered to repay to replace the initial \$672.68 which was returned, but which may now not be recoverable by the tenants due to a potentially stale-dated cheque.

As the tenants were successful in their application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application.

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.

Regarding the landlords' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred, and that it is up to the party claiming compensation to

provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the tenant fail to comply with the *Act*, regulation or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the landlord prove the amount of, or value of, the damage or loss?
- Did the landlord act reasonably to minimize that damage or loss?

Section 37 of the *Act* provides, in part, the following:

- 37** (2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events without any form of evidentiary corroboration, the party making the claim has not met the burden on a balance of probabilities.

Based on the testimony and evidence provided by the parties, and on a balance of probabilities, I find that the landlords have demonstrated that it is more likely than not that there was some damage, to some items listed on the landlords' claim, caused by the tenants to the rental unit. Therefore, with respect to some items forming the landlords' claim for compensation arising from damage, I find that the tenants failed to comply with section 37 of the *Act*, and the landlords' loss resulted from this non-compliance.

However, as detailed below, the landlords have not met the burden of proof in substantiating that the tenants caused damage to (or should be held liable for) all items for which compensation is sought.

The final component of the four-part test referenced above is the requirement for the claimant to prove the amount of, or value of, the damage or loss. I find that the landlords have provided sufficient evidence, in the form of copies of invoices and an itemized list of items and the associated cost to replace those items, to prove the amount of the loss for some of the items discussed below. However, as detailed below, the landlords did not meet the burden for all items for which compensation was sought.

With respect to the landlords' claim for replacing the baseboard heater, I find that the landlords have met the burden of proving this loss. The landlords provided as evidence a picture of the damage to the heater and an invoice to prove the cost of replacing the heater. Additionally, the tenants agreed with the nature of the damage to the heater. The tenants had also testified that they initially reached a provisional verbal agreement with the landlord to agree to a deduction of \$100.00 from the deposit to account for damage to the heater, thereby accepting responsibility

for damage to the heater. The landlords seek costs in the amount of \$113.87 for this item, and this amount is only marginally higher than the initial \$100.00 agreed to by the tenants. Based on the foregoing, I find that the landlords have proven this loss and I award \$113.87 to the landlords for the cost of replacing the baseboard heater.

With respect to the landlord's claim in the amount of \$278.91 for the cost of purchasing and installing blinds in the living room, I dismiss this portion of the landlords' claim. I accept the tenants' testimony that the functional capacity of the blinds has not diminished. The photograph provided by the landlord, in an effort to illustrate damage to the blinds, depicts the blinds in a closed position with very minimal bends to any of the individual horizontal blinds that form the set. Further, the closed positions of the blinds depicts that the blinds adequately cover the entire window, such that there are minimal gaps through which sunlight can pass. Based on the photograph, I find that the landlord has not demonstrated that the blinds are not functional.

Residential Tenancy Policy Guideline 40 provides that the useful life of blinds is 10 years. The landlord testified that the rental unit is 15 years old and the blinds have never been replaced. Given that the blinds are five years beyond their useful life, I find that some wear and tear is to be expected, and that even give the reasonable expectation of wear and tear, the blinds present in such a fashion to suggest that there is very minimal bending of the blinds and no discernable diminishment in their function.

I dismiss the landlords' claim of \$40.00 for the cost of repairing a sliding shower door. The landlords have not proven the value of this purported loss, as the landlords have not provided any evidence to prove the cost associated with purchasing the parts to repair the sliding mechanism. Further, the landlords did not provide any evidence to depict the purported damage to the shower. The landlords failed to meet the burden of proving this loss, and the value of the purported loss.

I dismiss the landlords' claim of \$40.00 for the cost of installing a new light fixture, in the amount of \$40.00. The landlords failed to meet the burden of proving this loss, and the value of the purported loss. The landlord did not provide any invoices or evidence to prove the value of the loss. I further note that the tenants denied having caused any damage to the lighting fixture, and the burden of proving otherwise rests with the landlords, and the landlords did not meet that burden.

Based on the foregoing, the landlords are granted a total monetary award in the amount of \$113.87.

As the landlords were not successful in the entirety of their application, the landlords are not granted recovery of the filing fee for their application.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,613.45 against the landlords, calculated as follows:

Item	Amount
Doubling of Return of unreturned portion of Security Deposit (\$477.32 x 2)	\$954.64
Return of Security Deposit initially provided as a cheque on Oct. 15, 2018	\$672.68
Recovery of Filing Fee	\$100.00
Less monetary award to Landlords	\$113.87
Total Monetary Award to Tenants	\$1,613.45

The tenants are provided with a Monetary 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 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 27, 2019

Residential Tenancy Branch