



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT MNSD FFL MNDL-S

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the Residential Tenancy Act. The landlord applied for:

- A monetary award for compensation for damage and loss pursuant to section 67;
- Authorization to retain the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants applied for:

- A monetary award for damages and loss pursuant to section 67;
- A return of the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 30 minutes. The tenants attended and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenants gave evidence that they served their application for dispute resolution and evidence on the landlord by registered mail. The tenants provided Canada Post tracking numbers as evidence of service. Based on the evidence I find that the landlord was deemed served with the tenant's materials in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is either party entitled to a monetary award as claimed?

Is either party entitled to the security deposit for this tenancy?

Is either party entitled to recover the filing fee from the other?

Background and Evidence

The tenants gave the following evidence. This tenancy began in December 2015. A series of written fixed-term agreements were signed by the parties to renew the tenancy during this period. Copies of some of the tenancy agreements were submitted into evidence. The rental unit is a suite in a detached home with the landlord occupying the remaining portion of the building. The monthly rent at the end of the tenancy was \$1,240.00 payable by the first of each month. In addition the tenants were paying \$100.00 for parking. A security deposit of \$600.00 was paid at the start of the tenancy and is still held by the landlord.

The tenants said that a condition inspection report was prepared at the start of the tenancy. The copy of the report submitted into documentary evidence is not dated and only signed by the tenant. No move-out inspection was done.

The tenants submit that despite the written tenancy agreement providing that natural gas is included in the rent the tenants were required to contribute to the cost of utilities. The tenants also submit that they were made to pay the full amount of electricity for the building. The tenants seek a return of the amounts overpaid to the landlord during the course of the tenancy in the amount of \$3,414.40. The tenants testified that payment was made to the landlord but did not submit documentary evidence showing the payments made.

The tenants said that the tenancy ended on August 15, 2018 when they vacated the rental suite and returned the keys to the landlord. The tenants say they paid the full amount of the rent for that month and are seeking a return of \$620.00 for overpaid rent and \$50.00 for the parking fees paid for August, 2018.

The tenants seek a return of their security deposit. The tenants gave evidence that they provided the landlord with a forwarding address by email dated September 2, 2018. A copy of the email was submitted into evidence. The tenants say that they did not give permission that the landlord may retain any portion of the security deposit for this tenancy.

Analysis

The landlord did not attend the hearing which was scheduled by conference call at 1:30pm. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Accordingly, as the landlord failed to attend the hearing at the scheduled time and to present evidence in support of their claim, I dismiss the landlord's application without leave to reapply.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receiving a forwarding address in writing. If that does not occur, the landlord must pay a monetary award pursuant to section 38(6) 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 authorization to retain all or a portion of the security deposit.

In the present case the tenants provided a forwarding address in writing by email dated September 2, 2018. The landlord filed their application for dispute resolution on September 15, 2018, within the 15 days provided under the *Act*.

However, the landlord did not prepare a move-out condition inspection report at the end of the tenancy nor did they offer the tenants two opportunities to participate in an inspection as required under the Regulations. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. 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.

Accordingly, 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 end of the tenancy in accordance with the *Act*. I note that the copy of the move-in report submitted into evidence does not meet the requirements of a proper report as it is undated and not signed by the landlord.

Under the circumstances I find that the tenants are entitled to a monetary award in the amount of \$600.00 the value of the security deposit paid 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.

I find that there is insufficient evidence that the amount claimed by the tenants as overpayment of utilities is a loss that occurred due to the landlord. While the tenants have submitted copies of utility invoices I find that is inadequate to conclude that the tenants paid the full amount of the utilities to the landlord. The tenants did not submit sufficient documentary evidence showing the funds were paid. I do not find the few hand written notes peripherally referring to utility payments to be sufficient to establish that the tenants made payments in the amounts they claim. I find that there is insufficient evidence to show that the tenants made payments in the amounts that they claim. Therefore, as the tenants have not met their evidentiary burden I dismiss this portion of the application.

I accept the tenants' evidence that they were unable to use the rental suite for the full duration of the tenancy as the landlord took possession of the suite on August 15, 2018. I find the testimony of the tenants that they paid the full rent for the month of August 2018 but were unable to use the suite from August 15, 2018 onwards to be credible. I therefore find that the tenants suffered a loss equivalent to half a month's rent and parking fees for the period that the landlord prevented them from access to the suite. Accordingly, I find that the tenants are entitled to a monetary award in the amount of \$670.00.

As the tenants application was successful the tenants are also entitled to recover the filing fee for their application.

Conclusion

The landlord's application is dismissed without leave to reapply.

I issue a monetary Order in the tenants' favour under the following terms:

Item	Amount
Return of Security Deposit	\$600.00
Monetary Award	\$670.00
Filing Fee	\$100.00
Total Monetary Order	\$1,370.00

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 25, 2019

Residential Tenancy Branch