



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was originally convened on January 29, 2019 and was adjourned to March 15, 2018. This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

The landlord, the landlord's agent and tenant M.A. (the "tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenant personally served the landlord with her application for dispute resolution in October of 2018. I find that the application for dispute resolution was served in accordance with section 89 of the *Act*.

Preliminary Issue- Res Judicata

Res judicata prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment. It also precludes re-litigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue was contested and decided in the first action. *Res judicata* is analogous to the criminal law concept of double jeopardy.

The landlord submitted into evidence a previous decision dated May 10, 2018 between the same parties as this hearing and regarding the same residential address. The May 10, 2018 Decision made the following findings:

The evidence is clear that the tenant did not comply with the Act in ending this fixed term tenancy, and I, therefore, find that the tenant vacated the rental unit contrary to Sections 44 and 45 of the Act. The evidence of the landlord is that he was able to re-rent the suite, and the landlord is claiming one month's rent for loss of rental income for the month of January 2018. I am satisfied that the landlord had made efforts to mitigate the tenant's exposure to the landlord's monetary loss of rent for January 2018, as is required by section 7(2) of the Act by listing and re-renting the suite as soon as possible. I, therefore, allow the landlord's monetary claim for one month's rent.

The landlord provided undisputed evidence that the tenant failed to pay the outstanding rent in the amount of \$605.00. Therefore, I find that the landlord is entitled to \$605.00 in outstanding rent for this tenancy.

As the landlord was successful in his application, I am allowing recovery of the filing fee for this application in the amount of \$100.00.

The landlord continues to hold the tenant's security deposit of \$1,050.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit of \$1,050.00 in partial satisfaction of the monetary claim.

Conclusion

As the tenant moved out on December 31, 2017, the landlord had withdrawn his application for an Order of Possession.

I issue a Monetary Order in the amount of \$1,755.00 in the landlord's favour under the following terms for the losses and money owed associated with this tenancy. I allow the landlord to retain the \$1,050.00 security deposit in satisfaction of his monetary claim. The landlord is also authorized to recover \$100.00 for the filing fee.

Item	Amount
Loss of Rental Income	\$2,100.00
Unpaid Rent for December 2017	605.00
Recovery of Filing Fee	100.00
Security Deposit	-1,050.00
Total Monetary Order	\$1,755.00

The landlord is provided with this Order in the above terms and the tenant must be served with a copy of this Order as soon as possible. Should the tenant 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.

The tenants' current application seeks, in part, a monetary award for the following damages:

Item	Amount
Refund of January 2018's rent	\$2,100.00
Refund filing fee from May 10, 2018 decision	\$101.00
Refund interest accrued from filing fee awarded in May 10, 2018 decision	\$4.92
Return of portion of security deposit after December 2017 outstanding rent deducted	\$1,050.00 - \$605.00 = \$445.00

I find that the tenants' claims for January 2018's rent, the security deposit, and the filing fee awarded to the landlord in the May 10, 2018 decision are res judicata as they were conclusively determined in the May 10, 2018 Decision. I therefore dismiss the tenants'

monetary claims for January 2018's rent, the security deposit and the filing fee awarded to the landlord in the May 10, 2018 decision.

The May 10, 2018 Decision determined that the landlord was entitled to the filing fee and has not been overturned; thus, no interest is due to the tenants. I therefore dismiss the tenants' claim for interest on the filing fee awarded in the May 10, 2018 Decision,

Preliminary Issue- Withdrawal

During the course of the hearing, the tenant withdrew her monetary claim for loss of income in the amount of \$200.00. I therefore dismiss the tenants' claim for loss of income in the amount of \$200.00

Issue(s) to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 16, 2017 and ended on December 31, 2017. Monthly rent in the amount of \$2,100.00 was payable on the first day of each month. A security deposit of \$1,050.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agreed that the tenant provided the landlord with her forwarding address in writing on December 31, 2017.

The landlord testified that he made an application with the Residential Tenancy Branch on December 28, 2017, for:

- an Order of Possession;
- a monetary order for unpaid rent and compensation for losses;
- authorization to retain the tenants' security deposit; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The May 10, 2018 Decision did not state the landlord's claim to retain the tenants' security deposit pursuant to section 38 of the *Act* and only mentioned the security deposit when applying the set off provisions of section 72 of the *Act*. The following is the relevant except from the May 10, 2018 Decision:

The landlord continues to hold the tenant's security deposit of \$1,050.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit of \$1,050.00 in partial satisfaction of the monetary claim.

The landlord retained the tenants' security deposit pursuant to the May 10, 2018 Decision.

The tenants are seeking a Monetary Order in the amount of \$1,050.00 for double their security deposit on the grounds that the landlord did not return their security deposit within 15 days of the end of the tenancy and the provision of their forwarding address in writing.

The tenant testified that based on her understanding of the *Act*, she is entitled to receive a penalty fee of double her damage deposit for every month the landlord improperly withheld her security deposit. The tenant testified that she is therefore seeking to recover from the landlord \$1,050.00 for the month of January 2018, as the landlord only improperly retained her deposit for half the month as he should have returned it by January 15, 2018. The tenant testified that she is seeking to recover from the landlord \$2,100.00 per month from February to October 2018 in the amount of \$18,900.00.

Analysis

Upon review of the landlord's December 28, 2017 application, it is clear that he applied to retain the tenants' security deposit on December 28, 2017. I find that the failure of the Arbitrator to list the landlord's claim to retain the tenants' security deposit, does not

alter the fact that the application was made on December 28, 2017. Based on the testimony of both parties I find that the tenancy ended on December 31, 2017.

Section 38(1) of the *Act* states:

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.

Section 38(6) of the *Act* states:

38 (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.

I find that the landlord made an application for dispute resolution claiming against the tenants' security deposit pursuant to section 38(1) of the *Act* as the landlord filed an application to retain the security deposit within 15 days from the later of the end tenancy and the provision of the tenants' forwarding address in writing. I therefore dismiss the tenants' application for double the security deposit, and the penalty fees from January to October 2018.

I note that the tenant's interpretation of the security deposit doubling provision at section 38(6) of the *Act* is incorrect. In circumstances where the landlord does not comply with section 38(1) of the *Act* the tenant is only entitled to the doubling of the security deposit on one occasion, not for each month the deposit is improperly retained.

As the tenants were unsuccessful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

I dismiss the tenants' application without leave to reapply.

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: March 20, 2019

Residential Tenancy Branch