



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT MNSD

Introduction

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

- authorization to recover the filing fee for this application from the landlord per section 72;
- return of security deposit per section 38; and,
- compensation for damage or loss under the *Act*, regulation or tenancy agreement per section 67.

Both parties attend the hearing and were given an opportunity to be heard. Parties did not raise any issue with the service of documents and were prepared to proceed.

Issues to be Decided

- Are the tenants entitled to recover the filing fee for this application from the landlord?
- Are the tenants entitled to the return of the outstanding portion of their security deposit?
- Are the tenants entitled to compensation for loss related to receiving less than 30 days of notice the requirement to vacate by the end of the tenancy agreement?

Background and Evidence

As per the tenancy agreement entered into evidence, this was a one-year fixed term tenancy for October 1, 2017 to September 30, 2018. Rent was \$5,750.00 per month, due on the first of the month, and the landlord collected a security deposit in the amount of \$2,875.00. The landlord and tenants both initialed the fixed term section of the tenancy agreement and the agreement was signed on September 5, 2017. No move-in

condition inspection report was completed. The landlord stated he did a walk thorough of the unit with at least one of the tenants at the start of the tenancy.

The tenants stated they wanted to stay in the rental unit after the end of the fixed term and the landlord led them on to believe they might be able to renew. They submitted evidence of the landlord confirming in an email on September 2, 2018 that the tenancy would not be renewed as he intended his family to use the rental unit. The tenants claim this email gave them less than the 30 days notice required by the Act (section 49) and are seeking return of September 2018 rent (\$5,750.00) and the cost of their rent at a second rental unit (\$1,670.00) as well as \$300.00 for a cleaning service because they did not have enough time to clean the unit themselves prior to the September 30, 2018 vacate date.

The landlord denies ever indicating to the tenants that the tenancy may be extended. The landlord referenced email correspondence with the tenants in the summer about them not following the rules and otherwise stated the tenants were not the type of tenants he wanted. The landlord submitted an email dated August 2, 2018 to the tenants in which he wrote "Keep in mind your lease is expiring Sept. 30, 2018."

The tenants vacated the unit on or about September 30, 2018. The landlord claims the tenants had not fully vacated on September 30, 2018. No move-out condition inspection was completed. The landlord and tenants stated the landlord did a walk-through on September 30th but no report was completed; the tenants stated that during the walk-through the landlord did not indicate there were damages to the unit which would reduce the value of their security deposit.

By the landlord's own accounting, the tenants had a credit balance of \$3,699.88 at the end of the tenancy (\$2,875.00 security deposit + \$224.88 hydro overpayment + \$600.00 hot tub fees overpayment). The landlord initially deducted \$2,711.48 from the tenants' damage deposit for repairs; this accounting is dated October 12, 2018. The tenants strongly disagreed with this. On October 24, 2018, a new accounting of deductions from the security deposit was provided to the tenants by the landlord; the deductions were reduced from \$2,711.48 to \$1,700.49. Both parties agreed the tenants received two payments from the landlord at the end of the tenancy, \$988.40 (related to October 12th accounting) and \$1010.99 (related to October 24, 2018 accounting) for a total payment of \$1,999.39. Thus, the tenants received back from the landlord \$1,174.51 of their \$2,875.00 damage deposit and \$824.88 for hydro/hot tub overpayment.

The tenants claim they left the unit clean and undamaged and do not agree with the landlord's \$1,700.49 deductions from their damage deposit. The tenants stated and provided evidence they sent their forwarding address by registered mail to the landlord on November 6, 2018.

The landlord acknowledged receiving the tenants' forwarding address sometime after November 6, 2018; the landlord has not returned the remaining amount of the security deposit because the tenants did not keep the rental unit clean and \$1,700.49 in deductions is reasonable and fair.

Analysis

- Compensation for less than 30 days notice to clean and vacate

The tenants agreed on September 5, 2017 to a fixed term tenancy. The Act defines a fixed term tenancy as "a tenancy under a tenancy agreement that specifies the date on which the tenancy ends"; by its very nature, a fixed term tenancy already includes a notice of the tenancy ending; no additional notice by the landlord is required.

The tenants cited Section 49 of the Act as their legal grounds for entitlement to compensation. This section applies when the landlord has issued a notice to end a tenancy for landlord's use.

I dismiss the tenants' claims for compensation without leave to reapply.

- Return of security deposit

Sections 24 and 35 of the Act require a landlord to complete move-in and move-out condition inspections as prescribed. By undertaking informal walk-throughs without completing a written report signed by both parties, the landlord failed to comply with the Act and Regulation.

The consequences for failing to comply are provided in sections 24 and 36 of the Act—the landlord's right to claim against the tenants' security deposit for damages to the unit is extinguished. Having failed to complete condition reports as prescribed, the landlord has no legal authority to retain \$1,700.49 of the tenants' security deposit for damage to the unit.

As the landlord has no legal authority to retain the tenants' security deposit for damage to the rental unit, the landlord should have returned the tenants' entire security deposit of \$2,875.00. This requirement is set out in section 38(1) of the Act.

The Act sets out a consequence for landlords who do not return the security deposit: the landlord must pay the tenant double the amount of the security deposit (reference section 38(6)(b)). The Residential Tenancy Branch's Policy Guideline #17 "Security Deposit and Set off" addresses this provision of the Act:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

The landlord is required to pay the tenants double the value of their deposit.

- Recovery of filing fee

The tenants are largely successful in their application and I authorize recovery of their filing fee from the landlord.

Conclusion

I issue a monetary order to the tenants according to the following terms:

Filing fee	\$100.00
Double \$2,875.00 security deposit	\$5,750.00
Portion of security deposit already returned	-\$1,174.51
Total award to tenants	\$4,675.49

The order must be served by the tenants to the landlord as soon as possible. Should the landlord fail to comply with the order, the tenants make seek enforcement through Provincial Court (small claims).

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: May 10, 2019

Residential Tenancy Branch