



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 obtain a return of all or a portion of his security deposit pursuant to section 38;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenant DG attended the hearing by way of conference call, the landlord did not. I waited until 1:48 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant provided sworn, undisputed testimony that he had served the landlord with this application for dispute resolution hearing package ("Application") and evidence by way of Registered Mail on March 14, 2019. The tenants provided a receipt and a photo of the package in their evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application and evidence on March 19, 2019, five days after mailing. The landlord did not submit any written evidence for this hearing.

Issues(s) to be Decided

Are the tenants entitled to the return of their security deposit?

Are the tenants entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

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

Background and Evidence

This month-to-month tenancy began on July 15, 1999, and ended by way of mutual agreement signed by the landlord and tenants on July 15, 2018. Monthly rent was set at \$1,044.00. The tenants moved out on July 15, 2018, and provided a forwarding address in writing to the landlord on both August 8, 2018 as well as September 21, 2018.

Despite these requests, the tenants only received \$443.83 from the landlord of the \$950.00 damage deposit.

The tenants are also seeking compensation for repairs that were performed at the residence at the tenants' expense. The tenants testified that although no written contracts or agreements were completed, they had a verbal agreement with the landlord that they would be reimbursed for these repairs. The tenants are also seeking compensation for the washer and dryer that they had purchased, and is still at the residence.

The tenants feel that the landlord had taken advantage of the tenants by requesting that the Mutual Agreement be signed when the tenant was in chemotherapy treatment. The tenants testified that no official Notices to End Tenancy were issued, but the landlord had discussed on the phone that they had planned to sell the home due to the low rent the tenants paid.

The tenants applied for the following monetary orders as set out in the table below:

Item	Amount
Return of Security Deposit & Interest	\$600.48
Compensation for washer & dryer	725.76
Tearing Down and Putting Up New Fence	600.00
Interior Painting	1,200.00
Rebuilding of back porch & stairs	520.00
Repairs to carport post	120.00
Repair of soffetts and other miscellaneous repairs	640.00
Total Monetary Order Requested	\$4,406.24

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlord had not returned the tenant's security deposit in full within 15 days of receipt of the tenants' forwarding address in writing. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenants' security deposit. The tenants gave sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any portion of the tenants' security deposit.

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order award for the landlord's failure to return their full deposit to them, plus applicable interest, as well as the return of the remaining portion of their deposit.

Although the tenants reference a verbal agreement between the parties, I find that no written agreements or contracts exist. In the absence of sufficient supporting evidence that the landlord had agreed to reimburse the tenants for any of the purchases or repairs that had taken place during this tenancy, I am not satisfied that the tenants have met the burden of supporting their loss by providing sufficient evidence to support any agreements that were in place. Accordingly, I dismiss this portion of the tenants' application without leave to reapply.

The tenants testified that the landlords were still in possession of their washer and dryer. As the tenants did not file an application for the landlords to return these appliances to them, I decline to make any orders for the return of such items.

I find that the tenants are entitled to recover the filing fee for this application.

Conclusion

I issue a Monetary Order in the amount of \$1,650.48 in the tenants' favour as set out in the table below. The remainder of the tenants' application is dismissed without leave to reapply.

Item	Amount
Return of Remaining Security Deposit (\$506.17) plus interest (\$94.31)	\$600.48
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	950.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$1,650.48

The tenants are provided with this Order in the above terms and the landlord must be served with a copy of 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: July 5, 2019

Residential Tenancy Branch