



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNSD FFL MNDCL-S MNDL-S

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order for the return of all or a portion of the tenant's security deposit pursuant to section 38; and,
- authorization to recover the filing fee for this application pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the *Act* or:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlords acknowledged receipt of the tenants' Notice of Hearing and Application for Dispute Resolution and the tenants acknowledged receipt of the landlords' Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67?

Are the tenants entitled to an order for the return of all or a portion of the tenant's security deposit pursuant to section 38?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72?

Are the landlords entitled to a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67?

Are the landlords entitled to retain all or a portion of the tenant's 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?

Background and Evidence

The tenants testified that the tenancy started on September 1, 2018. The monthly rent was \$1,200.00 and the tenants paid a \$600.00 security deposit. The tenancy had a fixed term expiring on June 15, 2019. The tenancy agreement also had a clause which stated, "18. Give a minimum of 1 month's advance notice before vacating the premises."

The tenants testified that they gave written notice on January 29, 2019 that they were ending the tenancy on March 1, 2019. The tenants testified that they moved out on February 22, 2019.

The tenants testified that the landlords had the tenants forwarding address throughout the tenancy.

The tenants testified that the landlords sent an electronic transfer of \$483.00 on March 8, 2019 as a partial refund of the security deposit. The tenants testified that they

rejected the transfer on March 9, 2019 because they wanted the entire deposit to be refunded.

The tenants claimed an award of double the amount of the security deposit, \$6.00 in interest on the security deposit and reimbursement of the filing fee.

The landlords testified that the tenants left the rental unit in a dirty condition and they claimed that it took more than two hours to clean. The landlords charged a labour rate of \$35.00 per hour for two hours of cleaning a total of \$70.00.

The landlord also claimed \$35.00 for damage to a side table. The landlords testified that they were able to partially repair the finish on the table and they testified that the amount of the claim was based upon the landlord's labour and chemical costs. The tenants testified that they provided the repair chemicals.

The landlords also claimed \$47.00 for the cost of a replacement mattress protector which the tenants did not leave in the rental unit. The parties testified that the tenants did return the mattress cover on March 18 but the landlords testified that they already purchased a replacement mattress cover by that time. The landlords provided a receipt showing the cost of the mattress cover being \$33.56.

The landlords also claimed a loss of rent from the tenant's early termination of the tenancy agreement. The landlords testified that they immediately advertised for a new tenant when the tenants notified them that they were ending the tenancy. The landlords testified that they needed to reduce the rent to \$1,000.00 to obtain a new tenant. The landlords testified that the tenants received the following rents after the tenants moved out: March 2019, \$710.00; April 2019, \$1,000.00; May 2019, \$1,000.00; June 2019 \$500.00. The landlords claimed a total of \$990.00 for loss of rent.

The landlords also claimed reimbursement of their filing fee.

Analysis

The tenants and the landlords each have claims for monetary orders. I will address each application individually.

Tenants' Application

Section 38 of the *Act* states that:

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.

I find that the tenancy ended on March 1, 2019 based upon the notice provide by the tenants and I find that the landlords had the tenants had provide the landlords with their forwarding address by that time. Pursuant to section 38, the landlords had fifteen days after March 1, 2019, being March 16, 2019, to repay the entire security deposit of make an application to dispute the return of the security deposit.

I find that the landlords did not comply with section 38(1). Although the landlords provided a partial refund of the security deposit, the landlords did not provide a complete refund of the security deposit as required by section 38 or file an application to dispute the return of the security deposit within the 15 day period.

According to section 38(6) of the *Act*, if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit. Since I have determined that the landlord has violated section 38(1) of the *Act*, I find that the landlords must pay the tenant double the amount of the security deposit.

I deny the tenants request for \$6.00 in interest on the security deposit. Pursuant to section 4 of the *Residential Tenancy Branch Regulations* (the "*Regulations*"), the interest on security deposits is calculated as follows:

The rate of interest under section 38 (1) (c) of the *Act* [*return of deposits*] that is payable to a tenant on a security deposit or pet damage deposit is 4.5% below the prime lending rate of the principal banker to the Province on the first day of each calendar year, compounded annually

In applying *Regulations*, section 4 to this matter, no interest is owed by the landlords to the tenants for the security deposit.

In addition, since the tenants have been successful this matter, I award the tenants \$100.00 for recovery of the filing fee pursuant to section 72.

Landlords' Application

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish all of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Based on the landlords' testimony and the photographs provided, I find that two hours of cleaning is reasonable. However, I find the rate of \$35.00 per hour to excessive. I find that that a reasonable rate for cleaning services is \$20.00 per hour. Accordingly, I grant the landlord \$40.00 (\$20.00 per hour x two hours) for cleaning services.

Based on the landlords' testimony and the photographs provided, I find that the landlords did need to repair the side table. Again, I find the rate of \$20.00 per hour to be a reasonable amount for cleaning services and I find that one hour is a reasonable amount of time to repair the finish on the table. Accordingly, I grant the landlords \$20.00 for repairing the finish on the table.

Based on the testimony of both parties, I find that the landlords incurred a cost to replace the mattress protector which the tenants took with them. I find that, even though the tenants later returned the item, the landlords reasonably incurred the replacement cost prior to the return. Based on the receipt provide by the landlords, I find the landlords incurred a cost of \$33.56 to replace the mattress cover. I grant the landlords an award of \$33.56 for the replacement of the mattress cover.

The landlords also claimed loss of rent from the tenants' early termination of the contract. However, although the tenancy agreement states that the agreement has a fixed term expiring on June 15, 2019, section 18 of agreement explicitly states that the tenant may terminate the agreement by providing one month notice.

The landlords argued that this provision would only apply if the fixed term had expired and the parties were continuing the tenancy on a month-to-month basis. However, there is nothing in the tenancy agreement to support this interpretation. A plain reading of the tenancy agreement provides that the tenants may cancel the tenancy upon thirty days notice.

Furthermore, even if there is an ambiguity in the terms of the agreement, the legal principle of contra proferentem states that ambiguity in an agreement should be interpreted against the interests of the party that drafted the agreement. In this matter, since the landlords drafted the tenancy agreement, any ambiguity in the tenancy agreement should be interpreted against the landlords.

For the forgoing reasons, I find that tenants were permitted to terminate this tenancy upon the provision of one month of notice. Further, I find that the tenants did provide the required one month of notice before terminating this tenancy agreement. As such, I find that the tenants do not owe the landlord compensation for loss of rent of terminating the tenancy agreement early.

Since the landlords have been partially successful in this matter, I award the landlords \$100.00 for recovery of the filing fee pursuant to section 72. Furthermore, since both the tenants and the landlords have been granted a reimbursement of their \$100.00 filing fees herein, I find that the filing fee awards are offsetting.

According, the tenants are granted a monetary order of \$1,106.44, based on the following calculation.

<u>Item</u>	<u>Amount</u>
-------------	---------------

Award of double security deposit to tenants	\$1,200.00
Less: award of landlords' cleaning costs	-\$40.00
Less: award of landlords' table repair costs	-\$20.00
Less: award of landlords' mattress cover costs	-\$33.56
Total award to tenants	\$1,106.44

Conclusion

I grant the tenants a monetary order in the amount of **\$1,106.44**. If the landlords fail to comply with this order, the tenants may file the order in the Provincial Court to be 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 08, 2019

Residential Tenancy Branch