



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, MNSD, FF

Introduction

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

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenants attended the hearing via conference call and provided testimony. The landlord did not attend or submit any documentary evidence. The tenants stated that the landlord was served with the notice of hearing package via Canada Post Registered Mail on April 24, 2019. The tenants have provided a copy of the Canada post receipt and the tracking label as confirmation. The tenants further stated that the Canada Post online tracking system reports that attempted service was made, but that the recipient "refused" the package. I accept the undisputed evidence of the tenants and find that the landlord was properly served and although did not accept the package or attend the hearing is deemed served as per section 90 of the Act.

At the outset, the tenants application was clarified in that he was not seeking "emergency costs", but a monetary claim for repairs that the landlord was notified of and refused to pay.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for repairs, return of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on October 6, 2017 to December 6, 2017 for a fixed term. The rental rate was \$3,400.00 and a security deposit of \$500.00 was paid as per the submitted copy of the "Seasonal Temporary Rental Agreement". The tenants stated that this was a short term temporary tenancy for a set period.

The tenant seeks a monetary claim of \$405.76 which consists of:

\$173.25	emergency repair/replace faulty bedroom door lock
\$232.51	return of security deposit portion held by the landlord

The tenants claim that they were forced to hire a locksmith to gain access to one of the bedrooms in the house. The tenants described the lock as faulty since once the door is pulled shut, it locks. The tenant was told by the landlord that there is no key. The landlord was contacted via email and notified of the issue. The landlord told the tenants that there was no key and suggested that the tenants use a kitchen utensil to open the door. The tenants stated that they were concerned about damaging the door and were informed by the landlord to call somebody to fix it, but that the landlord would not be responsible for the cost. The tenants have provided a copy of the locksmith invoice which confirms that the door lock was faulty. The tenants seek recovery of the locksmith invoice of \$173.25.

The tenants also seek recovery of \$232.51 a portion of their \$500.00 security deposit which was withheld by the landlord without their consent. The tenants confirmed that they are not aware of the landlord filing an application for dispute of its return. The tenants stated that they were informed by the landlord that the amount withheld was for cleaning the rental unit at the end of tenancy. The tenants argued that consent was not given and that the rental unit was left clean thoroughly prior to vacating. The tenants stated that the tenancy ended on December 6, 2017 and that the landlord was provided with their forwarding address in writing for return of the security deposit via Canada Post Registered Mail on January 30, 2018. The tenants have provided a copy of the Canada Post Customer Receipt dated January 30, 2018 as confirmation.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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.

In this case, I accept the undisputed evidence of the tenants and find that a repair cost of \$173.25 was incurred by the tenant to repair a faulty bedroom door lock as per the submitted copy of the locksmith invoice. The tenants provided undisputed testimony that the landlord was notified of the issue and chose to not take any action. The tenants stated that they were advised to use a kitchen utensil to open the door, but refrained from doing so to avoid any damage issues. As such, I find that the tenants acted responsibly by notifying the landlord in advance of having the lock replaced/repared. On this basis, the tenants have been successful in their claim.

Section 38 of the *Act* requires the landlord to either return all of a 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 a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the *Act* equivalent to the value of the security deposit.

The tenants have provided undisputed evidence that the tenancy ended on December 6, 2017 and that the landlord withheld a portion of the \$500.00 security deposit from the tenants of \$232.51. The tenants also provided undisputed testimony that the landlord was provided with their forwarding address in writing for return of the \$500.00 security deposit via Canada Post Registered Mail on January 30, 2018. The tenants stated that the landlord was not given consent to retain this amount nor are the tenants aware of the landlord filing an application for dispute of its return. On this basis, I find that the tenants are entitled to return of the \$232.51 claim. However, I also find as such that the landlord has failed to comply with section 38(1) of the *Act* and is liable to an amount equal to the \$500.00 security deposit as compensation pursuant to section 38(6) of the *Act*.

Conclusion

The tenants are granted a monetary order for \$1,005.76 which consists of:

\$173.25	Locksmith Invoice
\$232.51	Return of Security Deposit portion
\$100.00	Filing Fee
\$500.00	Compensation, Fail to Comply Sec. 38(6)

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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 16, 2019

Residential Tenancy Branch