



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT FFL MNDL-S

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- a return of all or part of the security and pet damage deposit for this tenancy pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended and were given a full opportunity to be heard, to make affirmed submissions, present evidence, call witnesses and cross-examine one another.

The tenants confirmed receipt of the landlord's application and evidence. Based on the testimony I find that the tenants were served with the landlord's materials in accordance with sections 88 and 89 of the *Act*.

The landlord denied being served with the tenants' application. The tenants testified that they served the landlord at the service address provided on the tenancy agreement, by registered mail sent on March 21, 2019. The tenants provided a valid Canada Post

tracking number and receipt as evidence of service. The landlord said that the address on the tenancy agreement is no longer their address for service and the tenants ought to have served them at the address for service provided on the landlord's application.

Issue(s) to be Decided

Is either party entitled to a monetary award as claimed?

Is either party entitled to a return of the filing fee from the other?

Background and Evidence

This periodic tenancy began in August 2018 and ended on February 28, 2019. The monthly rent was \$1,550.00 payable on the first of each month. A security deposit of \$775.00 and pet damage deposit of \$300.00 were paid at the start of the tenancy and are still held by the landlord. No condition inspection report was prepared at any time for this tenancy.

The tenant provided a forwarding address by letter dated March 1, 2019. The tenants did not provide written authorization that the landlord may retain any portion of the security or pet damage deposit.

The landlord claims the amount of \$825.00 for repairs and cleaning to the rental unit.

The landlord says in their written submissions:

Tenant caused damage to ceiling and top of cabinets due to grease and fire. Tenants dog caused damage to door by scratching and biting.
Stripped and peeled paint

The landlord submitted into documentary evidence an estimate from a photograph of an area of the ceiling, a message from contractor providing an estimate of \$1100-\$1200 to perform work and a correspondence with the tenant where the landlord reminds the tenant of their obligation to clean the kitchen ceiling.

Analysis

In accordance with sections 88 (c) and 89 (1)(c) of the Act, an application for dispute resolution may be served on a landlord by sending a copy by registered mail to the address at which the landlord resides or carries on business.

Residential Tenancy Policy Guideline 12 further provides that a post office box, set out in the written tenancy agreement, as the address for the landlord may be considered the appropriate service address.

While the landlord submits that they provided their current address for service on their own application for dispute resolution which supersedes the service address found on the tenancy agreement, I do not find this reasoning to be reasonable or persuasive. I find that it would be inappropriate to expect that an application for dispute resolution invalidate the information provided on the written tenancy agreement without expressly setting out that the address for service on the agreement is no longer valid. By providing a separate address on their application, I find that it establishes that the new address is the appropriate address at which the tenants may serve the landlord with evidence pertaining to the landlord's application, but it does not invalidate the address for service provided on the written tenancy agreement.

In any event, I find that both parties were fully aware of the content of their respective claims and agreed upon much of the evidentiary background. Accordingly, I find that the landlord was sufficiently served with the tenant's application and evidence for the purposes of the Act in accordance in section 71(2)(c).

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the evidence of the parties that this tenancy ended on February 28, 2019 and the tenants gave the landlord the forwarding address in writing on March 1, 2019. The landlord filed their application for dispute resolution to retain the security deposit on March 13, 2019. Therefore, I find that the landlord filed their application within the 15 days provided under the *Act*.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

While the landlord seeks a monetary award for damages I find that in the absence of a condition inspection report properly prepared at the start of the tenancy there is insufficient evidence that the landlord suffered losses due to the tenants as claimed. I find the single photograph and correspondence to be insufficient to show that the tenants caused any damage beyond what would be reasonably expected through the course of a tenancy. I find that there is little visible evidence of damage in the photograph submitted and I find the balance of the landlord's claim to be unsubstantiated by the documentary evidence. I find that the landlord has not met their evidentiary burden to establish their monetary claim and consequently it is dismissed.

I accept the evidence that the tenants did not provide written authorization that the landlord may retain any portion of the security or pet damage deposit. I find the correspondence between the parties to be insufficient to show that there was any authorization on the part of the tenants. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances, I find that the tenants are entitled to an \$1,075.00 Monetary Order, the value of the security and pet damage deposit paid for this tenancy. No interest is payable over this period.

As the tenants were successful in their application they may recover their filing fee from the landlord.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,175.00 against the landlord.

The tenants are provided with a Monetary Order in the above terms and the landlord must be served with 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 18, 2019

Residential Tenancy Branch