



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STERLING MANAGEMENT SERVICES
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT MNSD FFL MNDCL-S MNDL-S MNRL-S

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants applied for:

- A return of the security deposit pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The corporate landlord was represented by their agent (the “landlord”).

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the other’s materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is either party entitled to a monetary award as claimed?
Is either party entitled to the security deposit for this tenancy?
Is either party entitled to recover 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 arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

This periodic tenancy began in December 2016 and ended in accordance with a 2 Month Notice to End Tenancy for Landlord's Use in December 2018. The monthly rent was \$2,000.00 payable by the first of the month. A security deposit of \$1,000.00 was paid at the start of the tenancy and is still held by the landlord.

The parties agree that the tenants remained in the rental suite until December 3, 2018. The tenants testified that there was an agreement with the property owner that they could stay as they allowed the owner to bring their trailer onto the property prior to the end of the tenancy. The landlord disputes that any arrangement was made and seeks a monetary award of \$200.00 for the 3 additional days the tenant occupied the rental unit.

The parties participated in a move-out condition inspection report on December 3, 2018. A copy of the report was submitted into evidence.

The landlord said that the rental unit was left in a state of disarray requiring considerable cleaning, repairs and maintenance and garbage disposal. The landlord seeks a monetary award in the amount of \$2,222.50 for the cost of various work performed. The landlord submitted into written evidence receipts and invoices for the work done.

The tenant testified that they disagreed with the landlord's assessment of damage and did not give written authorization that the landlord may retain any portion of the security deposit.

The tenants first provided the landlord with their forwarding address on their application for dispute resolution dated February 27, 2019. The parties confirm that the landlord was served with the application and the tenants' forwarding address on March 13, 2019.

Analysis

Section 38 of the *Act* requires the landlord to either return the 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 receiving a forwarding address in writing. If that does not occur, the landlord must pay a monetary award pursuant to section 38(6) 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 authorization to retain all or a portion of the security deposit.

I accept the evidence of the parties that the tenants first provided a forwarding address to the landlord on their application for dispute resolution dated February 27, 2019 and served on the landlord on March 13, 2019. Accordingly, the landlord had 15 days from March 13, 2019 to either return the security deposit in full or file an application to retain the deposit. The landlord filed their application on March 19, 2019, within the 15 days permitted under the *Act*.

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.

I find that the landlord has provided sufficient evidence to meet their evidentiary burden on a balance of probabilities. I accept the evidence of the parties that the tenants overheld by 3 days. I do not find the tenant's explanation that they were authorized to do so to be supported in any documentary evidence or in line with what would reasonably be expected under the circumstances. I find the landlord's submission that the tenants overheld without authorization and that the landlord therefore suffered a loss equivalent to rent for 3 days to be more reasonable. I therefore award the landlord a

monetary award in the amount of \$200.00, the equivalent of the 3 days the tenants overhired the rental suite.

I accept the landlord's evidence that the rental suite required some work after the tenancy had ended. I find the inspection report and photographs submitted by the landlord to show that cleaning and general work was required. I find the receipts and invoices submitted by the landlord to be reasonable in the scope of work performed and the cost for the labour and supplies. While I understand that the tenants performed some cleaning work of their own prior to the end of the tenancy, I accept the evidence of the landlord that the work was not sufficient. I issue a monetary award in the landlord's favour in the amount of \$2,222.50 for the damages and loss suffered.

As the landlord was successful in their application the landlord may recover the filing fee for their application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour. No interest is payable over this period.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I issue a monetary award in the landlord's favour in the amount of \$1,522.50 on the following terms:

Item	Amount
Unpaid Rent Dec 1 – Dec 3, 2018	\$200.00
Damages and Loss	\$2,222.50
Less Security Deposit	-\$1,000.00
Recovery of Filing Fee for this Application	\$100.00
Total Monetary Order	\$1,522.50

The landlord is provided with these Orders in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: June 13, 2019

Residential Tenancy Branch