



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDCT FFT

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 their 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 landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenants' Application. Both parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

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 fixed-term tenancy began on June 1, 2017, and was to end on May 31, 2019. The tenants moved out on April 7, 2019. Monthly rent was set at \$2,000.00, payable on the first of the month. The tenants paid a security deposit in the amount of \$1,000.00, which the landlord still holds. The tenants testified that they had provided a forwarding address to the landlord on April 8, 2019.

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

Item	Amount
Return of security deposit plus compensation for landlord's failure to comply with section 38	\$2,000.00
Compensation for landlord's failure to comply with section 49(3) of the <i>Act</i> (12x \$2,000.00)	24,000.00
Multiple Renovations	4,000.00
Filing Fee	100.00
Total Monetary Order Requested	\$30,100.00

The tenants testified that the landlord had informed them in November of 2018 that she might have to move back into the home due to relationship issues. The tenants received official notice from the landlord in February of 2019 that she would be moving back in as of May of 2019. The tenants started looking for a place due to the nature of the rental market, and were able to secure a place for April 1, 2019, and moved out of the home. The tenants confirmed that the landlord had never officially given them a 2 Month Notice as their communication had always been casual.

The tenants are seeking compensation as set out above as they believe that the landlord did not end the tenancy in good faith, and had intended to re-rent the home instead. The tenants are also seeking reimbursement of the renovations that they have done in the home as they were under the impression that their tenancy would be for a much longer term. They testified that they were taken by surprise with the news that the landlord would be moving back in. The tenants testified that they were unable to provide all the receipts for the renovations as they are still in boxes.

The tenants are also requesting the return of their security deposit, which the landlord still holds. The landlord testified in the hearing that she was only consenting to the return of a portion of the deposit.

The landlord is disputing the tenants' monetary claim as they feels that she had never agreed to a long-term tenancy, and that she had given the tenants time to find a new place. She also disputes that she had ever agreed to compensate the tenants for any of the work and renovations completed in the home.

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 did not return the tenants' 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.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenants' forwarding address is received in writing; ...*
- *whether or not the landlord may have a valid monetary claim.*

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security deposit

Section 49 of the *Act* allows for the landlord to issue a Notice to end the tenancy for landlord's use, and states the following:

7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Section 52 of the *Act* requires that the above Notice complies with the *Act*, specifically, that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) state the grounds for ending the tenancy, and (e) be in the approved form.

Although the landlord communicated to the tenant that the tenants must move out, I find that no notices to end tenancy were issued to the tenants that comply with section 52(e) of the *Act*. The tenants applied for compensation pursuant to section 51 below, which requires that a notice be given under section 49 of the *Act*.

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I find that the tenants had moved out as requested by the landlord, and not as a result of receiving a Notice to End Tenancy pursuant to Section 49 of the *Act*. I find that the tenants had moved out without filing any applications disputing the landlord's notice to end tenancy. On this basis, I am not allowing the tenants' application for monetary compensation pursuant to section

51 of the *Act* as the tenants had moved out as requested by the landlord, and not on the basis of a Notice given under section 49 of the *Act*.

The tenants also applied for reimbursement for the renovations that they had completed in the home.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenants must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bear the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

I find that the tenant failed to provide sufficient evidence to support that the landlord had ever agreed to compensate them for the renovations that they had decided to complete in the home. Although I am sympathetic to the tenants that they had spent a substantial amount of time, money, and energy renovating the home, I find that the tenants had moved out as requested by

the landlord, without disputing the landlord's notice to end this tenancy. As stated above, the burden of proof falls on the tenants to support the amount of their actual loss, and that this loss was the direct result of the other parties' actions. As I find that the tenants have failed to meet the tests as set out above, I dismiss the tenants' monetary claim for renovations without leave to reapply.

As the tenants were only partially successful in their claim, I find that they are entitled to recover half of the filing fee for this application.

Conclusion

I issue a **\$2,050.00** Monetary Order in the tenants' favour for the landlord's failure to comply with the provisions of section 38 of the *Act*, and for recovery of half of the filing fee.

The tenants are provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) 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.

The remaining portions of the tenants' application are dismissed without leave to reapply.

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: August 7, 2019

Residential Tenancy Branch