



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNSD**

Introduction

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

- Authorization to recover the filing fee for this application from the landlord pursuant to section 72; and
- An order for the return of a security deposit or pet damage deposit pursuant to section 38 and 67.

The tenant CM attended the hearing. All 3 landlords attended the hearing and were represented by landlord, SM ("landlord"). As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Issue(s) to be Decided

Should the tenant's security deposit be returned?

Should the filling fee be recovered?

Background and Evidence

While I have turned my mind to all the documentary evidence, including miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

This tenancy involves an entire house located on a property that also has a carriage house located on it. A copy of the tenancy agreement was provided as evidence. The one-year fixed term tenancy began on September 1, 2017 to end on August 31, 2018.

Rent was set at \$2,500.00 per month payable on the first day of each month. A security deposit of \$1,250.00 was collected by the landlord which he continues to hold. No pet damage deposit was taken. In the agreement, 85% of the hydro bill and 100% of the natural gas bill is to be paid to the landlord, MF.

The tenancy ended on August 31, 2018 in accordance with the terms of the tenancy agreement. The landlord acknowledges there is no damage to the rental unit resulting from the tenancy. The tenant testified she provided her forwarding address to the landlords on April 17, 2019 by registered mail. The tracking number for the mailing is provided on the cover page of this decision.

The tenant testified she has communicated with the landlords extensively to recover her security deposit but they wouldn't return it because they allege outstanding utilities. The tenant testified she was paying for cablevision when she wasn't required to under the tenancy agreement and disputes the agreement to pay 85% of the hydro bill as she felt it was an unequal distribution of costs between the two units on the property. The tenant also testified her spouse previously paid the utilities from his business account but did not provide any evidence to corroborate this. She attributed the confusion about the unpaid bills to her spouse's setting up of his professional practice and moving to another location during the time of the tenancy ending.

The landlord testified he notified the tenant there were outstanding utility bills to be paid before the tenancy ended. The landlord provided a string of emails sent between the parties between August 26th and August 27th as evidence of this. In the emails, the landlord advises the tenant failed to pay hydro, natural gas and cablevision. The tenant responded on August 27th at 7:19 a.m.: *"I didn't realize [spouse] hadn't paid those...you can deduct those bills that are still owing and the new ones from the damage deposit and then etransfer whatever is remaining..."* repeating later *"for the DD, just deduct the utilities or etransfer for any remaining works"*. At 5:59 p.m. the same day, the tenant writes: *"[spouse] asked you deduct it off the damage deposit along with the new amount that will be due."* At 6:27 the tenant writes *"...If there's anything left owing once all the final utility bills are over and above the \$1,250 that is due back to us, then we will square that up..."*

The landlord provided the following bills:

hydro bill for May 8 to July 6 in the amount of \$632.32

hydro bill for July 7 to September 6 for \$640.69

Natural gas bill for August 1 to August 31 in the amount of \$40.62.

The landlord testified he returned the remainder of the tenant's security deposit in the amount of \$50.95. The tenant acknowledges receiving the cheque but has not yet cashed it or deposited it.

Analysis

Section 7 of the *Act* states: 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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

In the case before me, the burden is upon the tenant prove it is more likely than not the facts support her claim. While the landlord acknowledges he did not return the security deposit; he asserts he had written consent from the tenant to retain it to pay outstanding utilities as agreed to in the tenancy agreement. The tenant claims the utility bills were paid by her spouse and no utilities are owing. Other than testimony, the tenant has not provided any documentary evidence to substantiate this assertion. On a balance of probabilities, the tenant has provided insufficient evidence to prove the bills were paid.

A landlord is required to repay any security deposit to the tenant within 15 days of the tenancy ending and receiving the tenant's forwarding address in writing pursuant to section 38(1) of the *Act*. Failure to do so would require the landlord pay double to amount pursuant to section 38(6) of the *Act*. The tenant seeks a doubled security deposit returned to her pursuant to section 38(6).

Section 38(4)(a) reads as follows:

A landlord may retain an amount from a security deposit or a 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.

Based on the emails dated August 27th, I find the tenant clearly agreed in writing that the landlord may retain her security deposit to pay the utilities. The landlord is not in breach of section 38 of the *Act* for failing to return the security deposit within 15 days of the tenancy ending and receiving the tenant's forwarding address.

I am satisfied the tenancy ended with the following outstanding utility bills left unpaid:

Item	Billing date	Period	amount	85% of bill
Hydro	July 10, 2018	May 8 to July 6, 2018	\$636.32	\$540.87
Hydro	Sep 10, 2018	July 7 to Sep 6, 2018	\$640.68	\$544.57
Natural Gas	Aug 31, 2018	Aug 1 to Aug 31, 2018	\$40.62	\$40.62
Total				\$1,126.06

The tenancy agreement clearly indicates the tenant is not required to pay for cablevision. I do not find the landlord is entitled to any compensation for it.

I find the landlord is entitled to retain \$1,126.06 of the tenant's security deposit in accordance with section 38(4)(a) of the *Act*. The remaining \$123.94 of the security deposit is to be returned to the tenant.

The tenant was not successful in her claim and will not recover her filing fee.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$123.94.

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: October 17, 2019

Residential Tenancy Branch