



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFL MNDCL-S

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- a monetary order for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

AR, an advocate for the tenants, testified on behalf of the tenants in this hearing. The tenants had made a written request that the RTB provide them with an interpreter for the hearing. At the hearing, the tenants confirmed that they were able to obtain the services of their own interpreter, AA, who attended the hearing and assisted as needed. 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.

As the tenants confirmed receipt of the landlords’ application and evidentiary materials, I find that the tenants were served with the landlords’ application and evidence in accordance with sections 88 and 89 of the *Act*. The landlords testified that they were never served with the tenant’s application and evidence package, but that they did receive the tenant’s written response to their application. The tenants testified that they had served the landlords with their package by way of registered mail, and provided the tracking information for the hearing. The landlords confirmed in the hearing that they

took no issue with proceeding with the tenants' cross application as both matters are related. Accordingly, the hearing proceeded in relation to both applications. As the landlords confirmed receipt of the tenants' written response to their application, the tenants' written response was confirmed to have been served in accordance with section 88 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for losses arising out of this tenancy?

Are the tenants entitled to the return of their security deposit?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This month-to-month tenancy began on September 1, 2017, and ended on July 8, 2019. Both parties confirmed that the monthly rent was set at \$2,594.80 at the end of the tenancy, payable on the first of every month. The tenants had paid a security deposit in the amount of \$2,495.00 at the beginning of the tenancy, and half was returned to the tenants during the tenancy. The landlords still hold \$1,247.50 of the original security deposit paid. After a previous hearing that was held on July 4, 2019, the Arbitrator allowed the landlords to retain \$100.00 of the security deposit in satisfaction of the filing fee awarded to them.

The tenants are applying for the return of the \$1,247.50 held by the landlords. Both parties confirmed that the tenants had provided a forwarding address to the landlords on July 8, 2019. The landlords applied for an application to keep this security deposit on July 21, 2019, within the 15 days required by section 38 of the *Act*.

Although the landlords applied for a monetary order in the amount of \$4,332.52 in their original application, the landlords confirmed the following monetary claims as set out in the table below.

Item	Amount
Registered Mail	\$35.02
Damage Deposit	1,247.50
Filing Fee granted for previous decision	100.00
Yard Maintenance	280.00
Dining Room Light	150.00
Loss of Rental Income for July 2019	2,600.00

Total Monetary Order Requested	\$4,412.52
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A previous hearing was held on July 4, 2019 to deal with cross applications by the same parties, regarding this tenancy. The landlord's application was dealt with by way of a settlement agreement. The following excerpt is from the July 5, 2019 decision for the July 4, 2019 hearing:

"During the hearing, both parties agreed that they had signed a Mutual Agreement to End Tenancy and that the Tenant had not moved out in accordance with that agreement, on June 30, 2019. Both parties also agreed that the Landlord had submitted an application for dispute resolution on June 24, 2019, requesting an order of possession to enforce the Mutual Agreement to end the tenancy and to recover the filing fee for their application.

Both parties requested that the Landlords application be dealt with during these proceedings. and expressed a desire to enter into a settlement agreement on a date for the Tenants to move out of the rental unit.

Section 63 of the Act allows for the parties to consider a settlement to their dispute during the hearing, and that any settlement agreement reached during the hearing may be recorded in the form of a decision and an order. In accordance with this, an opportunity for a settlement discussion was presented, and the parties came to an agreement on a settlement that would resolve their dispute.

During the hearing, the parties agreed to the following settlement:

- 1. The Tenants will move out of the rental unit no later than July 11, 2019, at 1:00 p.m.*

The above terms of the settlement agreement were reviewed with all parties during the hearing, and all parties confirmed that they were entering into the settlement agreement on a voluntary basis. Both parties were also advised that I have made no determination regarding any claim that the Landlords may have regarding the Tenants overholding the rental unit. "

The landlords are applying for \$2,600.00 in lost rental income for July 2019 for the tenants' failure to move out on the effective date of the Mutual Agreement, November 30, 2019. The landlords testified that they had already found new tenants who were to move in on July 1, 2019, but due to the tenants' failure to vacate the home until July 8,

2019, the landlords had to cancel this new tenancy. The landlords testified that they had agreed for the tenants to move out on July 11, 2019 as the tenants were already overholding, and they had to mitigate their losses. The landlords testified that despite the mutual agreement for the tenancy to end on July 11, 2019, as of July 4, 2019, the hearing date, the tenancy should have ended pursuant to the Mutual Agreement on June 30, 2019. The landlords argue that the tenants' failure to move out pursuant to that Mutual Agreement had caused them to suffer a loss of \$2,600.00.

The tenants dispute the landlords' claim for lost rental income as they feel that they had complied with the settlement agreement made on July 4, 2019. The tenants testified that they were awaiting the Arbitrator's decision that was to be made after the hearing on July 4, 2019 regarding the Mutual Agreement. The tenants testified that this tenancy had ended on the basis of the settlement agreement, and not on the merits of the Mutual Agreement previously signed, and as they had paid the landlords the rent for the period that they stayed in July 2019, they had already compensated the landlords for over holding.

The landlords are also requesting to keep the tenants' entire security deposit as they feel the tenants failed to attend the move-out inspection on the effective date of the Mutual Agreement, June 30, 2019. The tenants dispute this, stating that the unit was not vacated as of June 30, 2019, and the landlords failed to wait until they had vacated the rental unit to arrange a move-out inspection. The tenants testified that both parties attended a move-out inspection at the end of the tenancy on July 8, 2019. The landlords confirmed that the tenants were not provided a copy of the move-out inspection report prior to this application.

The tenants agreed to compensate the landlords \$165.00 for the yard maintenance, but not the \$280.00 requested by the landlords as they feel the amount to be excessive. The landlords testified that the tenants' failure to maintain the lawn had caused them the loss of \$280.00, which involved over 4 hours of labour.

The tenants do not dispute the landlords' monetary claim for \$150.00 for replacement of the dining room light.

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 or 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, the onus is on the landlords to prove, on a balance of probabilities, that the tenants had caused damage and losses in the amounts claimed by the landlords.

Section 35 of the *Act* states the following about move-out inspections:

- 35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
 - (b) the tenant has abandoned the rental unit.

In this case, I find that the landlords had attempted to perform the move-out inspection before the tenants had vacated the rental unit. The tenants testified that they did not agree to do the inspection prior to the move-out date. Furthermore, I find that that landlords had failed to provide the tenants with a copy of the move-out inspection report. I find that the landlords have failed to establish that the tenants have failed to comply with section 35 of the *Act*, and the tenants' security deposit will be dealt with in accordance with section 38 of the *Act*.

Although both parties confirmed that there was a Mutual Agreement signed to end this tenancy on June 30, 2019, I find that this tenancy had ended on the basis of a new settlement agreement on July 4, 2019 for the tenancy to end on July 11, 2019. I find that the tenants had complied with this new settlement agreement, and had moved out prior to July 11, 2019, and compensated the landlords for the dates that they overheld up to July 8, 2019. I have reviewed the settlement decision dated July 5, 2019, and I find that the landlords had agreed to the settlement decision instead of proceeding with the hearing on the merits of the original Mutual Agreement. There is no reference to any outstanding monetary losses or disputes arising out of the original Mutual Agreement other than a possible claim by the Landlords for overholding. I find that this tenancy ended on the basis of the settlement agreement, and not on the basis of the Mutual Agreement. I find that the tenants had compensated the landlords for overholding, and that they had complied with the settlement agreement as set out in the decision dated July 5, 2019. Accordingly, I dismiss the landlords' monetary claim for loss of rental income in the amount of \$2,600.00 without leave to reapply.

As the tenants agreed to compensate the landlords for the dining room light, I allow this portion of the landlords' monetary claim.

I am satisfied that the landlords had supported their monetary claim for the yard work. I find they supported their entire claim, and established that they suffered the monetary loss due to the tenants' actions. Accordingly, I allow the landlords' monetary claim of \$280.00.

As the landlords had already been successful in claiming the \$100.00 filing fee for their previous application, this is therefore a second application for compensation related to the same issue. I therefore find that this current application for the filing fee for the previous application is *res judicata* meaning the matter has already been conclusively decided and cannot be decided again. Accordingly, I dismiss the landlords' new application for the filing fee.

Section 72 of the *Act* does not allow the landlords to claim for the costs of filing an application other than the filing fee. Accordingly, I dismiss the landlords' application for recovery of mailing costs.

As both parties were equally successful in their applications for today, and obtained offsetting monetary awards, no order will be made in regards to the recovery of their filing fees.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain a portion of the tenants' security deposit plus applicable interest in satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit. The remaining portion of the security deposit shall be returned to the tenants.

Conclusion

As both parties were equally successful in their applications and obtained offsetting monetary awards, no order will be made in regards to the recovery of their filing fees.

I allow the landlords' monetary claims for yard maintenance as well as for the dining room light. I dismiss the remainder of the landlords' monetary claims without leave to reapply. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain a portion of the tenants' security deposit in satisfaction of their monetary claim as set out in the table below. I allow the tenants a monetary order in the amount of \$817.50 for the return of the remaining portion of their security deposit.

Item	Amount
Damage Deposit	\$1,247.50
Yard Maintenance	-280.00
Dining Room Light	-150.00
Total Monetary Order to Tenants	\$817.50

The tenants are provided with this Order in the above terms and the landlords(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.

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: November 5, 2019

Residential Tenancy Branch