



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- return of the security deposit pursuant to section 38;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or 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 pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the *Act* for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a return of the security deposit pursuant to section 38?

Are the tenants entitled to a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72?

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The parties agreed that the monthly rent was \$2,500.00 and the tenant paid a \$1,250.00 security deposit and a \$1,250.00 pet damage deposit. The tenancy agreement also stated that the tenant was responsible for two-thirds of the electric and gas utility bills and that the tenant was responsible for lawn cutting. The tenancy has ended and the parties are both disputing the deposits.

The landlord provided statement evidencing the electric utility charges totaling \$377.12, itemized as follows:

- Service dates March 16, 2019 to May 15, 2019: total \$222.82; and
- Service dates of May 16, 2019 to July 3, 2019: total \$154.30.

The landlord provided statement evidencing gas utility charges totaling \$475.90, itemized as follows:

- Service date of April 2019: \$70.92
- Service date of May 2019: \$155.77
- Service date of June 2019: \$201.54
- Service date of July 2019: \$47.67

Two-thirds of the claimed electric utility charges totals \$251.41 and two-thirds of the claimed gas charges totals \$317.27. Accordingly, the electric and gas utility claims total \$568.68. However, on the landlord's application the landlord only requested reimbursement of \$399.77 in utility expenses and, pursuant to *Residential Tenancy Branch Rules of Procedure*, Rule 2.2, an applicant's claim is limited to what is stated in the application. Accordingly, the landlord's claim for reimbursement of utility expenses is limited to \$399.77, as pled in his application.

The landlord also claimed \$150.00 for power washing the deck and garage. The landlord testified that the deck and garage was not left in a clean condition and it took three hours of labour for two individuals each to power wash the deck and garage. The landlord performed the cleaning himself and he charged \$25.00 per hour for his labour.

The landlord also claimed \$150.00 for power washing the deck and garage. The landlord testified that the deck and garage was not left in a clean condition. The landlord provided photographs of the deck and garage. The landlord testified that it took three hours of labour for two individuals each to power wash the deck and garage. The landlord performed the cleaning himself and he charged \$25.00 per hour for his labour.

In addition, the landlord also claimed \$100.00 for cutting the lawn. The landlord testified that the lawn was left in a unkempt condition and the tenancy agreement provides that the tenant is responsible for cutting the lawn. The landlord provided photographs of the lawn before and after cutting it. The landlord testified that it took two hours of labour for two individuals to cut the lawn. The landlord performed the cleaning himself and he charged \$25.00 per hour for his labour.

Analysis

Section 7(1) of the *Act* states that "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results." Based upon the utility statements submitted and the undisputed testimony of the landlord, I find the landlord has established that the tenant has an obligation pay two-thirds of the electric and gas utility charges and that the tenant's outstanding share exceeds the \$399.77 claimed by the landlord. Accordingly, I find that the landlord is entitled to a monetary order of \$399.77 pursuant to section 7(1) for reimbursement of electric and gas utilities.

I am not satisfied that the landlord has sustained any damages for cleaning expenses. I find that the photographs submitted by the landlord do not show a need for significant cleaning services for the deck or garage. The tenants are only required to leave the

rental unit reasonably clean at the end of the tenancy pursuant to section 37(2)(a) of the *Act*. I find that the landlord has failed to provide sufficient evidence to establish that the deck and garage were not left in a reasonably clean condition.

I find that the tenant did have an obligation to maintain the landscaping pursuant to tenancy agreement. Further, based upon the photographs provided and the testimony of the landlord, I find that the tenants did fail to leave cut the lawn before vacating the property. Further, I find the landlord's claim of \$100.00 for cutting the lawn to be reasonable. Accordingly, I find that the landlord is entitled to a monetary order of \$100.00 pursuant to section 7(1) for lawn cutting.

I dismiss the tenant's application for an award of double the security deposit because I find that the tenant has failed to provide sufficient evidence to establish that she had provided the landlord with her complete forwarding address in writing as required by section 38 of the *Act*.

Based on the agreed testimony of both parties, I find that the landlord holds a a \$1,250.00 security deposit and a \$1,250.00 pet damage deposit. Further, pursuant to section 72(2)(b) of the *Act*, I find that the landlord may deduct the monetary damages awarded herein from the deposits. In addition, I order the landlord to return the remaining balance of the security deposit and the pet damage deposit to the tenants pursuant to section 38.

In addition, since both parties were partially successful, I dismiss both parties requests for reimbursement of their filings fees pursuant to section 72 of the *Act* as offsetting.

The total award to tenants is accordingly \$2,000.23 as set forth below:

Item	Amount
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Security deposit	\$1,250.00
Pet damage deposit	\$1,250.00
Monetary award for electric and gas utilities	-\$399.77
Monetary award for lawn cutting	-\$100.00
Total award to tenants	\$2,000.23

Accordingly, I order the landlord to pay the tenants the sum of \$2,000.23.

Conclusion

The landlord's right to retain the security deposit is extinguished.

I grant the tenants a monetary order in the amount of **\$2,000.23**. If the landlord fails to comply with this order, the tenants may file the order in the Provincial Court to be 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 06, 2019

Residential Tenancy Branch