



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary claim of \$472.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, a monetary order for the return of the \$700.00 pet damage deposit, and recovery the cost of their \$100.00 Application filing fee.

The Tenant, S.D. and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Are the Tenants entitled to a monetary order, and if so, in what amount?
- Are the Tenants entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the Tenants began a fixed term tenancy with a different landlord on November 1, 2015, and that a new tenancy agreement was signed each year. The Parties agreed that the Landlord took over from the Tenants' first landlord after she purchased the residential property in the Spring of 2019, which the Landlord said closed on June 28, 2019. The Parties agreed that the Tenants paid the Landlord a monthly rent of \$1,456.00 due on the first day of each month. The Parties agreed that the Tenants had paid the original landlord a security deposit of \$700.00, and a pet damage deposit of \$700.00.

In the hearing, the Tenant said:

I rented this unit December 1, 2015 from [a national property management company], as they represented Landlord A. In April of 2019, Landlord A decided to sell the property, and the property sold right away. We were released from our lease as of July 1st and we do have the Tenancy Board Form RTB-8 signed [Mutual Agreement to End a Tenancy] ("Mutual Agreement").

The new landlord couldn't get out of her lease, so she changed her mind and didn't want us to move, but by that time we had a deposit on a new place. With housing so tight we had our forms signed we continued the process and moved.

The Mutual Agreement was executed by the Tenants and their former landlord on May 12, 2019, and sets out that the Tenants "hereby agree to vacate the above-named premises at 1:00 p.m. on the 31st of July, 2019. It is signed by the Tenants and the landlord or the landlord's agent. The Mutual Agreement includes:

The parties recognize that the tenancy agreement between them will legally terminate and come to an end at this time. It is also understood and agreed that this agreement is in accordance with the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*, which states: 'The landlord and tenant agree in writing to end the tenancy.'

The Parties agreed that the Tenants moved out on July 29, 2019, and that they provided their written forwarding address to the Landlord on the move-out condition inspection report on July 29, 2019.

The Tenant said she was surprised to receive a cheque and an email from the Landlord

on August 5, 2019, "...within the right timeframe", saying the Landlord was returning only \$228.00 of the Tenants' \$1,400.00 security and pet damage deposits. The Tenant said the Landlord's reason was that she had to repair a hole in the bathtub, although the Tenant said this was the first that she had heard about it. The Tenant said that the move-out CIR noted a chip, but did not say there was a hole in the bathtub, nor that she would be responsible for any costs from the move-out CIR.

The Landlord argued that the Tenants owed her \$700.00 for ending the fixed term tenancy agreement early, despite the Mutual Agreement. The Landlord said that she never asked to move into the rental unit early; rather, she said she always believed that the Tenants would live there until the end of their lease. The Landlord said she determined this prior to making an offer to purchase the residential property. The Landlord said that the Mutual Agreement was signed in error by the prior landlord's agent, the property management company. Further, the Landlord said she never told the Tenants that she would return the security and pet damage deposits if they gave her their forwarding address. She said she is short four months' rent, because the Tenants left prior to the end of their lease. The Landlord said: "If I can get the money back, you can get your security deposit back."

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

I find that the Tenants provided the Landlord with their written forwarding address on July 29, 2019, and that the tenancy ended on July 31, 2019, pursuant to the Mutual Agreement. Section 38(1) of the Act addresses the connection between these dates and the security and pet damage deposits, stating the following:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the Landlord was required to return the \$700.00 security deposit and the \$700.00 pet damage deposit within fifteen days after July 31, 2019, namely by August 15, 2019, or to apply for dispute resolution to claim against the security deposit. The Parties agreed that the Landlord returned \$228.00 of the Tenants' \$1,400.00 of deposits, and did not apply to the RTB to claim against the deposit(s). Therefore, I find the Landlord failed to comply with her obligations under Section 38(1).

I find that the Landlord's interpretation of the Mutual Agreement was incorrect in that it applies to a fixed term, as well as a periodic tenancy. Section 44 of the Act states:

44 (1) A tenancy ends only if one or more of the following applies:

...

(c) the landlord and tenant agree in writing to end the tenancy.

I find that the Tenants were not at fault for an alleged mistake on the part of the property management company, and that therefore, they should not suffer the consequences of this error. The Landlord may wish to seek legal advice regarding potential compensation from the party she says erred in this regard, causing the losses she suffered.

Further, if the Landlord had wanted to claim against the deposits for damage to the rental unit or other compensation from the Tenants, she should have applied for dispute resolution to make such a claim; however, she did not do this within the 15 days after the end of the tenancy.

I find that the Landlord failed to comply with the requirements of section 38(1) of the Act. Further, section 38(6)(b) of the Act states:

38 (6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. [emphasis added]

Accordingly, I find that the Landlord must pay the Tenants double the amount of the unreturned security and pet damage deposits, less the amount already paid. There is no interest payable on the security deposit.

Summary/Set Off

Tenants' Seek	Held by Landlord	Doubled
Security Deposit	\$472.00	\$ 944.00
Pet Damage Deposit	\$700.00	\$1,400.00
	TOTAL	\$2,344.00

The Tenants are successful in their claim for the return of the security and pet damage deposits from the Landlord, as the Landlord breached section 38 of the Act in not returning the full deposits or applying for dispute resolution to claim against them within 15 days of the end of the tenancy.

Given the Tenants success in their Application, I also award them recovery of the \$100.00 Application filing fee. I, therefore, award the Tenants with a monetary order from the Landlord in the amount of **\$2,444.00**.

Conclusion

The Tenants' claim for recovery of the security and pet damage deposits is successful in the amount of \$2,344.00. The Tenants are also awarded recovery of the \$100.00 filing fee for this Application from the Landlord.

I grant the Tenants a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$2,444.00**.

This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) 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: December 31, 2019

Residential Tenancy Branch