



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

- an order for the landlord to return the security deposit pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation ("Regulation") or tenancy agreement pursuant to section 67 of the Act; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Although I left the connection open until 1:55 P.M. to enable the landlord to call into this teleconference scheduled for 1:30 P.M., the landlord did not attend this hearing.

Tenants CL (the tenant) and BS attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

The tenant affirmed he served the tenant the Notice of Hearing and the evidence (the materials) by registered mail sent on January 03, 2020. The tracking number is on the cover page of this decision.

I find the landlord was properly served in accordance with section 89(1)(c) of the Act. The landlord is deemed to have received the materials on January 08, 2020, in accordance with section 90(a) of the Act.

Issues to be Decided

1. Are the tenants entitled to an order for the landlord to return double the security deposit?
2. Are the tenants entitled to a monetary order for compensation for loss under the Act, Residential Tenancy Regulation ("Regulation") or tenancy agreement?
3. Are the tenants entitled to an order requiring the landlord to reimburse the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending party; it is their obligation to present the evidence to substantiate their application.

The tenant testified the tenancy started on August 01, 2018 and ended on December 01, 2019. Monthly rent was \$1,900.00 due on the last day of the prior month. At the outset of the tenancy a security deposit of \$950.00 was collected. The tenants received \$650.00 of their security damage deposit on December 21, 2019. The tenancy agreement was submitted as evidence.

The tenant testified there was no authorization for the landlord to retain any balance of the security deposit and the forwarding address was provided on December 06, 2019 via registered mail (the tracking number is on the cover page of this decision). The letter containing the forwarding address was submitted into evidence.

The tenant affirmed the landlord informed the tenants would be able to park a bicycle in the rental building underground bicycle stalls. The tenancy agreement submitted into evidence states: "b) What is included in the rent: Other: Bike".

The tenant affirmed he purchased his bicycle and accessories on March 07, 2019. The tenant submitted into evidence a receipt for \$846.27.

The tenant asked the landlord to authorize him to park in the underground bicycle stalls when he purchased his bicycle. The landlord informed the tenant the bicycle stalls were not available and he should lock his bicycle to a fence in the building's garage. The tenant affirmed the bicycle was stolen between April 15, 2019 (the last day he saw the

bicycle) and April 19, 2019 (the day he noticed the bicycle was stolen). The tenant affirmed the police is investigating this matter and informed the police file number (mentioned on the cover page of this decision).

The tenant also submitted into evidence a monetary order worksheet (RTB form 37). The tenant is seeking for:

- double the security deposit: \$1,250.00
- bicycle reimbursement: \$791.27
- registered mail reimbursement: \$21.84

Analysis

The tenant testimony was cohesive and convincing. I am dividing the analysis of the tenants' claims in three topics.

Security deposit

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenants' forwarding address in writing.

I find the landlord has not brought an application for dispute resolution claiming against the security deposit for any unpaid utilities or damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I accept the tenant's undisputed testimony that the tenants gave the landlord written notice of their forwarding address on December 06, 2019 and that the landlord only returned \$650.00 of the security deposit.

The landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. This provision does not apply if the landlord has obtained the tenants' written permission to keep all or a portion of the security deposit, pursuant to section 38(4)(a) of the *Act*:

38 Return of security deposit and pet damage deposit

(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.

[...]

- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
 - (a) 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, or
 - (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

The value of the monetary award to the tenant is address in Policy Guideline 17 of the Residential Tenancy Branch:

The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

[...]

- Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525)

Under these circumstances and in accordance with sections 38(6) of the Act and Policy Guideline 17, I find that the tenants are entitled to a monetary award of \$1,250.00. Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit.

Bicycle reimbursement

Sections 7 and 67 of the Act state:

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.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

I find the tenant did not prove, on a balance of probabilities, how the fact that the bicycle was parked inside the rental building, but not on the bicycle parking stall, contributed for it being stolen.

Residential Tenancy Branch Policy Guideline 16 states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find the landlord did not provide the bicycle parking in the parking stalls and he was obligated to do so under the tenancy agreement. As such, I award the tenants nominal damages in the amount of \$400.00.

Registered mail reimbursement

Service of documents are actions related to the dispute process.

Section 72 of the Act only authorizes the recovery of the filing fee. Expenses related to services of documents, such as the cost of registered mail, are not authorized under the Act to be reimbursed.

As such, I dismiss the tenants' application for reimbursement of the registered mail expenses.

As the tenants' application is successful, I award the tenants the return of the filing fee.

In summary:

ITEM	AMOUNT \$
Security deposit	950.00
Section 38(6) - doubling of security deposit	1,900.00
Amount returned by the landlord	650.00
Amount of security deposit to be returned to tenants	1,250.00
Nominal damages	400.00
Section 72 - Reimbursement of filing fee	100.00
TOTAL	1,750.00

Conclusion

I grant the tenants a monetary order pursuant to sections 38 and 72 of the Act, in the amount of \$1,750.00.

This order must be served on the landlord by the tenants. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) 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*.