



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, FF, MNSD

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit 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;
- authorization to recover his/her/their/its filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the *Act*;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenants with the notice of hearing package and the submitted documentary evidence via email on May 19, 2020.

Preliminary discussions with both parties revealed that the landlord's filed monetary claim against the 4 named tenants were each under a separate tenancy agreement. Each of the tenants confirmed this. The tenants, Q.L., R.Y. and R.H.L. have each already filed a separate application for return of the security deposits. Each has received a separate decision. The tenant, Y.W.S.C.'s cross application is the only outstanding application for return of the security deposit. Pursuant to Residential Tenancy Branch Rules of Procedure, 2.3 Related Issues the landlord's claims against

the named tenants, Q.L., R.Y. and R.H.L. are dismissed with leave to reapply. The Landlord's application shall be amended to remove these named tenants.

Extensive discussions over a 68 minute period resulted in the hearing being adjourned. The landlord was assisted by an agent and a translator. The hearing shall proceed on the landlord's monetary claim for damages and recovery of the filing fee against the tenant, Y.W.S.C and the tenant, Y.W.S.C's monetary claim for return of double the security deposit and recovery of the filing fee. Both parties are cautioned that no new evidence is to be submitted nor shall it be accepted, except the landlord may submit a revised monetary claim and monetary worksheet regarding the tenant, Y.W.S.C. only. The landlord is directed to be prepared to present their monetary claim against the tenant, Y.W.S.C. only.

On July 21, 2020 the hearing resumed with the landlord, X.J.S., his agent/daughter, Y.S. and the tenant, Y.W.S.C. During the hearing, the landlord. X.J.S. connection was ended. The landlord's agent, Y.S. stated that she could proceed in the absence of the landlord. The hearing resumed.

The tenant stated that the landlord was served with his notice of hearing package via Canada Post Registered Mail on April 24, 2020 and the submitted documentary evidence via email on May 17, 2020. The landlord confirmed receipt of these two packages as claimed.

I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Are the tenants entitled to a monetary order for return of double the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties confirmed that this tenancy was for a room with shared common areas with other occupants in the rental property and that the tenant vacated the rental unit on February 29, 2020 and the keys were returned to the landlord on March 1, 2020. Both parties confirmed that a condition inspection report for the move-in and the move-out were not completed by both parties. Both parties confirmed that the tenant paid a \$450.00 security deposit at the start of the tenancy.

The landlord seeks a clarified and amended monetary claim of \$543.03 which consists of:

\$115.00	Cleaning (General/Deep Carpet Cleaning)
\$325.00	Garbage Removal
\$16.25	Garbage Removal, GST
\$86.78	Unpaid Utilities, Hydro and Gas

The landlord confirmed these amounts based upon the landlord's submitted document, "Detailed breakdown of RTB37". The landlord clarified that the above amounts are based on totals divided evenly amongst 4, 6 or 7 tenants who have vacated the rental property. The landlord also clarified that the description in the above mentioned "Detailed breakdown of RTB37" references Utility and Water fee as an error when it should have been for utilities, hydro and gas.

The landlord claims that the tenant was one of six that vacated the rental property leaving it dirty and damaged in the common shared areas of the property. The landlord stated that this cost was divided by all 6 of the tenants at \$690.00. Each tenant's portion is \$115.00. The landlord submitted a copy of an invoice dated March 3, 2020 for a total balance paid of \$690.00. This invoice details room cleaning and carpet washing. The tenant disputes this claim arguing that after vacating the rental on February 29, 2020 the tenant's room was left clean. The tenant also argued that there were still other tenants vacating the rental after he was gone. The landlord has referenced the submitted photographs "Photos showing garbage and damage part 1 and part 2". The landlord references the submitted 18 photographs of various "common shared areas" of the rental property showing numerous items left. Both parties referenced the date of the photographs taken ranging from March 1, 2020 to April 22, 2020. Both parties agreed that the photographs were taken after the tenancy had ended. During the hearing both parties confirmed that there were two additional basement tenants who were not supposed to access the "common shared areas" but did.

The landlord claims that the tenant left garbage throughout the "common shared areas" of the rental property for which the landlord incurred an expense of \$1,300.00. The landlord clarified that this claim was divided between 4 of the tenants who "didn't clean

up” for a claim of \$325.00 each. The landlord also seeks recovery of the GST (tax) of \$325.00 which was divided amongst the 4 tenants for a claim of \$16.25 for the tax paid. The landlord referenced a “Construction Agreement” dated April 20, 2020 which details cleaning for an item at \$1,300.00. The total stated was for \$8,610.00. The landlord also referenced a paid invoice dated April 21, 2020 which a balance due of \$8,610.00 which the landlord claims was paid. The tenant disputes this claim arguing that the tenancy ended on February 29, 2020 and that the premises was left clean when he vacated the property.

The landlord seeks \$86.78 for the cost of unpaid utilities (hydro and gas) for the last ½ month for the period February 15, 2020 to March 1, 2020. The landlord stated the amount \$54 + \$553.50 was divided by 7 tenants. The landlord relies upon the submitted copies of Utility statements (Hydro and Gas) for the period up to February 14, 2020 of \$368.52 and \$385.47 used as reference for calculation of this claim. The tenant disputes this claim arguing the utilities (gas, hydro and internet) were paid for this period. The tenant refers to a copy of an e-Transfer payment dated March 6, 2020 for \$130.00 marked at tenant’s evidence “M-2”. The tenant states that this payment references “Sunny hydro (0.5mth), (1.5mth), internet. The tenant also refers to “M-1” on page 2 which states in part,

After X.J.S. informed us, the tenants, on March 4th 2020, of the total hydro fees (\$54), total gas fees (\$554), and three months’ of internet fees (December 2019 to February 2020) that we owe to him, I applied my calculation for the monthly fees to calculate everyone’s share. (Please refer to the table on Page 5 for the amount).

A review of the table shows that the tenant’s calculations based on the \$54 and \$554 hydro and gas owed shows a division between 7 tenants for a payment of \$130.00 to the landlord. The landlord was unable to confirm or deny whether the payment was made and accepted by the landlord.

The tenants seek a monetary claim of \$1,000.00 which consists of:

\$900.00	\$450.00 Security Deposit
	\$450.00 Fail to Comply, Sec. 38(6)
\$100.00	Filing Fee

The tenant stated that the landlord was provided with a typed letter dated March 4, 2020 (which the tenant has submitted a copy of) by placing it in the landlord’s mailbox on the evening of March 4, 2020. The landlord disputes this claim arguing that at no time did

the landlord receive the tenant's forwarding address in writing for return of the \$450.00 security deposit. The tenant referenced a submitted photograph of the delivery of the letter dated March 4, 2020 which shows a time stamp of March 4, 2020 at 9:26pm. The tenant also references a submitted copy of an RTB-41, Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit which confirms service as claimed with a witness, P.C. The landlord argued that the witness, P.C. has provided a statement that the forwarding address was not received by the landlord.

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/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 landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the affirmed evidence of both parties and find on a balance of probabilities that the landlord has failed to establish a claim. The landlord has sought a claim based upon all the cleaning and compensation expenses incurred divided equally amongst the tenants. In this case, the landlord has applied the claim for this tenant by equally dividing the claim amounts between all of the tenants. The landlord has not provided any evidence to support the claim that the "common shared areas" were left dirty with garbage by this tenant or by any other particular tenant. The landlord argues that all of the tenants were equally responsible and was unable to provide any evidence to show that this tenant was the cause of the rental property "common shared areas" being left dirty. I also find that the landlord's submission for unpaid utilities to be insufficient. Although the landlord referenced unpaid utilities "...the amount \$54 + \$553.50 was divided by 7 tenants. The landlord relies upon the submitted copies of Utility statements (Hydro and Gas) for the period up to February 14, 2020 of \$368.52 and \$385.47 used as reference for calculation of this claim." The tenant disputed this claim providing evidence of an E-Transfer payment of \$130.00 dated March 6, 2020. The tenant also provided detailed spreadsheets calculating the utilities owed and the division amongst all of the tenants who occupied the rental during this time period. Further the landlord

was unable to confirm or dispute the payment or that the landlord accepted this payment. Based upon the above the landlord's entire monetary claim is dismissed as the landlord has failed to provide sufficient evidence that the rental unit was left dirty requiring cleaning and that there were unpaid utilities by this tenant.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept the undisputed affirmed evidence of both parties that the tenant paid a \$450.00 security deposit to the landlord and that the tenancy ended on March 1, 2020 when the tenant returned the key to the rental to the landlord. The tenant stated that the landlord was provided with his forwarding address in writing in a letter dated March 4, 2020 by delivering it to the landlord's mailbox on March 4, 2020 as per a submitted photograph and a completed RTB-41, Proof of Service document with a witness. However, the landlord has argued that at no time has the landlord received the tenant's forwarding address in writing for return of the security deposit. The landlord further argued that the witness, P.C. has provided a handwritten statement that this did not occur. A review of the statement shows in part,

I confirmed that my previous roommates delivered the Address Changing letters on March 4th 20 (around 9 p.m.) Because the house was decorated, and I did not remind Mr. S. about these letter. In this case, I am not certain that Mr. S. (the landlord) had received the letters in person.
[reproduced as written]

I find in reviewing this statement the witness, P.C. has confirmed that the tenant's forwarding address in writing was delivered as claimed by the tenant to the landlord's address on March 4, 2020. The witness further stated that because of the house being "decorated" the witness did not remind the landlord about the letter. I find that this is not relevant as there is no evidence before me that the house being "decorated" interfered with the landlord receiving his mail. The witness, P.C. further stated that "I am not certain that ... (the landlord) had received the letters in person". I find that this is not relevant as the letter was served via the mailbox and not in person. As such, I find on a balance of probabilities based upon the above evidence from both parties that the landlord was served with the tenant's forwarding address and request for return of the \$450.00 security deposit. I find that the landlord is deemed to have received it 3 days

later on March 7, 2020. The tenant is entitled to return of the original \$450.00 security deposit. I also find that as the landlord did not return the security deposit or file an application within the allowed 15 days upon receiving the tenant's forwarding address on March 7, 2020 the landlord is subject to section 38(6) and is liable to pay the amount of the \$450.00 security deposit to the tenant.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord's application is dismissed.

The tenant is granted a monetary order for \$1,000.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the 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: July 21, 2020

Residential Tenancy Branch