



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Introduction

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

- authorization to obtain a return of all or a portion of their security deposit plus compensation pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenants' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlords were duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

The tenant JA confirmed that her proper surname. As neither party was opposed, JA's name was amended to reflect her proper name.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the return of their security deposit?

Are the tenants entitled to a monetary award for the landlords' failure to return their entire security deposit?

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on July 28, 2018, and ended on May 23, 2020. Monthly rent was set at \$2,240.00, payable biweekly. The landlords collected a security and pet damage deposit in the amounts of \$1,100.00 each deposit. \$1,450.00 of the tenants' deposits have been returned to them, while the landlords still retain the remaining \$750.00.

It was undisputed by both parties that a move-in and move-out inspection report was completed. The move-out inspection took place on May 23, 2020, and the tenants provided their forwarding address to the landlords.

The tenants are seeking a monetary order for the return of the \$750.00 held by the landlords, as well as \$2,200.00 compensation under section 38 of the *Act* for the landlords' failure to return the remainder of their deposit to them.

The landlords testified that the tenants had consented for them to keep the \$750.00 for the damage left by the tenants at the end of the tenancy, as well as for the cleaning. The landlords testified that the tenants had signed off on the move-out inspection report, as well as provided their verbal consent. The landlords testified that the home was not in reasonably clean and undamaged condition, and they did not file any applications for dispute resolution as they were under the understanding that the tenants had consented to them keeping a portion of their deposit to cover the damages and losses. BC, spouse of one of the landlords, testified that he was present when the tenants had signed off on the inspection report, and testified that the tenants did not oppose the deductions. The landlords testified that the tenants had filed an application for dispute resolution in May of 2020, but withdrew their claim so the landlords had assumed the matter was resolved, and they no longer had to file an application for dispute resolution. The tenants responded that they had withdrawn the claim at the time as the 15 day period had not yet passed.

The tenants do not dispute that they had signed off on the inspection report, but that they had done so in error when the move-in inspection was completed on July 27, 2018. The tenants testified that they did not agree to any deductions, but were open to discussions about compensating the landlords for the damage to the carpet once an invoice was presented for the repairs. Both parties agreed in the hearing that the

landlords may retain \$350.00 of the tenants' deposits to cover the damage to the carpet, but the tenants dispute the rest of the landlords' claims for cleaning and damage.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "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."

In this case, I find that the evidence does support that the tenants had signed off on the inspection report indicating that they had agreed to the landlords making deductions from their security and pet damage deposits. However, I find that this portion was signed off by tenants during the move-in inspection on July 27, 2018, as reflected by the difference in ink. Although, the tenants did sign off on the dual-use document again upon move-out, I am not satisfied that the tenants did in fact consent to the landlords' retention of their security and pet damage deposits. I find that the tenants had signed off the inspection report in error, and that the tenants had entered into a discussion to compensate the landlords, but this amount was never finalized by both parties. I, therefore, find that the tenants are entitled to return of the remaining \$750.00 of their deposits, less the \$350.00 for the carpet damage as agreed to by both parties during the hearing.

I have considered the tenants' application for compensation under section 38 of the *Act*. Although the landlords had retained \$750.00 of the tenants' deposits, and did not file an application for dispute resolution, I find that the landlords had provided a reasonable explanation for why they had assumed the matter had been resolved. I find that the tenants' signing off on the inspection report, and the withdrawal of the initial application, combined with the acceptance of the \$1,450.00, could have led the landlords to believe that no further applications from them were required. I do not find that the landlords had contravened section 38 of the *Act*, as they were under the assumption that they had permission to keep a portion of the tenants' deposits considering the circumstances. On

this basis, I dismiss the tenants' application for compensation under section 38 of the *Act* without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenants were partially successful in their monetary claim, I find that they are entitled to recover half the filing fee.

Conclusion

I issue a \$450.00 Monetary Order in favour of the tenants under the following terms, which allows for the return of the tenants' deposits, recovery of half of the filing fee, less \$350.00 for damage to the carpet.

Item	Amount
Return of Deposits Held by Landlord	\$750.00
Recovery of Half of Filing Fee	50.00
Compensation as agreed to by both parties for damage to carpet	-350.00
Total Monetary Order	\$450.00

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

The remainder of the tenants' application is dismissed without leave to reapply.

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 23, 2020

Residential Tenancy Branch