



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: MNDCT FFT
For the landlord: MNDL-S FFL

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for a monetary order in the amount of \$2,405.00 for damage to the unit, site or property, and to recover the cost of the filing fee. The tenants applied for a monetary order in the amount of \$8,400.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of their security deposit and pet damage deposit, and to recover the cost of the filing fee.

The tenants and the landlord attended the teleconference and were affirmed. The hearing process was explained to the parties and an opportunity to ask questions was provided to the parties. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Regarding documentary evidence, both parties eventually confirmed that they received and had the opportunity to review the evidence from the other party and that an adjournment was not necessary. I find the parties were sufficiently served under the Act. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

During the hearing, the landlord was advised that their application for monetary compensation was being refused, pursuant to section 59(5)(c) of the Act as their application did not provide sufficient particulars of their claim for compensation, as is

required by section 59(2)(b) of the Act. Specifically, the landlord's monetary claim of \$2,405.00 did not provide a breakdown of the specific items claimed at the time the landlord filed their application and that the landlord failed to formally amend their application to the \$3,147.00 amount listed on the Monetary Order Worksheet submitted in evidence on August 7, 2020. I also note that the landlord's application was filed on April 22, 2020.

I find that proceeding with the landlord's monetary claim at this hearing would be prejudicial to the tenants, as the absence of full particulars including a monetary breakdown of the amount being claimed, makes it difficult, if not impossible, for the tenants to adequately prepare a response to a claim against them. As a result, the landlord's application is **dismissed with leave to reapply**. As a result of the above, only the tenants' application was considered during this proceeding. The parties were advised; however, that due to the landlord applying to retain the tenants' security deposit and pet damage deposit (combined deposits), that I would consider whether the landlord complied with section 38 in my decision in determining what should happen to the tenants' combined deposits and whether the combined deposits should double under the Act.

Issues to be Decided

- Are the tenants entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenants' combined deposits under the Act?
- Should the tenants recover the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence and the parties agreed that there has been a total of four fixed-term tenancy agreements. The first tenancy agreement began on March 1, 2016, while the second tenancy agreement began on March 1, 2017, followed by the next agreement effective March 1, 2018 and the most recent tenancy between March 1, 2019, which ended March 31, 2020. The parties agreed that the tenants returned the rental unit keys on March 31, 2020.

The tenant's monetary claim of \$8,400.00 is comprised of \$4,300.00 for the return of the combined deposits, which both parties confirmed should have read \$4,350.00 as the security deposit paid in 2016 was \$2,175.00 and the pet damage deposit was

\$2,175.00. The tenants are also seeking \$4,000.00 for emotional stress between September 2016 to the end of the tenancy on March 30, 2020.

Regarding the tenants' written forwarding address, neither party submitted a copy of the written forwarding address. The tenants claimed that they provided their written forwarding address to the landlord on April 4, 2020. The landlord stated that they could not recall the date in which they received the tenants' written forwarding address. The landlord filed their application on April 22, 2020, claiming against the tenants' combined deposits of \$4,350.00.

The tenants stated that they made up the amount of \$4,000.00 for emotional stress related to how dismissive the landlord was during the tenancy. The tenants write in their application that their daily lives were compromised by unreliable hot water delivery and poor water flow to the kitchen sink. The tenants admitted that they did not write to the landlord to complain about the water during the tenancy.

Analysis

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

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage.

Finally, it must be proven that the tenants did what is reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Firstly, regarding the tenant's security deposit, without a copy of the written forwarding address by either party, I find that there is insufficient evidence before me to find that the landlord did not file within the 15-day timeline under section 38 of the Act. In reaching this decision I have also taken into consideration that the tenants did not file for double the return of their combined deposits under the Act. As a result of the landlord's application not proceeding due to insufficient details, and in accordance with section 38 of the Act, I will address the combined deposits further below.

Regarding the tenant's claim for \$4,000.00 for emotional stress between September 2016 to the end of the tenancy on March 30, 2020, I find the tenants failed to comply with section 7(2) of the Act that applies and states:

Liability for not complying with this Act or a tenancy agreement

7(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.

[Emphasis added]

I find that by waiting between 2016 and allowing the claim to increase until the end of the tenancy on March 31, 2020 without writing to the landlords to advise of their concerns, that the tenants have not complied with section 7(2) of the Act. Furthermore, part four of the four-part test for damages or loss described above also states:

That the party making the application did whatever was reasonable to minimize the damage or loss.

I find the tenants also failed to meet part four of the four-part test for damages or loss and as a result, I dismiss the tenants' claim for \$4,000.00 in full due to their breach of section 7(2) of the Act and failure to meet all four parts of the test for damages or loss.

I find the tenants' application did have some merit; however, and as a result, I grant the landlord recovery of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

I ORDER that the landlord return the tenants full combined deposits plus the \$100.00 filing fee in the total amount of **\$4,450.00** no later than 15 days after Monday September 7, 2020. I have used this date to ensure that the parties have sufficient time to receive this decision by email. I find that the combined deposits have accrued \$0.00 in interest during the tenancy under the Act.

I grant the tenants a monetary order in the amount of \$4,450.00, which will be of no force or effect if the landlord pays the tenants in accordance with my order above.

Conclusion

The landlord's claim is dismissed with leave to reapply as indicate above. The tenants' claim for \$4,000 for emotional stress is dismissed without leave to reapply, for the reasons stated above.

The landlord has been ordered to return the tenants full combined deposits plus the \$100.00 filing fee in the total amount of \$4,450.00 no later than 15 days after Monday September 7, 2020. The tenants have been granted a monetary order in the amount of \$4,450.00, which will be of no force or effect if the landlord pays the tenants in accordance with my order above. Should the tenants require enforcement of the monetary order, the order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties. The monetary order will be emailed to the tenants only for service on the landlord, if necessary.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 2, 2020

Residential Tenancy Branch