



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **LL: MNDL-S, MNDCL-S, FFL**
 TT: MNSDS-DR

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover their filing fee from the tenants pursuant to section 72.

The tenants applied for:

- A return of the security deposit for this tenancy pursuant to section 38.

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

As both parties were present service was confirmed. The parties each testified that they received the materials and based on the testimonies I find each party duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover their filing fee from the tenants?

Are the tenants entitled to a return of the deposit for this tenancy?

Background and Evidence

The parties agree on the following facts. This tenancy began on February 1, 2020 and ended April 30, 2020. The monthly rent was \$1,475.00 payable on the first of each month. A security deposit of \$737.50 was paid at the start of the tenancy and is still held by the landlord.

The parties prepared a condition inspection report at the start and end of the tenancy. The parties were unable to agree on the assessment of damage at the end of the tenancy and the tenants did not authorize the landlord to retain any portion of their deposit. The tenants provided a forwarding address by a text message and in a written letter provided to the landlord on April 29, 2020. The landlord confirmed that they received a text message on that date but disputes they were provided with any other written notice of a forwarding address until they were served with the tenants' application for dispute resolution dated May 26, 2020. The landlord filed their application for dispute resolution including authorization to retain the deposit on June 9, 2020.

The landlord submits that the rental unit required considerable cleaning and work to restore to its pre-tenancy condition. The landlord submitted into evidence numerous photographs of the rental unit, invoices and receipts for work undertaken, quotes for replacement of appliances and the move-out condition inspection report wherein the landlord detailed the nature and extent of damage. Among the work the landlord says was required are carpet cleaning for multiple large stains, painting of walls to remove damage, replacement of some flooring, general cleaning and replacing some damaged appliances. The landlord seeks a monetary award in the amount of \$4,239.37 for the cost of the work and replacement items.

The landlord also submitted correspondence between the parties where they discuss some of the issues with the rental unit. In the correspondence dated May 26, 2020 the tenant writes:

We took 100% accountability for the carpet on move out inspection day and know we stained the carpet. As discussed we were willing to pay for a carpet cleaning service and whatever was necessary for those to come out and we apologized for such stains

In the hearing the tenants disputed that they are responsible for any of the damage claimed by the landlord and sought a return of the full value of the security deposit. The

tenants say that they have not authorized the landlord to maintain any portion of the deposits and had provided their forwarding address to the landlord when the tenancy ended on April 30, 2020.

Analysis

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 section 38(6) of the *Act* equivalent to the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

In the present case I accept the evidence of the parties that the tenants provided the landlord with a forwarding address by text message on April 29, 2020. While text message is not a means of service of documents including a forwarding address pursuant to section 88 of the *Act*, I find that the landlord acknowledged receipt and had no reason to mistrust the veracity of the information provided. I accept that the numbers used for the communication were the ones routinely used during the tenancy to communicate tenancy matters and that the landlord acknowledged receipt of the information with a confirmation text. Under the circumstances, I find it evident that the tenants provided a valid forwarding address on April 29, 2020 which was acknowledged and confirmed by the landlord. As such, I find that the forwarding address was sufficiently served in accordance with section 71(2) of the *Act* on April 29, 2020.

Furthermore, the tenants testified that they provided the landlord with a written forwarding address in addition to their text message on April 29, 2020. The tenants provided documentary evidence by way of a signed Proof of Service Form. While the landlord refuted that they were provided with a forwarding address in writing on that date, I find the landlord's refutation to not be supported in the documentary materials and that there is sufficient evidence by way of the ongoing communication between the parties after the end of the tenancy to demonstrate that the landlord was aware of the forwarding address for the tenants.

Under the circumstances I find that the tenants sufficiently served the landlord with their forwarding address on April 29, 2020 and the landlord had 15 days from that date to

either return the deposit in full or file an application for authorization to retain the deposit. The landlord did not file their application until June 5, 2020, well outside of the 15 days provided under section 38. Therefore, I find that the tenants are entitled to a monetary award in the amount of \$1,475.00 double the amount of the security deposit for this tenancy.

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.

I find that the landlord has met their evidentiary burden to demonstrate that the rental unit required cleaning, work and maintenance and that this is attributable to the tenants. I find that there is a preponderance of evidence, by way of the multiple photographs, testimonies of the landlord and their witness and in the correspondence between the parties, in support of the landlord's submission that the rental unit required cleaning and work. I accept the landlord's submission that the cost of cleaning, disposal of garbage, touch-up painting and other work was \$1,508.09. I find that the description of the work in the invoices and submissions of the landlord to be reasonable and in line with what was required to restore the rental unit to its pre-tenancy condition. Accordingly, I issue a monetary award in that amount in the landlord's favour.

I find insufficient evidence in support of the portion of the landlord's application seeking the cost of replacing appliances. The evidence submitted shows some cosmetic damage to the surfaces of the refrigerator and oven but I find insufficient evidence that the nature or extent of the damage is so extensive that the items need to be wholly replaced. I find little evidence that the items are no longer functioning or that they are so deficient that replacement is a reasonable solution. I find that the cost of purchasing new appliances goes beyond rectifying damage and is more in the nature of making improvements to the rental unit. A tenant is only responsible for restoring a rental unit to its pre-tenancy condition. Based on the evidence I am unable to find that the replacement of appliances is necessary or required to restore the rental unit. As such, I dismiss this portion of the landlord's application.

As the landlord was partially successful in their application, I find it appropriate to allow the landlord to recover half of the filing fees from the tenant in the amount of \$50.00.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms:

Item	Amount
Monetary Award for Cleaning and Repairs	\$1,508.09
Recovery of Filing Fee for this Application	\$50.00
Less Double Security Deposit to Tenants as per section 38 of the Act ($\$737.50 \times 2$ = \$1,475.00)	-\$1,475.00
Total Monetary Order	\$83.09

The landlord is provided with the Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with the 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: September 15, 2020

Residential Tenancy Branch