



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAGNOLIA APARTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on October 9, 2020, under the Residential Tenancy Act (the “Act”) for a monetary order for damages, permission to retain the security deposit and an order to recover the cost of filing the application. The matter was set for a conference call.

The Landlord, represented by three Property Managers and one of the Tenants, attended the conference call hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to the return of their filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

Both parties agreed that the tenancy began on December 29, 2018. Rent in the amount of \$1,925.00 was payable on the first day of each month, and the Tenants had paid a security deposit of \$962.50 at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The parties also agreed that this tenancy ended on August 31, 2020, in accordance with the Act, and that the move-out inspection had been completed that same day. The Landlord testified that the tenant had agreed to the condition report at the time of the inspection but that the value of the damage listed on this inspection report was not agreed to at the time of the inspection. The Landlord confirmed that they had written a security deposit deduction value on the report several days after the inspection and without the agreement or knowledge of either of the Tenants. Both parties agreed that the Landlord had returned \$362.80 of the security deposit to the Tenants. The Landlord submitted a copy of the move-in/move-out inspection report into documentary evidence.

The Landlord testified that the Tenants returned the rental unit to them with damaged window blinds in the bedroom. The Landlord testified that the window blinds slats had been bent and could not be repaired. The Landlord testified that new blinds had to be purchased to replace the damaged bedroom window binds at the end of this tenancy, at the cost of \$413.70, for the purchase and installation. The Landlord submitted a copy of the receipt to buy and install the new window blinds into documentary evidence.

The Tenant testified that the window blinds were of poor quality and that they should not be responsible for the replacement costs, as the blinds could have been repaired. The Tenant agreed that they did not repair the damaged blinds at the end of this tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I will first address the security deposit the Landlord is holding for this Tenancy. I accept the Landlord's testimony that they returned \$362.50 of the security deposit to the Tenants on September 3, 2020. In these proceedings, the Landlord is claiming to retain \$513.70 of the remaining \$599.70 security deposit they are holding for this tenancy.

Section 38(1) of the *Act* provides the conditions in which a Landlord may make a claim to retain the security deposit at the end of a tenancy. The *Act* gives a landlord, 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's

forwarding address to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit in full to the tenant.

Return of security deposit and pet damage deposit

38 (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.

In this case, I accept the agreed-upon testimony of these parties that this tenancy ended on August 31, 2020, and that the Tenants provided their forwarding address to the Landlord on that same day. I also accept the agreed-upon testimony of these parties that there was no agreement to a deduction from the security deposit for this tenancy between these parties, and that the amount recorded on the move-out inspection report had been added by the Landlord without the consent of the Tenants. Accordingly as the Landlord did not have an agreement with the Tenants to withhold a portion of this security deposit, I find that the Landlord had until September 15, 2020, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenants or submitting an Application for Dispute resolution to claim against the deposit.

I have reviewed the Landlord's application for this hearing, and I find that the Landlord submitted their Application for Dispute resolution to claim against the deposit on October 9, 2020, 24 days after the expiry of the statutory timeline to file for dispute resolution. Therefore, I find that the Landlord breached section 38(1) of the *Act* by not filing their claim against the deposit within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within 15 days, the landlord must pay the Tenant double the security deposit.

Return of security deposit and pet damage deposit

38 (6) *If a landlord does not comply with subsection (1), the landlord*

- (a) may not make a claim against the security deposit or any pet damage deposit, and*
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

Therefore, I find that pursuant to section 38(6) of the *Act*, the original amount of the security deposit that the Landlord was holding for this tenancy has doubled in value to the amount of \$1,925.00. As it has been determined that the Landlord has already returned \$362.50 of the security deposit to the Tenants, I find that as of the date of these proceedings, the Landlord is holding a security deposit valued at \$1,562.50 for this tenancy.

As for the Landlord's claims for \$413.70 for new window blinds and the recovery of the \$100.00 filing fee for these proceedings, awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"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. 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.

I accept the agreed-upon testimony of these parties that the window blinds in the bedroom were damaged at the end of this tenancy. I also accept the Landlord's testimony, supported by the move-in inspection report, that the window blinds had been new at the beginning of this tenancy. Section 37(2) of the *Act* requires that a tenant return the rental unit reasonably clean and undamaged at the end of the tenancy.

Leaving the rental unit at the end of a tenancy

37 (2) *When a tenant vacates a rental unit, the tenant must*

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and*
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

I find that the Tenant breached section 37 of the Act when they returned the rental unit to the Landlord with damaged window blinds.

I accept the Landlord's testimony, support by their documentary evidence, that they paid \$413.70 to have the damaged window blinds replaced. However, in determining the suitable award, I must refer to the Residential Tenancy Branch guideline # 40 Useful Life of Building Elements. The guideline sets the useful life of window blinds at 10 years. Therefore, even though these window blinds had been new at the beginning of this tenancy, they had aged by 18 months during this tenancy, leaving 82% of the life expectancy left of the original blinds at the end of this tenancy. Therefore, I find that the Landlord has proven they are entitled to the recovery of 82% of their replacement costs for new window blinds. Accordingly, I award the Landlord \$339.24 in the recovery of their costs to replace damaged window blinds.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

I grant permission to the Landlord to retain \$439.24 from the security deposit they are holding for this tenancy, in full satisfaction of the amounts awarded above.

I order the Landlord to return the remaining \$1,122.96 security deposit that they are holding for this tenancy to the Tenants within 15 days of the date of this decision.

If the Landlord fails to return the security deposit to the Tenants as ordered, I grant a **Conditional Monetary Order** to the Tenants with an effective date of **February 16, 2021**; this order is only to be served on the Landlord if they do not return the security deposit to the Tenants as ordered by February 15, 2021.

Conclusion

I grant the Landlord permission to retain \$439.24 from the security deposit they are holding for this tenancy.

I order the Landlord to return the remaining \$1,122.96 of the Tenants' security deposits to the Tenants within 15 days of the date of this decision.

I grant the Tenants a Conditional Monetary Order in the amount of **\$1,122.96**, dated 15 days from the date of this decision. The Tenants are provided with this **Conditional Monetary Order** effective February 16, 2021; the Landlord must be served with this Order as soon as possible after the effective date. Should the Landlord 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.

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: January 29, 2021

Residential Tenancy Branch