



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

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

- authorization to obtain a return of double the amount of the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38;
- a monetary order for compensation under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The three landlords, landlord RP ("landlord"), "landlord PP," and "landlord SP," and the tenant BW ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 33 minutes.

The hearing began at 1:30 p.m. and ended at 2:03 p.m. The landlord exited the hearing at 1:34 p.m. and called back in immediately. I did not discuss any evidence with the tenant in the absence of the landlord.

The landlord confirmed that he had permission to represent the other two landlords, landlord PP and landlord SP, at this hearing (collectively "landlords"). The tenant confirmed that she had permission to represent the other "tenant JW" named in this application, who did not attend this hearing (collectively "tenants").

At the outset of this hearing, I informed both parties that recording of this hearing was nor permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure*. The three landlords and the tenant all separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties affirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision.

The landlord confirmed receipt of the tenants’ application for dispute resolution hearing package and the tenant confirmed receipt of the landlords’ evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants’ application and the tenants were duly served with the landlords’ evidence.

Issues to be Decided

Are the tenants entitled to a return of double the amount of their deposits?

Are the tenants entitled to a monetary order for compensation under the *Act*, *Regulation* or tenancy agreement?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenants’ claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2019 and ended on March 15, 2021. Monthly rent in the amount of \$3,300.00 was payable on the first day of each month. A security deposit of \$1,650.00 and a pet damage deposit of \$1,000.00 were paid by the tenants and the landlords returned \$884.00 to the tenants and retained \$1,766.00. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were not completed for this tenancy. The tenants provided a written forwarding address to the landlords, by way of email, dated March 1, 2021. The landlords did not file an application for dispute

resolution to retain any amounts from the tenants' deposits. The landlords did not have written permission to retain any amount from the tenants' deposits.

The tenants seek a return of double the amount of their deposits, totalling \$5,300.00, minus the \$884.00 returned to them, for a balance of \$4,416.00. The tenants also seek \$397.75 for a sink issue, and the \$100.00 application filing fee. The landlords dispute the tenants' entire application.

The tenant testified regarding the following facts. The kitchen sink detached from the counter and fell below on a Friday. She called the landlord to come the next day on Saturday but then she had a family emergency, so she asked the landlord to return the following day. The landlord came on Wednesday and looked at the sink and left but did not fix it. She had to get take-out food and spent added costs, more than usual. She had to use her laundry room and bathtub to wash dishes or get water. The move-out clean took 20 hours and was longer because she did not have access to water or the kitchen sink. The cleaning was done by her own company, but she does not have a receipt, although she can provide one after the hearing.

The landlord testified regarding the following facts. On Friday, he was told by the tenant that the sink had fallen. He arranged to go on Saturday, but the tenant was busy, so they agreed on Monday. He went on Wednesday to inspect the sink and it fell through to the plumbing. The sink was installed one year before the tenants moved in, so it had only been 2.5 years. A huge weight was put on the sink, so it had to be reinstalled, which is a major job, since it had to be reglued. The landlord only had one hour to look at the sink because the tenant said she had to go out. He tried to prop the sink up temporarily, but it was broken. The tenant moved out on the following Monday. The landlord only had two business days to fix the sink on Thursday or Friday, before the tenant moved out. This was during the covid-19 pandemic, so it was difficult to get contractors to come in and do smaller work jobs. The landlord did a walk through the following week and noticed that someone sawed the plumbing off. The landlord was unable to fix the sink before the tenant moved out. The landlord fixed the sink later and it cost a lot of money, which the tenant should pay. The landlords kept money from the tenants' deposits for various issues, including the sink repair. The landlord returned the \$884.00 from the deposits to the tenant on April 15, 2021.

Analysis

Security Deposit

Section 38 of the *Act* requires the landlords to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposits. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

Further, a pet damage deposit can only be used for damage caused by a pet to the residential property. Section 38(7) of the *Act* states that unless the tenants agree otherwise, landlords are only entitled to use a pet damage deposit for pet damage.

On a balance of probabilities, I make the following findings based on the undisputed testimony of both parties. The tenancy ended on March 15, 2021. The tenants provided a written forwarding address to the landlords by way of email on March 1, 2021, which the landlords received. The tenants did not give the landlords written permission to retain any amount from their deposits. The landlords did not return the deposits or make an application for dispute resolution to claim against them at the RTB. The landlords' right to claim against the deposits for damages was extinguished for failure to complete move-in and move-out condition inspection reports for this tenancy, as required by sections 24 and 36 of the *Act*.

The landlords continue to hold \$1,766.00 from the tenants' deposits. No interest is payable on the deposits during the period of this tenancy. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the value of their security deposit of \$1,650.00 and pet damage deposit of \$1,000.00, totalling \$5,300.00, minus the \$884.00 already returned, for a balance of \$4,416.00. The tenants are provided with a monetary order for same.

The landlords returned \$884.00 from the tenants' deposits to the tenants on April 15, 2021, which is more than 15 days after March 15, 2021, the later date when the tenants vacated the rental unit. Therefore, the original amounts from both deposits have been doubled, as noted above.

Sink Issue

The following Residential Tenancy Branch ("RTB") *Rules of Procedure* are applicable and state the following, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim.

The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties.

I find that the tenant did not properly present her evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*.

This hearing lasted 33 minutes so the tenant had ample opportunity to present the tenants' application and respond to the landlords' claims. During the hearing, I repeatedly asked the tenant if she had any other information that she wanted to add to her submissions.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlords in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenants' application for \$397.75, without leave to reapply. I find that the tenants failed the above four-part test.

During this hearing, the tenant did not review or reference any claims or numbers in the tenants' monetary order worksheet provided as evidence. The tenant did not testify about a breakdown of monetary costs, nor did she review any of the invoices or other documents provided for this hearing. I asked the tenant whether she had any proof of costs and she said that she did, but she did not review any of these documents or amounts during this hearing.

The tenant said that she was claiming for cleaning costs, but she did not provide any invoices, estimates or receipts to support this claim. She said that the cleaning was done by a company that she owned, but she did not have a receipt for it, although she said she could provide one after the hearing. The tenants had ample opportunity to provide this evidence prior to this hearing, as this application was filed on April 9, 2021 and this hearing occurred on September 10, 2021, a period of over five months.

As the tenants were only partially successful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlords. This claim is dismissed without leave to reapply.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$4,416.00 against the landlord(s). The landlord(s) must be served with 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: September 10, 2021

Residential Tenancy Branch