# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDCL-S, FFL

Introduction

On September 7, 2021, the Landlords applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking to apply the security deposit towards these debts pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Landlords attended the hearing; however, neither Tenant attended the hearing at any point during the 60-minute teleconference. At the outset of the hearing, I informed the Landlords that recording of the hearing was prohibited and they were reminded to refrain from doing so. They acknowledged this term, and they provided a solemn affirmation.

Landlord R.D. advised that a Notice of Hearing and evidence package was served to each Tenant by registered mail on September 27, 2021 (the registered mail tracking numbers are noted on the first page of this Decision). He stated that these packages were not returned to sender, so he assumed that they were received by the Tenants.

Records indicate that these packages were made available to the Landlords on September 17, 2021 and were required to be served to the Tenants within three days of this date in accordance with Rule 3.1 of the Rules of Procedure (the "Rules"). Records also indicate that the Landlords contacted the Residential Tenancy Branch on September 20, 2021 to advise that they were camping and unable to serve the packages. They were informed by an Information Officer of the Rules of service and that it would be up to the Arbitrator at the hearing to determine if service of these packages was satisfactory, despite being served contrary to the Rules.

Given that the Information Officer was not wrong with this information provided, R.D. was unnecessarily agitated during the hearing. Regardless, as these packages were served on September 27, 2021, and as the hearing was scheduled for March 18, 2022, I am satisfied that the Tenants still had ample time to prepare for the hearing despite these Notice of Hearing packages being served late. Therefore, I do not find that the Tenants were prejudiced by this late service.

Based on R.D.'s solemnly affirmed testimony and the accompanying registered mail receipts corroborating the method of service, I am satisfied that the Tenants were deemed to have received the Landlords' Notice of Hearing and evidence packages five days after they were mailed. As such, I have accepted the Landlords' evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

## Issue(s) to be Decided

- Ares the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to apply the security deposit towards these debts?
- Are the Landlords entitled to recover the filing fee?

## Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

R.D. advised that the tenancy started on February 1, 2017, and the tenancy ended when the Tenants gave up vacant possession of the rental unit on July 31, 2021. Rent was established at an amount of $2,200.00 per month and was due on the first day of each month. A security deposit of $1,100.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He testified that a move-in inspection was conducted on February 21, 2017 and that a move-out inspection was attempted on July 31, 2021. He stated that he forgot his copy of the move-out inspection report, so the parties used the copy that the Tenants brought to the inspection. However, as the parties could not agree on the condition of the rental unit, the move-out inspection was not signed. A copy of the move-in inspection and move-out report was submitted as documentary evidence.

As well, he indicated that they received the Tenants' forwarding address by email on June 25, 2021 and this was the address that they used to file this Application. He noted that they attempted to send a portion of the Tenants' security deposit back on August 31, 2021, but he then put a stop payment on that cheque on October 27, 2021. He testified that they did not have the Tenants' consent to deduct any amount from the security deposit, and that they are still holding the entire amount in trust. In addition, they noted that the Tenants filed their own Application on August 17, 2021 to claim for the return of double the security deposit. However, the Tenants were not successful as it was determined that they had applied too early (the relevant file number is noted on the first page of this Decision).

The Landlords advised that they are seeking compensation in the amount of **$504.00** because the Tenants damaged five blinds, in different manners, requiring them all to be replaced. They referenced the pictures submitted as documentary evidence of the damaged blinds. As well, they cited the invoice submitted as documentary evidence to support the cost of the replacement blinds.

The Landlords also advised that they are seeking compensation in the amount of **$108.03** because the Tenants chipped the inner ring of the toilet seat, as seen in the picture provided. They noted that there were no issues with the toilet seat at the start of the tenancy. As well, they were seeking compensation because it appeared as if the Tenants had an oven fire as the range hood was covered in black, scorch marks and the nearby cupboards were melted. The Landlords attempted to clean this range hood, but it required replacing. They referenced the pictures submitted to corroborate this damage. As well, they cited the invoice provided to substantiate the cost of the repairs for these items.

## Analysis

Upon consideration of the testimony before me, I have provided an outline of the

following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlords and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlords and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed day. As well, the Landlords must offer at least two opportunities for the Tenants to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulations* (the "*Regulations*") outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlords or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlords to claim against a security deposit and pet damage deposit for damage is extinguished if the Landlords do not complete the condition inspection reports in accordance with the *Act*.

The undisputed evidence is that a move-in inspection report was conducted with the Tenants and a move-out inspection was attempted with the Tenants. As a result, I find that the Landlords complied with the *Act* or *Regulations* in attempting to complete these reports. Therefore, I find that the Landlords have not extinguished the right to claim against the deposit.

Section 38 of the *Act* outlines how the Landlords must deal with the security deposit at the end of the tenancy. With respect to the Landlords' claim against the Tenants' deposit, Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposit. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposit, and the Landlords must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, the Landlords acknowledged that they received the Tenants' forwarding address by email on June 25, 2021. Furthermore, the Landlords made an Application, using this same address, to attempt to claim against the deposit on September 7, 2021. As the Landlords made this Application well past 15 days after the end of the tenancy on July 31, 2021, I am satisfied that the Landlords breached the requirements of Section 38 of the *Act*. In essence, the Landlords illegally withheld the Tenants' deposit contrary to the *Act* as they did not have the Tenants' consent to do so, nor did they have an Order from the Residential Tenancy Branch permitting them to withhold it. Therefore, I find that the doubling provisions do apply to the security deposit in this instance. Under these provisions, I grant the Tenants a monetary award amounting to double the original security deposit, or **$2,200.00**.

During the hearing, the Landlords claimed to have been Landlords for a significant length of time, with few tenancy issues in the past. They stated that during that whole time, they were not aware of these provisions of the *Act*. I advised them that the manner with which a security deposit is dealt with has been established in the *Act* for a substantial amount of time. Furthermore, I attempted multiple times to provide them with resources to allow them to update their knowledge regarding their rights and responsibilities under the *Act*, and to obtain assistance should they believe they need it. However, they were not receptive in receiving any information or direction for resources.

With respect to the Landlords' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding their claims for repairs in the amount of $612.03, the consistent and undisputed evidence is that the Tenants damaged several items that did not appear to be damaged at the start of the tenancy. As such, I am satisfied that the Landlords have substantiated their claims in their entirety. Consequently, I grant the Landlords a monetary award in the amount of **$612.03** to remedy these issues.

As the Landlords were successful in these claims, I find that the Landlords are entitled to recover the $100.00 filing fee paid for this Application.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

**Monetary Award Payable by the Landlords to the Tenants**

| | |
|---|---|
| Blinds | $504.00 |
| Toilet seat and range hood | $108.03 |
| Filing fee | $100.00 |
| Double security deposit | -$2,200.00 |
| **TOTAL MONETARY AWARD** | **- $1,487.97** |

Conclusion

The Tenants are provided with a Monetary Order in the amount of **$1,487.97** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: March 23, 2022

Residential Tenancy Branch