



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL, MNSDS-DR, FFT

Introduction

This hearing dealt with cross applications filed by the parties. On May 13, 2022, the Landlord 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*.

On May 25, 2022, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing and advised that the other person he named as an Applicant on this Application was not a Landlord. As such, the Style of Cause on the first page of this Decision was amended to reflect this correction. Both Tenants attended the hearing as well, and Tenant R.P. confirmed the correct name of the co-tenant. The Landlord confirmed that U.R. was a co-tenant of this tenancy, and the Style of Cause on the first page of this Decision was amended to reflect this correction.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of

the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of documents was discussed and there were no issues concerning service.

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

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?
- Are the Tenants entitled to double the security deposit?
- Are the Tenants 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.

All parties agreed that the tenancy started on January 12, 2020, and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on or around April 26, 2022. Rent was established at an amount of \$2,150.00 per month and was due on the first day of each month. A security deposit of \$1,075.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence, by the Tenants, for consideration.

The Landlord confirmed that a move-in inspection was never conducted with the Tenants. As well, all parties agreed that the Tenants provided their forwarding address in writing to the Landlord on May 2, 2022.

In addressing the Landlord's claims, I find it important to note that Section 59(2) of the *Act* requires the party making the Application to detail the full particulars of the dispute. The Landlord applied for a Monetary Order for compensation in the amount of \$14,700.00; however, he did not fill out a Monetary Order Worksheet, and the only indication of how this figure was broken down was in his Application. In the Application, the Landlord noted six different heads of claim, two of which the Landlord estimated the cost to repair as a price range between thousands of dollars. Clearly, the amounts claimed then could not specifically total the amount that he was requesting.

As the Landlord claimed figures that were not close to precise, I find it would be prejudicial for the Tenants as it would be difficult for them to even understand what the Landlord was specifically claiming for. Consequently, I do not find that the Landlord has made it abundantly clear to any party that he is certain of even what would be close to the exact amounts he believes is owed by the Tenants. As I am not satisfied that the Landlord outlined his claims precisely, with clarity, I do not find that the Landlord has adequately established a claim for a Monetary Order pursuant to Section 59(2) of the *Act*. Section 59(5) allows me to dismiss this Application because the full particulars are not outlined. For this reason, I dismiss the Landlord's Application with leave to reapply.

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 Landlord 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 Landlord 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 Landlord must offer at least two opportunities for the Tenants to attend the move-out inspection report.

Section 21 of the *Residential Tenancy Regulation* (the "*Regulation*") 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 Landlord 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 Landlord to claim against a security deposit and pet damage deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

The undisputed evidence is that a move-in inspection report was never conducted with the Tenants. As a result, I find that the Landlord did not comply with the *Act* or *Regulation* in completing these reports. Therefore, I find that the Landlord has extinguished the right to claim against the deposit.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit and pet damage deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenants' deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives 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 Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord 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 Landlord received the Tenants' forwarding address in writing on May 2, 2022. While the Landlord made an Application to attempt to claim against the deposit within 15 days of receiving the Tenants' forwarding address in writing, the Landlord was not permitted to do so as he extinguished this right. As such, I am satisfied that the Landlord has not complied with the *Act*. Therefore, I find that the doubling provisions do apply to the security deposit in this instance. Ultimately, under these provisions, I grant the Tenants a monetary award amounting to double the original security deposit, or **\$2,150.00**.

As the Landlord was not successful in these claims, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this Application.

As the Tenants were successful in this claim, I find that the Tenants 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 Landlord to the Tenants

Double security deposit	\$2,150.00
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$2,250.00

Conclusion

The Landlord's Application is dismissed with leave to reapply.

The Tenants are provided with a Monetary Order in the amount of **\$2,250.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. 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 26, 2023

Residential Tenancy Branch