



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSD, MNDL-S, LRSD, OLRD, FFL

Introduction

This hearing dealt with the Applications for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act") by the Tenants on January 17, 2024, and the Landlords on February 27, 2024.

The Tenants applied for:

- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act

The Landlords applied for:

- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Issue(s) to be Decided

1. Are the Landlords entitled to a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act?
2. Are the Landlords entitled to authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act? If not, are the Tenants entitled to a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act?
3. Are the Landlords entitled to authorization to recover the filing fee for this application from the Tenants under section 72 of the Act?

Background and Evidence

I have reviewed all evidence, including the testimony of both parties but will refer only to what I find relevant for my decision.

Evidence and testimony provided by both parties indicates that the tenancy began on October 1, 2023, with a monthly rent of \$1,800.00 due on the first of each month. A security deposit of \$900.00 was paid. The tenancy ended on December 31, 2023.

According to the Tenants, the Landlords did not conduct a move-in inspection report with them because they claimed they were not required to because the suite was brand new. The Tenants testified that a move-out inspection was conducted with the Landlords on December 31, 2023, and a copy of the report was provided to them. They testified that the Landlords told them that they would get a quote for some of the minor damage to the paint and get back to them but that the costs should not exceed \$50.00 to \$100.00. They testified that the Landlords did not get back to them with a quote but rather sent them an email indicating they were keeping \$367.50 for repainting costs and returned \$532.50 of the security deposit. They stated that the Landlords altered the move-out report after the fact and that the copy they were provided with, which includes their forwarding address, did not have a specific dollar amount for painting but rather only said "will be determined by the painter". They stated that the Landlords added the paint deduction amount section later. Copies of one move-out report without deductions specified on the form and a second one showing deductions made were provided as evidence by the Tenants.

The Tenants pointed out the fact that the move-out report indicates that the stovetop was dirty, not damaged. The Tenants are seeking double the return of their security deposit.

Landlord representative R.D. confirmed that a move-in inspection report was not completed and that the Landlords did withhold \$367.50 for the cost of painting following the end of tenancy and repaid the balance of \$532.50 but argued that the Tenants agreed to allow the Landlords to retain this amount. Copies of a January 15, 2024, email from the Landlords to the Tenants stating that they would be retaining a portion of the security deposit as agreed and a January 15, 2024, e-transfer to the Tenants in the amount of \$532.50 were submitted by the Landlords as evidence.

According to Landlord representative R.D., the Landlords are seeking \$367.50 for painting that was required following the end of the tenancy and \$2,000.00 to replace the damaged stove. She stated that she did not know if the Landlords secured quotes for a

replacement part or a new stove and indicated that the amount sought was based on an estimated replacement value. Copies of an invoice for painting and alleged before and after pictures of the unit were submitted as evidence.

Analysis

Are the Landlords entitled to a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act?

Section 35 of the Act establishes that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report.

Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlords have not established a claim for damage to the rental unit or common areas and loss resulting from the tenancy.

I find that the Landlords failed to complete a move-in report and therefore I am unable to determine the condition of the unit at the start of the tenancy versus at the condition of the unit at the end of the tenancy. I find that, while the Tenants did acknowledge that some painting may have been required and that they were prepared to discuss the value of it, there is no evidence to show that an agreement had been reached in writing authorizing the Landlords to keep any portion of their security deposit. I further find that, even if the Landlords had completed a move-in inspection report, the move-out report indicates the stove was dirty and not damaged.

I find, therefore, that the Landlords are not entitled to a monetary award for damage to the rental unit or common areas under sections 32 and 67 of the Act and hereby dismiss the claim without leave to reapply.

Are the Landlords entitled to authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the Monetary Order requested

under section 38 of the Act? If not, are the Tenants entitled to all or a portion of their security deposit?

At the commencement of the tenancy, the Landlord did not pursue a condition inspection of the suite with the Tenant, as required by section 23 of the *Act*. (reproduced below)

23 Condition inspection: start of tenancy or new pet

1. The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
2. The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
 - a. the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - b. a previous inspection was not completed under subsection (1).
3. The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
4. The landlord must complete a condition inspection report in accordance with the regulations.
5. Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
6. The landlord must make the inspection and complete and sign the report without the tenant if
 - a. the landlord has complied with subsection (3), and
 - b. the tenant does not participate on either occasion.

Pursuant to section 24, the landlord's right to claim against the security deposit **is extinguished** if the landlord does not offer the tenant at least two opportunities for inspection.

Section 38 of the *Act* addresses the return of security deposits.

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.

...

(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.

Section 38(5) and (6) is further clarified in Residential Tenancy Branch Policy Guideline PG-17 which says, in part C-3:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

I find the Landlords did not provide 2 opportunities to inspect the suite with the Tenants at the commencement of the tenancy and the Landlords' right to claim against it was extinguished pursuant to sections 23 and 24. Further, the Landlords did not return the Tenants' security deposit within 15 days of being served with the Tenants' forwarding address at the end of the tenancy, contrary to section 38 of the *Act*.

The wording of section 38(6) is clear and unequivocal. The Tenants have not waived the doubling of the deposits and are entitled to **\$1,281.82**, including interest and less the \$532.50 already returned, in compensation. Pursuant to section 67 of the *Act*, I award the Tenants a monetary order for this amount.

Are the Landlords entitled to authorization to recover the filing fee for this application from the Tenants under section 72 of the Act?

As the Landlords were not successful in this application, the Landlords' application for authorization to recover the filing fee for this application from the Tenants under section 72 of the *Act* is dismissed, without leave to reapply.

Conclusion

I grant the Tenants a Monetary Order in the amount of **\$1,281.82** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for the Tenants for the return of double their security deposit from the Landlords under section 38 of the Act	\$1,281.82
Total Amount	\$1,281.82

The Tenants are provided with this Order in the above terms and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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 Landlords' application for a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act is dismissed without leave to reapply.

The Landlords' application for authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act is dismissed without leave to reapply.

The Landlords' application for authorization to recover the filing fee for this application from the Tenants under section 72 of the Act 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: May 28, 2024

Residential Tenancy Branch