



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF, MNDC, MNSD

Introduction

This hearing, conducted by a conference call, dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- a monetary order for unpaid utilities pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of all or a portion of the security deposit and pet damage deposit pursuant to section 38;
- a monetary award for damages and loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to speak, present evidence, provide affirmed testimony and call witnesses.

As both parties were in attendance I confirmed that there were no issues with service of the parties' respective applications for dispute resolution. The parties confirmed receipt of one another's application. In accordance with section 89 of the *Act*, I find that the parties were duly served with copies of the respective applications.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid utilities as claimed?

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit and pet damage deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to a monetary award for damages or loss as claimed? Is either party entitled to recover the filing fee for this application from the other?

Background and Evidence

Both parties had poor recollection and records of the details of the tenancy. Both parties had difficulty remembering the exact amount of security deposit and pet damage deposit paid and the month that this tenancy ended. The parties were eventually able to agree on the following facts. The tenant paid a security deposit of \$775.00 at the start of the tenancy. The tenant paid a pet damage deposit of \$693.00 during the tenancy. Both amounts are still held by the landlord. The tenancy ended on March 29, 2017 when the tenant vacated the rental unit. The tenant provided the landlord with a forwarding address by letter dated April 17, 2017.

The landlord testified that the tenant is liable for paying utility bills, specifically the electric bills as part of the tenancy agreement. The landlord testified that the tenant paid the bills up to November, 2016 but has failed to pay the full amount owing since that time. The landlord testified that the current arrears amount is \$2,121.40. The landlord said that she had informed the tenant of the arrears previously but he has not paid it.

The parties confirmed that no condition inspection report was prepared at either the start or the end of the tenancy. The tenant testified that at the end of the tenancy there was an altercation and he left the rental unit several days earlier than he had originally planned. As a result the tenant said that he was unable to retrieve foodstuffs and an internet modem that were left in the rental unit. The tenant claims \$400.00 for the food and modem that were left in the rental unit. The tenant also calculates that he should be refunded \$53.23 for the days that he vacated the rental unit earlier than he was required to.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit and pet damage deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary

award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit and pet damage deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit and pet damage deposit as per section 38(4)(a).

The parties provided undisputed evidence that the tenant provided a forwarding address in writing by a letter dated April 17, 2017. The landlord filed an application for dispute resolution with the Residential Tenancy Branch on May 10, 2017, outside of the 15 days provided under the Act. I find that the landlord failed to either return the security deposit in full or file an application for dispute resolution within the timeframe provided under the Act.

Additionally, section 24 of the *Act* outlines the consequences if reporting requirements are not met and a condition inspection report is not prepared at the start of the tenancy. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I accept the parties' evidence that no condition inspection report was prepared at the start of the tenancy. Therefore, I find that the landlord has extinguished any right to claim against the security deposit by failing to prepare a condition inspection report in accordance with the *Act*.

Based on the undisputed evidence before me, I find that the landlord had extinguished their right to apply to retain the security deposit for this tenancy, **has failed to file an application to retain the security deposit within the time provided under the Act**, and has failed to return the tenant's security deposit in full. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a Monetary Order, double the value of the security deposit and pet damage deposit paid for this tenancy. I accept the parties' testimony that the security deposit for this tenancy is \$775.00 and pet damage deposit is \$693.00. I therefore issue a monetary award of, \$2,936.00 double the deposits for this tenancy. No interest is payable over this period.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find there is insufficient evidence in support of the tenant's claim. Much of the written evidence submitted by the tenant consists of portions of text conversations, emails and statements. Several of the pages submitted by the tenant are faded, unclear and many are illegible in parts. Pursuant to Rules of Procedure 3.7 I only considered those portions of the written materials submitted into evidence that were clear and legible.

I find there is little evidence of the value of the foodstuffs and modem left in the rental unit. There is little evidence as to why the tenant could not have picked up the items from the rental unit. The parties alluded to a conflict and being advised by the police to avoid contact with one another but I find there is little evidence of this advice. Even if it was advisable to avoid direct contact I find that the tenant still had the possibility of getting an agent to retrieve the possessions. Most of the written evidence I further find that there is little evidence that the tenant's lack of access to the rental unit arose due to a violation of the *Act*, regulations or agreement by the landlord. I find that there is insufficient evidence in support of this portion of the tenant's claim and therefore dismiss it.

I find there is insufficient evidence in support of the landlord's claim for utility arrears. While the landlord testified about the electricity system in the rental building and said that she had emailed the tenant the amount due the tenant disputed he received the notifications from the landlord. I find that on a balance of probabilities there is insufficient evidence to show that the amount claimed by the landlord is the accurate amount of arrears for utilities for the tenancy. The onus is on the applicant to show on balance of probabilities that there is a loss, and the exact amount of that loss. I find that there is insufficient evidence to establish that the amount claimed by the landlord in her application is accurate. Consequently, I dismiss the landlord's application.

As the tenant's application was partially successful I find that the tenant is entitled to recover \$50.00, a portion of the filing fee for this application from the landlord.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$2,986.00 under the following terms:

Item	Amount
Double Security Deposit (\$775.00 x 2)	\$1,550.00
Double Pet Damage Deposit (\$693.00 x 2)	\$1,386.00
Filing Fee	\$50.00
Total	\$2,986.00

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.

The balance of the tenant's application is dismissed.

The landlord's application is dismissed.

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: July 27, 2017

Residential Tenancy Branch

DECISION/ORDER AMENDED PURSUANT TO
SECTION 78(1)(A) OF THE RESIDENTIAL TENANCY
ACT ON **January 11, 2018** AT THE PLACES
INDICATED IN **BOLD** ON **PAGE 3**.