



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND MNSD MNDC FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both parties were duly served with each other’s Applications and evidence.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Is the landlord entitled to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary award requested?

Is the tenant entitled to the return of their security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on July 1, 2016, with monthly rent set at \$1,000.00. The landlord collected, and still holds, a security deposit the amount of \$500.00. The tenant testified the move-out date was on June 29, 2017, while the landlord testified that the tenant moved out on July 1, 2017. Both agreed that the keys were returned to the landlord on July 2, 2017. Both parties confirmed that the tenant provided a forwarding address on July 2, 2017.

The tenant testified that no move-in or move-out inspection was done, nor was the tenant ever provided a conditions inspection report. The landlord confirmed in the hearing that no reports were ever provided to the tenant.

The tenant testified that the landlord failed to return any portion of their security deposit within 15 days of them providing their forwarding address or move-out date, and they had never agreed in writing to allow the landlord to retain any portion of their deposit.

The landlord submitted a monetary claim of \$1,360.00 for damages that occurred during this tenancy:

Item	Amount
Sofa	\$800.00
Window Pane	300.00
Cleaning	200.00
Toilet Seat Cover	10.00
Plumber	50.00
Total Monetary Order Requested	\$1,360.00

The landlord testified that the tenant had moved out, leaving behind considerable damage as listed above. The landlord testified that the tenant had returned the keys a day late on July 2, 2017, and the tenant's dog had soiled the sofa and damaged the window pane. The landlord testified that the toilet seat cover was replaced by the tenant, and does not properly fit. The landlord testified that a plumber was hired to fix the clogged sink and that the suite required 3 days of cleaning due to the tenant's failure to properly clean the rental suite.

In support of the monetary claim, the landlord provided colour photos, but no receipts, reports, or invoices. The tenant admitted that the window pane may have been damaged by the dog, but disputes the monetary claim of \$300.00. The tenant felt that \$50.00 to \$100.00 to be a fair amount of compensation for the damage.

The tenant disputes the remainder of the landlord's monetary claim for damages and cleaning, as the tenant disputes having caused the damage during this tenancy, or having left the rental suite in less than satisfactory condition.

Analysis

Section 38(1) of the *Act* requires that 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 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 return the tenants' security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenants' provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenants agree in writing the landlords may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlord did not return the tenants' security deposit in full within 15 days of receipt of the tenant's forwarding address in writing. The landlord did not apply for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit until August 12, 2017, well past the 15 day time limit for doing so. The tenant gave sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenants have 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 not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenants' forwarding address is received in writing; ...*
- *whether or not the landlord may have a valid monetary claim.*

I also note that the landlord had failed to comply with sections 23 and 35 of the *Act* which requires the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the

Act is that “the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished”, as noted in sections 24(2) and 36(2) of the *Act*.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the original security deposit.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss.

The landlord provided a summary of the damages caused by the tenant, along with photos. The tenant did not dispute that there was damage to the suite, but they did argue that these damages occurred prior to this tenancy. The tenant only admitted to some possible damage to the window pane by the tenant's dog.

Without any move-in or move-out inspection reports, I find that there is no way to determine which damages occurred during this tenancy, and what the pre-existing condition of the home was. Furthermore, in the absence of any invoices, estimates, or receipts, I find that the landlord failed to support the value of the monetary loss.

I find that the landlord has not supplied sufficient information to make any kind of finding that the tenant had caused any of the damage listed in the landlord's monetary claim. In the absence of documentation or witness testimony to support whether the damage was caused by the tenant, I am dismissing the landlord's application for monetary compensation with the exception of the damage to the window pane, which the tenant admitted to having caused. As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the tenant nominal damages of \$100.00 for the damaged window pane.

The recovery of the filing fee is normally awarded to the successful party after a hearing. As the landlord was only partially successful in their application, I allow the landlord to recover half of the filing fee for their application.

Conclusion

I issue a Monetary Order in the amount of \$850.00 in the tenant's favour under the following terms which allows the tenant to recover the portion of the security deposit retained by the landlord, plus a monetary award equivalent to the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. A deduction will be made from this Monetary Order for the damage caused by the tenant plus recovery of half of the filing fee for the landlord.

Item	Amount
Return of the Security Deposit retained by the landlord	\$500.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	500.00
Less Monetary Claim for Damage Awarded to the Landlord	-100.00
Less Half of Filing Fee for Landlord's Application	-50.00
Total Monetary Order	\$850.00

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of 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 remainder of the landlord's monetary claim 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: February 15, 2018

Residential Tenancy Branch