



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDCL-S MNRL-S

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to retain the security 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 tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant was assisted by an advocate.

At the outset of the hearing the respondent stated that their actual legal name is different than the name listed as the respondent on the application. The applicant requested that they name of the respondent be changed on their application. The parties agreed to the change and that change is reflected in this decision.

The landlord confirmed receipt of the tenant's evidence.

The landlord testified that they served their application of October 9, 2018 and evidence on the tenant by registered mail to a forwarding address provided by the tenant. The tenant confirmed receipt of the landlord's application but said that they have not been served with any of the landlord's evidence. The landlord provided 4 Canada Post tracking numbers as evidence of service. While the tenant disputes having received the landlord's materials they did not provide an explanation as to how they received the application but none of the other materials.

In accordance with section 90 of the *Act*, I find that the landlord's evidence was deemed served on October 14, 2018, five days after mailing. Pursuant to the Residential Tenancy Branch Rule of Procedure 3.5, I am satisfied that the landlord has demonstrated that the tenant was served with the evidence in accordance with the *Act*. While the tenant disputes that they received the landlord's evidence I find that the landlord has provided sufficient evidence in the form of valid Canada Post tracking numbers that the tenants were deemed served in accordance with the *Act*.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to retain the security deposit for this tenancy?

Are the landlords entitled to recover the filing fee from the tenant?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in June, 2003. A security deposit of \$375.00 was paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at either the start or the end of the tenancy. The tenancy ended on September 30, 2018. The tenant had provided the landlord with their forwarding address in a letter dated August 30, 2018.

The landlord seeks a monetary award for the following items:

Item	Amount
Cleaning	\$1,050.00
Water Bill July Aug Sept 2018	\$59.82
Past Water Bill	\$365.70

The landlord testified that the tenant was obligated to pay a portion of the utilities in accordance with the tenancy agreement. The landlord said that the total amount of the utility bill arrear is \$425.52. The landlord submitted into evidence a utility bill dated September 30, 2018 showing an outstanding amount of \$87.82. The landlord said that the tenancy agreement with the tenant provides that the tenant is responsible for payment of utilities beyond the first \$28.00, and therefore the amount owing on that bill is \$59.82.

The landlord submitted into evidence a typewritten document dated April 2017 signed by the parties agreeing to a rental increase. The document also contains a hand written statement saying

Back water bill owing of \$790.70 to be paid in monthly payments of minium \$25.00 per month. Minus \$100.00 for reimbursement of fee for hearing dispute resolution fee. Total \$690.70

The form contains an addition handwritten note stating:

NO MONEY RECEIVED FOR PAST WATER FOR SPET 2017 OR JAN 2018
TOTAL PAID \$325.00 REMAINING OWED \$690.70 – 325.00 = \$365.70

The landlord seeks the cost of cleaning the rental unit and has submitted an invoice for the work done by a third party cleaning company. The landlord testified that the condition of the suite required far more cleaning than would be expected from the normal wear and tear of a tenancy.

The tenant disputes the landlord's calculation of utility arrears. The tenant testified that the suite was left in a reasonable condition for the duration of the tenancy.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security 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. 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 as per section 38(4)(a).

Furthermore, section 24 of the *Act* sets out that a landlord's right to claim against a security deposit is extinguished if they do not prepare a condition inspection report in accordance with the *Act*.

In the present case I accept the evidence that the landlord applied for authorization to retain the security deposit on October 9, 2018, within 15 days of the tenancy ending on September 30, 2018. However, I find that the landlord had extinguished their right to claim against the security deposit by failing to prepare a condition inspection report

during this tenancy. 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 \$388.28, the value of the security deposit paid for this tenancy plus applicable interest.

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.

The landlord claims the cost of cleaning in the amount of \$1,050.00. The landlord submits an invoice from a cleaning company with notes stating that the condition of the suite required more than would be expected from a normal move-out. I do not find this evidence to be persuasive.

In the absence of a proper condition inspection report prepared at the start of the tenancy I find that there is little evidence of the condition of the suite prior to the occupancy. Even if the rental suite was in pristine, new condition at the start, this was a 15 year tenancy. I find that it is reasonable that over the course of a decade and a half, that a residence would experience considerable wear beyond a short term tenancy.

Residential Tenancy Policy Guideline 40 provides the expected useful life of building elements. I find that the landlords' present claim involves cleaning for elements of a tenancy that are expected to require replacement after a tenancy of this length. I find that after a long-term tenancy it is reasonable that major cleaning would be required. I do not find that the need for cleaning arose due to the tenant's violation of the *Act* but simply as a consequence of the passing of time. Accordingly, I dismiss this portion of the landlord's application

I accept the landlord's evidence that there was an agreement with the tenant requiring payment of utilities. I accept the evidence that the tenant was obligated to pay anything more than \$28.00 on a utility bill for the rental property. I accept the landlord's evidence that the utility bill for the period of July 1, 2018 to September 30, 2018 is \$87.82 and therefore the tenant is responsible for paying \$59.82. I do not find that there is sufficient

evidence that the tenant has previously made any payment against this amount. Accordingly, I issue a monetary award in the landlord's favour for the amount of \$59.82.

I find that there is insufficient evidence in support of the landlord's claim for \$365.70. The figure is handwritten on a document dealing with a rent increase. I find that there is insufficient evidence that the parties agreed to the utility payment. The document is typewritten and signed and dated by the parties agreeing to the rent increase. I find that there is little evidence that the handwritten addition to the document was agreed to by the parties at the same time. It would be reasonable to assume that the parties would have revised the document, initialed the additional clause dealing with the utilities, or prepared a separate document to be signed and dated if this was a true meeting of minds between the parties. I find that there is insufficient evidence to show that this handwritten addition to the form was agreed to by the parties. Furthermore, I find that there is little evidence in support of the figures the landlord submits as the past utility arrear. The landlord has not provided a ledger, original bills or receipts showing payments. I find that the landlord has not met their evidentiary onus in support of this portion of their claim and it is consequently dismissed.

As the landlord's application was not wholly successful the landlord is not entitled to recover their filing fee for their application.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$328.46 against the landlords on the following terms:

Item	Amount
Security Deposit	\$375.00
Interest to Decision Dated (June 2003-Feb 4, 2019)	\$13.28
Less Landlord's Monetary Claim for Unpaid Utilities	-\$59.82
TOTAL	\$328.46

The tenant is provided with a Monetary 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.

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 4, 2019

Residential Tenancy Branch