



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNSD FFL MNDL-S

Introduction

This hearing dealt with cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- a monetary order for damage to the unit, site, or property, or for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

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. Accordingly, I find both parties duly served with each other's applications in accordance with section 89 of the *Act*. The landlord confirmed receipt of the tenant's evidentiary materials. I find the landlord duly served with the tenant's evidentiary materials in accordance with section 88 of the *Act*.

Preliminary Issue – Landlord’s Evidence

It was undisputed by the landlords that they did not serve the tenants with their written evidence in accordance with section 88 of the *Act*.

Rule 3.14 of the RTB’s Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing.

A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case, I am excluding the landlord’s written evidence.

Issue(s) to be Decided

Are the tenants entitled to the return of their security deposit?

Are both parties entitled to a monetary order for compensation and losses that they have applied for?

Are both parties entitled to recover the filing fees for their applications?

Background and Evidence

This month-to-month tenancy began on May 1, 2016, and ended on July 31, 2019. Monthly rent was set at \$1,500.00, payable on the first of every month. The tenants paid a security deposit in the amount of \$1,000.00, which is still held by the landlords. Both parties confirmed that the tenants had provided a forwarding address on July 31, 2019. The tenants provided a confirmation of this in their written materials.

Both parties also confirmed that no move-in inspection was done. The tenants are requesting the return of their security deposit and compensation for the landlords’ failure to return their deposit to them.

The landlord is seeking monetary compensation for the following items:

Item	Amount
Cleaning	\$200.00
Repair for blinds	120.00
Repair for Flood	909.30

Filing Fee	100.00
Total Monetary Order Requested	\$1,329.30

The landlords testified that the tenants had stored items in the laundry closet, causing the washing machine hose to disconnect, and flood the rental unit. The landlords testified that they attribute the damage to the tenants as the dryer was not situated in close proximity to the washing machine, and the tenants had used the closet for the storage of heavy items. The landlords are also seeking reimbursement for repairs to the blinds and for cleaning.

The tenants dispute the landlords' entire claim. The tenants provided a receipt for cleaning, as well as a statement from their cleaner confirming that a professional move-out clean for done on July 27, 2019. The tenants dispute the damage to the blinds, stating that the blinds were old and worn out. The tenants also dispute that they had damaged the washing machine hose. The tenants testified that the dryer would get very hot, vibrate, shake, and move, and that the washing machine hose was not properly secured. The tenants testified that the drain hose was fastened to the wall with electrical tape.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit 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 return the tenant's security deposit plus applicable interest and must pay the tenant 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 tenant's 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 tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlords did not returned the tenants' security deposit within 15 days of the provision of their forwarding address on July 31, 2019. The landlords did not file an application for dispute resolution until January 22, 2020. The tenants gave

undisputed sworn testimony that the landlords had not obtained their written authorization at the end of the tenancy to retain any of the security deposit.

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

As the tenants were successful in their application, I find that the tenants are also entitled to recover the filing fee from the landlords.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* 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. In this case, the onus is on the landlords to prove, on a balance of probabilities, that the tenants caused damage or losses in the amounts claimed by the landlords.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear. It was undisputed by both parties that a move-in inspection was not completed. I find that the landlords also failed to provide sufficient evidence that the tenants were provided two opportunities for both a move-in and move-out inspection. Sections 23 of the *Act* requires the landlord to perform a move-in inspection, and fill out a condition inspection report. In the absence of a move-in inspection report, I have no way of ascertaining what damages occurred during this tenancy unless the item was brand new at the beginning of the tenancy, or unless agreed to by the tenants.

The tenants dispute the landlords' claim for damage to the blinds citing normal wear and tear. In light of the disputed testimony, I find that the landlords have failed to provide sufficient evidence to support that the tenants had damaged the blinds beyond normal wear and tear, and on this basis, I dismiss this portion of the landlords' monetary claim without leave to reapply.

The landlords are also seeking \$200.00 for cleaning. I find that the tenants had provided sufficient evidence to support that they had paid for professional cleaning at the end of this tenancy. In light of the disputed evidence, I am not satisfied that the landlords had

proven their claim. Accordingly, I dismiss this portion of the landlords' monetary claim without leave to reapply.

The landlords applied for monetary compensation for damage caused by a disconnected washing machine hose. Although I accept the testimony of the landlords that the rental unit suffered damage due to the disconnection of the washing machine hose, I am not satisfied that the landlords had provided sufficient supporting evidence to establish that the tenants were directly and solely responsible for this damage. The hose could have been disconnected for several reasons, and I am not satisfied that the landlord had provided sufficient evidence to support that the tenants had caused this damage. Accordingly, this portion of the landlords' application is also dismissed without leave to reapply.

As the landlords were not successful in their claim, I dismiss their application for recovery of the filing fee without leave to reapply.

Conclusion

The landlords' entire application is dismissed without leave to reapply.

I issue a Monetary Order in the tenants' favour under the following terms which allows the tenants to recover the original security deposit, plus a monetary award equivalent to the value of their security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*. I find the tenants are also entitled to \$100.00 for recovery of the filing fee for this application.

Item	Amount
Return of Security Deposit	\$1,000.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	1,000.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$2,100.00

The tenant(s) are 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 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 6, 2020

Residential Tenancy Branch