Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The tenants applied for:

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

The landlord applied for;

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenants 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. The parties agreed that on April 30, 2013, they signed a Mutual End to Tenancy Agreement, calling for this tenancy to end on June 1, 2013. The tenancy ended on June 1, 2013, when the male tenant left the keys to this rental unit in the mailbox and the landlord retrieved these keys the following morning. The landlord confirmed that she received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on November 7, 2013. Although the landlord applied for dispute resolution on November 26, 2013, and was issued information by the Residential Tenancy Branch (the RTB) outlining the process for providing prompt notification to the tenants of her application for dispute resolution that day, the landlord delayed serving copies of her dispute resolution hearing package to the tenants for 2 ½ months. The female tenant (the tenant) confirmed that the landlord served her hearing package, and her written and photographic evidence by hand on February 14, 2013. Although the landlord's significant delay in serving her hearing package to the tenants

was not at all justified nor in accordance with the written instructions she was given by the RTB, the tenant said that the tenants had reviewed the landlord's application and evidence and were prepared to proceed with a consideration of both applications. I am satisfied that both parties have been served with one another's applications and written evidence and that both parties knew the case against them and were in a position to address the issues identified in the applications.

Issues(s) to be Decided

Are the tenants entitled to a monetary award equivalent to double 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*? Is the landlord entitled to a monetary award for damage and losses arising out of this tenancy? Are either of the parties entitled to recover theirs filing fee for their applications from one another?

Background and Evidence

The parties signed a one-year fixed term Residential Tenancy Agreement (the Agreement) on February 29, 2012, a copy of which was entered into written evidence by both parties. The tenancy was scheduled to begin on May 1, 2012, and end on April 30, 2013. The parties entered undisputed evidence, both written and oral, that the tenants actually took occupancy on or about April 14, 2012, when the tenants asked the landlord for the keys to take possession early. The landlord testified that she had no agreement with the tenants whereby they were to pay her additional rent for that portion of April 2012 that preceded the actual commencement date for their tenancy. Monthly rent according to the Agreement was set at $1,600.00, payable in advance on the first of each month. The landlord continues to hold the tenants' $800.00 security deposit paid on March 3, 2012.

The landlord maintained that her original asking rent for this tenancy was higher than $1,600.00. She said that she had an oral agreement with the tenants to increase the rent to $1,800.00, if they were to renew this tenancy beyond April 30, 2013. She testified that she submitted a new draft tenancy agreement to the tenants on March 1, 2013, in which she asked for a $200.00 increase in the monthly rent to $1,800.00. Both parties entered into written evidence copies of this draft agreement, signed only by the landlord. In addition to the increase in rent, well beyond the level allowed under the *Act* and the *Regulation* established under the *Act*, the landlord also included a provision in the March 2013 draft agreement that would allow the landlord to retain the tenants' security deposit. The tenants refused to sign this new agreement. Both parties signed the Mutual End to Tenancy Agreement, ending the tenancy on June 1, 2013.

The parties agreed that they both participated in a joint move-in condition inspection before the tenants took possession of the rental unit on or about April 14, 2012. However, the landlord did not prepare a condition inspection report regarding that inspection. The landlord testified that she did not send the tenants any written notice requesting that they participate in a joint move-out condition inspection of the premises. While the landlord said that she conducted her own inspection of the premises after the tenants vacated the premises, she did not prepare a report for that inspection.

The landlord confirmed that on October 4, 2013, she received the tenants' forwarding address in writing, sent to her by the tenants by registered mail on October 3, 2013. Although she maintained that she attended the RTB offices a few times in October 2013, she arrived too late to submit an application those days. She did not submit her application for dispute resolution to obtain authorization to retain the tenants' security deposit until November 26, 2013. She confirmed that she has not returned any portion of the tenants' security deposit, nor has she obtained their written authorization to retain any portion of that deposit.

The tenants applied for a monetary award of $1,600.00, double the value of their security deposit, as a result of the landlord's alleged failure to abide by the provisions of section 38 of the *Act*. They also applied to recover their $50.00 filing fee.

The landlord applied for a monetary award of $1,330.00 for the following items outlined in a document she entered into written evidence entitled "Work Done to Make the House Clean and Habitable."

Item	**Amount**
Cleaning – 2 people @ 6 hours each @ $35.00 per hour = $420.00	$420.00
Landlord's Cleaning Time – 3 hours @ $35.00 per hour = $105.00	105.00
Power Wash of Carport and Driveway	80.00
Trash Separation and Removal	50.00
Painting	50.00
Keys not Returned	150.00
Dining Table and 4 Chairs	125.00
Rent Increase Difference of $200.00 per month from April 15, 2013 to June 1, 2013	300.00
Filing Fee	50.00
Total Monetary Order Requested	**$1,330.00**

The landlord submitted 10 photographs to support her claim that the premises were not properly cleaned at the end of this tenancy.

Analysis – Tenants' Application

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 security deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain that deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the security 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.

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

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 not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *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;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

In this case and in accordance with sections 88 and 90 of the *Act,* I find that the landlord was deemed served with the tenants' forwarding address in writing on October 8, 2013, the fifth day after the tenants sent the landlord their forwarding address in writing by registered mail. The landlord had 15 days after October 8, 2013, to take one of the actions outlined above. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security 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." As

there is no evidence that the tenant has given the landlords written authorization at the end of their tenancy to retain any portion of their security deposit, section 38(4)(a) of the *Act* does not apply to the tenants' security deposit.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenants' security deposit in full within the required 15 days. The tenants have not waived their rights to obtain a payment pursuant to section 38 of the *Act* owing 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 tenants are therefore entitled to a monetary order amounting to double the value of their security deposit with interest calculated on the original amount only. No interest is payable over this period. Having been successful in this application, I find further that the tenants are entitled recover the $50.00 filing fee paid for this application.

Analysis – Landlord's Application

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/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 landlord to prove on the balance of probabilities that the tenants caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. Section 36(1) of the *Act* reads in part as follows:

Consequences for tenant and landlord if report requirements not met

> ***36*** *(2) Unless the tenant has abandoned the rental unit, 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 if the landlord*
>
> > *(a) does not comply with section 35 (2) [2 opportunities for inspection],*
> >
> > *(b) having complied with section 35 (2), does not participate on either occasion, or*
> >
> > *(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...*

Similar provisions are in place pursuant to section 24 of the *Act* requiring a landlord to prepare a joint move-in condition inspection report.

While a joint move-in condition inspection was conducted at the beginning of this tenancy, the landlord did not produce a report of that inspection. She also did not adhere to many of the above-noted requirements regarding the move-out inspection, including the preparation of a move-out condition inspection report

I find that the landlord did not follow the requirements of the *Act* regarding the joint move-in condition inspection report, much of the process relating to the move-out inspection and the process outlined in section 38 of the *Act* with respect to security deposits. For these reasons, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy has been extinguished.

However, this does not prevent a landlord from submitting a claim for damage and losses arising out of a tenancy. Section 37(2) of the *Act* requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." The parties entered conflicting evidence regarding the condition of the rental unit when this tenancy ended. Without properly completed move-in and move-out condition inspection reports, the landlord has little specific evidence to provide in order to compare the condition of the rental unit between the beginning and end of this tenancy.

Based on the oral, written and photographic evidence of the parties, I find on a balance of probabilities that the tenants did not fully comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit "reasonably clean, and undamaged" as some cleaning and repair was likely required by the landlord after the tenant vacated the rental unit. However, I find that the landlord's photographic evidence in no way reveals

that extensive cleaning in the magnitude claimed by the landlord was required to restore these premises to the condition whereby they could be rented to another tenant. For example, one of the landlord's photos revealed a birthday balloon near the ceiling. Another claimed that the tenants had not cleaned **under** the washer and dryer, appliances that would normally not be moved after installation. Under these circumstances, I find that the landlord is entitled to a monetary award of $100.00 for general cleaning and minor repairs that may have been required at the end of this tenancy.

I have dismissed the remainder of the landlord's claim for damage without leave to reapply. Of these remaining portions of the landlord's claim, I provide the following specific comments regarding some of these items.

The tenants entered into written evidence a detailed breakdown of a "Move-Out Checklist for Tenants" provided to them by the landlord. I find that many of these items, including the requirement that the tenants power wash the driveway are not required under the *Act*. The landlord confirmed that there was no specific provision in the Agreement or any Addendum that the tenants were responsible for power washing the carport and driveway at the end of their tenancy. Similarly, there was no requirement that the tenants obtain professional steam cleaning of the carpets. I also find insufficient evidence that the paint job provided by the tenants during this tenancy required work. As discussed at the hearing, the *Act* places the responsibility for changing locks at the end of a tenancy on the landlord, to ensure that the next tenants have keys that do not enable previous tenants to access the rental unit. The landlord confirmed that she had keys to access the rental unit and that she obtained the tenants' keys to access the rental unit. I heard disputed testimony as to whether the tenancy included a table and chairs. The tenants maintained that there were no chairs provided with this tenancy and that they left the landlord's dining room table behind at the end of this tenancy. I find insufficient evidence to enable me to issue a monetary award for the landlord's alleged loss of a dining room table and chairs.

I also dismiss without leave to reapply the landlord's application for loss of rent from April 15, 2013 until the end of this tenancy. In this regard, I find that the legal monthly rent established for this tenancy was $1,600.00, the amount identified on the Agreement that both parties signed. The landlord is without authority to claim that her attempt to increase the monthly rent by $200.00 was a legal notice of rent increase or that it could be undertaken without the tenants' written agreement under the terms of a new tenancy agreement. I find no basis whatsoever to this portion of the landlord's claim and would suggest that the landlord consult with an Information Officer with the RTB to learn about her responsibilities as a landlord.

As the landlord has had only limited success in her application, I allow her to recover only $25.00 from her filing fee.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms, which allows the tenants an award of double their security deposit and the recovery of their filing fee, less the amounts allowed the landlord for cleaning and minor repairs and to recover part of her filing fee:

Item	**Amount**
Return of Double Security Deposit as per section 38 of the Act ($800.00 x 2 = $1,600.00)	$1,600.00
Less Allowance for Cleaning and Minor Repairs	-100.00
Recovery of Tenants' Filing Fee	50.00
Less Landlord's Recovery of One-half of her Filing Fee	-25.00
Total Monetary Order	**$1,525.00**

The tenants are provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 21, 2014

Residential Tenancy Branch