



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, O, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of the security deposit and pet damage deposit (collectively "deposits"), pursuant to section 38;
- other unspecified remedies; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The "first hearing" on May 18, 2016 lasted approximately 26 minutes and the "second hearing" on July 21, 2016 lasted approximately 70 minutes, in order to allow both parties to fully present their submissions.

The landlord and his advocate (collectively "landlord") and the tenant CJP ("tenant") attended both hearings. "Tenant CTHP's advocate" attended the second hearing only, not the first hearing. Tenant CTHP's advocate confirmed that she had authority to speak on behalf of "tenant CTHP," the other tenant named in this application, as an agent at the second hearing. In both hearings, all parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue - Adjournment of First Hearing and Service of Documents

The first hearing on May 18, 2016 was adjourned because the landlord did not have sufficient time to respond to the tenant's written evidence. The second hearing, which was initially scheduled for June 20, 2016, occurred instead on July 21, 2016, due to scheduling by the Residential Tenancy Branch ("RTB"), not the parties. At the first hearing, I provided specific instructions to both parties to serve and re-serve evidence in accordance with specific deadlines. I issued an interim decision adjourning the first hearing and outlining these specific instructions.

At both hearings, the landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

The tenant confirmed that she did not serve any additional evidence upon the landlord, aside from the evidence that she had already served to the landlord prior to the first hearing. The landlord confirmed at both hearings that he was in receipt of the tenants' entire written evidence package, had reviewed it and was ready to proceed with the second hearing. Accordingly, I find that the landlord was duly served with the tenants' written evidence, pursuant to sections 88 and 90 of the *Act*.

The tenant and tenant CTHP's advocate (collectively "tenants") confirmed receipt of the landlord's written evidence package, which I directed the landlord to serve to the tenants after the first hearing, as per my interim decision, since the landlord had not served the tenants prior to the first hearing. The tenants confirmed receipt of the landlord's written evidence, said that they had reviewed it and were ready to proceed with the second hearing. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlord's written evidence.

At the outset of the second hearing, the tenant confirmed that she had not paid for an application filing fee and that she had applied for "other" unspecified remedies in error. Accordingly, these portions of the tenants' application are dismissed without leave to reapply.

Preliminary Issue - Previous Hearing

Both parties referenced their attendance at a previous RTB hearing on April 26, 2016, before a different Arbitrator. The file number for that hearing appears on the front page of this decision. The Arbitrator at the previous hearing issued a decision, dated May 18, 2016, following that hearing. The previous decision dismissed the landlord's application, which was filed on October 19, 2015, to retain the tenants' deposits and seeking monetary orders for unpaid utilities and damages to the rental unit. The Arbitrator noted that the tenants had a pending application (this current application) to recover their deposits and seek monetary orders against the landlord and that he was not making any findings regarding the tenants' application. Accordingly, the tenants' current application is not *res judicata*, as it has not already been dealt with by the previous Arbitrator and I find that I have jurisdiction to consider this application.

Issues to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to obtain a return of their deposits?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 15, 2014 and ended on October 3, 2015. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. Monthly rent in the amount of \$1,750.00 was payable on the first day of each month. A security deposit of \$875.00 and a pet damage deposit of \$437.50 were paid by the tenants and the landlord continues to retain both deposits. The tenants provided a forwarding address to the landlord on October 3, 2015 by way of a text message. The landlord did not have written permission from the tenants to keep any amount from their deposits. No move-in or move-out condition inspection reports were completed for this tenancy. The landlord filed an application to retain the deposits on October 19, 2015.

The tenants seek a monetary order totaling \$8,070.00. The tenants seek a return of both their deposits totaling \$1,312.50. The tenants seek \$70.00 for laundromat services, \$1,000.00 for pain and suffering due to two falls, \$5,250.00 in rent reimbursement for this tenancy (\$300.00 per month x 17.5 months) and \$437.50 rent reimbursement for March 2015.

Analysis

Monetary Claims

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the tenants must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

RTB Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a

minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

Section 28 of the Act deals with the tenants' right to quiet enjoyment:

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

I award the tenants nominal damages of \$300.00 of the \$5,250.00 sought for past rent reimbursement during this tenancy. I find that the tenants provided documentary evidence in the form of photographs and text messages that the landlord failed to complete repairs at all, or in a timely manner in the rental unit. I find that this failure caused the tenants to suffer a loss of quiet enjoyment in the rental unit. The smoke detectors in the rental unit were not operational during the tenancy and this caused a safety hazard, which the tenants were constantly worried about. There were electrical problems that the tenants repeatedly notified the landlord about that required constant access to the rental unit from the landlord's repair personnel, also posing a safety hazard which the tenants were worried about. The tenants notified the landlord about the broken hand railing inside the rental unit, which the landlord acknowledged, which the tenant said posed a safety hazard. However, I find that the tenants could not justify the full amount of \$5,250.00 claimed and therefore, I only award nominal damages.

I award the tenants \$437.50 in rent compensation during the period of renovations in March 2015. The landlord agreed to pay the above amount during the second hearing.

I dismiss the tenants' claim of \$70.00 for laundromat costs. The landlord disputed this claim. The tenant provided two invoices for \$40.00 and \$30.00 for the above costs. I find that the tenants failed to show that they notified the landlord that the laundry machines were not operational for two weeks at the beginning of this tenancy. The tenant stated that in the first week, the laundry machines were too far from the laundry room but in the second week, the machines were not hooked up or working. The landlord denied being notified of any problems with the laundry machines, such that he could fix the problem. The landlord said that no repair work was done on the machines.

I dismiss the tenants' claim for \$1,000.00 for pain and suffering that the tenant said was caused by two falls inside the rental unit, due to a broken handrail that was not repaired. The landlord

disputed this claim and said that he was only notified about the broken handrail, not the fact that the tenant fell due to it, only that she fell on water in the kitchen in another area. I find that the tenant failed to provide medical or work documentation to show that she attended at the hospital or sought medical attention, that she was prescribed medications, that she missed time off work or suffered other losses. The tenant said that she submitted confidential medical documents to the RTB only, not the landlord, but I had not received them and I advised the tenant that I could not consider them if they were not served on the landlord, as required by the *Act* and the *Rules of Procedure*.

Deposits

Section 38 of the *Act* requires the landlord to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposits. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of both parties. The tenancy ended on October 3, 2015 and the tenants provided a forwarding address on the same date. Although the tenants only provided the address by way of text message, contrary to section 88 of the *Act*, I find that the landlord was sufficiently served with the tenants' forwarding address, as per section 71(2)(c) of the *Act*. I find that the parties mainly communicated by way of text message, the landlord acknowledged receipt of the forwarding address and used this address to file his application to retain the deposits in October 2015.

The tenants did not give the landlord written permission to retain any amount from their deposits. The landlord did not return the deposits. The landlord filed his application to retain the deposits on October 19, 2015, more than 15 days after the end of the tenancy and the forwarding address was received, both on October 3, 2015.

In any event, the landlords' right to claim against the deposits was first extinguished for failure to complete move-in and move-out condition inspection reports, as required by sections 24 and 36 of the *Act*. Therefore, according to Residential Tenancy Policy Guideline 17, I am required to double the value of the return of the tenants' deposits. The tenants are not required to apply for double the value of their deposits. I am entitled to consider this claim as long as the tenants have not specifically waived this right, which I find they have not. Over the period of this tenancy, no interest is payable on the landlord's retention of the tenants' deposits. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy

Guideline 17, I find that the tenants are entitled to receive double the value of their deposits, totalling \$2,625.00.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$3,362.50 against the landlord. 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 tenants' application to recover the filing fee and for "other" unspecified remedies is dismissed without leave to reapply.

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 21, 2016

Residential Tenancy Branch