Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: MNDCL-S, FFL
For the Tenant: MNSDS-DR, FFT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlords filed a claim for:

- a monetary order of $2,788.30 for damage or compensation under the Act – holding the security deposit for this claim; and
- recovery of their $100.00 application filing fee.

The Tenants filed a claim for:

- the return of the security deposit in the amount of $875.00; and
- recovery of their $100.00 application filing fee.

The Tenant, J.S., the Landlords, K.R. and B.R., appeared at the first teleconference hearing and gave affirmed testimony. The hearing was adjourned to allow the Parties to exchange their respective applications, notices of hearing and documentary submissions. We did not review any of the Parties claims in the first hearing.

In the reconvened hearing, the Tenant, J.S., and the Landlord, B.R., appeared and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. The Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence in the reconvened hearing. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses in their applications, and in the hearing, they confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is either Party entitled to recovery of the filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy, which began on April 1, 2019 and was to run to March 31, 2020 and then operate on a month-to-month basis. They agreed that the Tenants paid the Landlords a monthly rent of $1,750.00, due on the first day of each month. They agreed that the Tenants paid the Landlords a security deposit of $875.00, and no pet damage deposit.

The Parties agreed that the Landlord did not conduct an inspection of the condition of the rental unit before or at the start of the tenancy, as the Parties could not agree to a date on which to conduct the inspection.

In the hearing, the Parties agreed that on September 9, 2019, the Tenants texted the Landlords notice of their intention to end the tenancy on October 31, 2019. The Parties agreed that the Tenants vacated the rental unit on October 30, 2019, and provided the Landlord with their forwarding address via regular mail on December 1, 2019.

LANDLORDS' CLAIMS

1. **Rent Shortage → $2,500.00**

The Landlord said that the Tenants signed a lease that was supposed to go until March 31, 2020; however, the Tenants ended the lease on October 30, 2019, and the Landlords had to find new tenants.

The Landlord said: "The new tenants are paying less; it's a mortgage helper we need. We found a single guy who was willing to pay less than the Tenants paid per month. We had him as a tenant before - a great guy." However, in a text from the Landlords' property manager to the Tenants dated November 5, 2019, the property manager said:

> …Since your lease was for one year at $1,750.00 and the new tenant has signed a lease for $1,500.00 – with five months left there is a total of $1,250.00 due; the landlords have agreed to keep the damage deposit and not seek further amounts from yourself. If you have any questions, please let me know.

The Landlords said they posted on social media platforms and reached out to friends and people at work, looking for someone who needed a place to stay. The Landlord acknowledged the Tenants' statement that "…it is not easy to find a place in this town." The Landlord reiterated that they rely on the rental income to pay their mortgage.

The Landlord's claim was for the difference they earned in rent between what the Tenants paid and what the new tenant was willing to pay. They said it was a difference of $500.00 per month from November 2019 until March 31, 2020, when the fixed term tenancy was scheduled to end for a total claim of $2,500.00.

The Tenant said:

> First, we gave notice about 60 days before we ended the lease and communicated that we were more than happy to find a replacement. We offered well above what her previous tenant was paying. Many, many, many people are looking for housing to pay what we were paying. I don't think she posted on [social media], because I had someone in mind.
>
> You shouldn't think you can tell people you're going to give back the security deposit . . . she told us she would email it; …to not show up to do the walk through. When I was emailing and texting her about going to Mexico for a

> medical procedure, I texted her that we wanted the security deposit back. She gave us an address for returning the keys, and I texted back that the keys were on the way. A couple days later and still no security deposit.
>
> Communications continued about not giving back the security deposit. The next day, [the Landlord] changed the lock, so why did we have to mail her the keys? We were not receiving any security deposit back, which is quite a shock when you're driving across the U.S. and need the money.

In copies of texts submitted by the Tenant between J.S. and K.R., the Tenant said: "You didn't even give us the opportunity to find new tenants to rent at the same price. Thoroughly disappointed in this decision , [K.],..."

The Landlord said:

> [The Tenant] said she could help find a tenant. There are two little children in this home. I didn't feel comfortable getting anyone into this shared residential property.
>
> The new tenant didn't feel comfortable that there were outstanding keys and the that the Tenants didn't leave on the best of terms. [D.R.] was a property manager, and we did tell [the Tenant] about him. [The Landlord] has a high stress job and needed someone to take over.

2. **<u>Cleaning Fees</u> → $80.00**

The Landlord said she had to take food out of cupboards and the refrigerator and that it took two people about two hours to clean up. The Landlord also said that the Tenants had left furniture behind that the new tenant did not want. In the Landlord's written submission on the costs they incurred, they state that it took four hours at $20.00 per hour to do the cleaning (or two people working two hours each).

The Tenant said:

> I think it's obvious that she was just trying to manipulate re the money she stole from us. Items left were left from the previous tenant and we were fine with them. Jars, glassware, trinkets. Nothing had been mentioned at all about this when we said we wanted our security deposit back. I thought she was grasping at straws to justify her position with this.

3. **Change Locks, Keys → $208.30**

The Landlord, B.R., said that K.R. asked the Tenants for the keys back on October 24th, but she still did not have them back when the new tenant moved in. The Landlord said: "There's no proof that they were mailed. The Tenants moved out on October 30th, 2019, and they never returned the keys."

The Tenant said that the locks were changed on November 6th. She said:

> There are many dates on their end that needed to be fabricated and jostled around. We weren't in [the city]. They were mailed in Saskatchewan. Her timelines aren't making sense. At the time that [the Landlord] asked for the keys back, the tenant had already moved in, as we had already discussed the table with them. Clearly it doesn't makes sense timeline-wise.

TENANTS' CLAIMS

Return of Security Deposit → $875.00

The Tenant said:

> We want the full security deposit back, as we agreed upon it on leaving the suite, along with $100.00 filing fee and interest, due to damage caused. I had to take out a loan to continue our trip. I have taken hours making and mailing documents. I gave [K.R.] the option to pay us back, as she had promised. We have been waiting months for the return, particularly . . .. it has been incredibly stressful and financially destructive.

The Landlord, B.R., said:

> I think [K.R.] did it the right way. We filed the proper application. We didn't know they were out of the country. We have also sent [the Tenant] emails that we're willing to negotiate. The Landlord was out of money too, with unresolved issues. . .. [K.R.] did the same thing as well - a lot of effort on people's parts - including the three of us today.

The Parties discussed having communicated about to whom the Landlords should return the security deposit. J.S. referred to her co-Tenant, M.S., saying that he does not

want to be involved in this dispute, because he finds it stressful. She said he has asked not to be called by the Landlord, which he considers bothersome, so she said: “Please don’t call him anymore.”

I allowed M.S. to submit an email after the hearing, indicating his preference in terms of distribution of any monetary order they may be awarded. M.S. said the following in his email of July 7, 2020:

> I, [M.S.], am writing to confirm that I wish for all dealings with this tenancy dispute to be handled by [J.S.]. I have not had the capacity to deal with the stress of the situation, and thus have left [J.S.] in the handlings. I am in the know of all aspects of the hearing, but I wish not to be directly a part.
>
> I did not reply to [B.R.’s] text messages, not because I’m not aware of the case details, but simply because I do not wish to personally go through the stress of the hearings and conversing with or about [K.R.]. I understand that in the hearing [B.R.] claimed that she did not attempt to contact me, she did in fact twice. This is another example of how the [Landlords] have not been completely true in the details of this dispute.
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> My personal relationship with [J.S.] is not of the business of [K.R.], and the status of my relationship with [J.] does not pertain to this case.
>
> I find it upsetting that the [Landlords] are gossiping about confidential information between [J.] and I which she has heard from a friend in head office at [the Inn] (my place of employment), and then brings that personal information up in a hearing about a tenancy dispute. This information is confidential and does not pertain to a tenancy dispute.
>
> Respectfully, all dealings are to be left with [J.S.], and we will continue to manage our relationship and this case on our own. [J.] and I will settle the damage deposit return between ourselves.
>
> Sincerely,
>
> [M.S.]
> [telephone number]

The Landlord said:

> No one's called him. [M.] arranged to pay the security deposit . . . I could write a cheque for [M.] and to [J.]; we didn't feel comfortable returning the security deposit . . .. [K.R] is willing to return it, but not to one Party, when they don't live in the same city.

The Tenant said:

> Again, you're implying I'm being dishonest. You did call [M.] twice… we have all these random people between us. [M.] is not feeling well, and he doesn't want to deal with this. We are still 100% in contact and aware of what's going on. I communicate with him constantly about this dispute. If it's a big deal, [M.] can send them a formal letter. He lives in staff accommodation, and he has no way for a cheque to be mailed to him.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Pursuant to sections 23, and 35 of the Act, a landlord must complete a CIR at both the beginning and the end of a tenancy, in order to establish that any damage claimed actually occurred as a result of the tenancy. Landlords who fail to complete move-in or move-out inspections and CIRs extinguish their right to claim against the security and/or pet damage deposits for damage to the rental unit, pursuant to sections 24 and 36. Further, landlords are required by section 24(2)(c) to complete and give tenants copies CIRs in accordance with the regulations.

Section 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property, or the tenant's pets. Section 37 requires a tenant to leave the rental unit undamaged and reasonably clean. However, sections 32 and 37 also provide that reasonable wear and tear is not damage, and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 helps interpret these sections of the Act:

> The tenant is also generally required to pay for repairs where damages are

> caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises)2, or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).
>
> Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

Policy Guideline #16 (“PG #16”) states: “The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due.”

The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Further, an applicant must prove the following, pursuant to PG #16:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

   [the “Test”]

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. According to PG #16:

> A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for

carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

LANDLORDS' CLAIMS

1. **Rent Shortage → ~~$2,500.00~~ $1,250.00**

Given the evidence from the property manager's text to the Tenants dated November 5, 2019, about the rent shortfall, I find that the Landlords must have erred in their claim that the difference between the Tenants' rent and the new tenant's rent was $500.00, rather than $250.00 per month. Accordingly, I find that the Landlords' claim in this regard is for a total of $1,250.00, rather than $2,500.00.

In terms of the Test noted above, I find the Landlords have established that the Tenants breached the Act and the tenancy agreement by ending the tenancy five months before the term ended. In the circumstances before me, I find that the Landlord suffered a loss, as a result of this violation of the tenancy agreement and the Act.

Section 45(2) of the Act addresses how tenants may end fixed term tenancies:

> **Tenant's notice**
>
> **45** (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (a) is not earlier than one month after the date the landlord receives the notice,
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> (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
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> (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

RTB Policy Guideline #3 ("PG #3") states: "This guideline deals with situations where a landlord seeks to hold a tenant liable for loss of rent after the end of a tenancy agreement." PG #3 offers an example of a tenant ending a fixed term tenancy:

> For example, a tenant has agreed to rent premises for a fixed term of 12 months at rent of $1,000.00 per month and abandons the premises in the middle of the

> second month, not paying rent for that month. The landlord is able to re-rent the premises from the first of the next month, but only at $50.00 per month less. The landlord would be able to recover the unpaid rent for the month the premises were abandoned and the $50.00 difference over the remaining 10 months of the original term.

I find that the Landlords have established the value of their loss at $250.00 per month; however, I also note two of the Landlords' pieces of evidence in this regard. First, I find that this loss was based on the Landlords' choice of the new tenant. The Landlord said that this person had been their tenant previously, and that he is "a great guy." Second, they acknowledged that it is difficult to find residential accommodation in their town; therefore, I find it must inevitably be a better market for landlords than for tenants.

I find that the Landlords did not provide sufficient evidence that they searched sufficiently hard to find a new tenant who would pay the same rent as the Tenants were required to pay under their tenancy agreement. I find it more likely than not that the Landlords chose this tenant, because of their past experience with him. I find that they were able to find him quickly and alleviate the strain of having no rental income from November 2019 forward. However, given the apparently low vacancy rate in the area, I find that the Landlords could have done better with rent if they had put more effort into finding a new tenant.

Based on the evidence before me in this regard, I find that the Landlords relied on their friends and social media to find a new tenant, rather than posting an advertisement locally and farther afield. I find on a balance of probabilities that if the Landlords had looked harder, or allowed the Tenants to help them, they could have found someone to rent the unit at a higher rate, given the low vacancy rate in the municipality.
As such, I find that the Landlords failed the fourth step of the above noted Test, in that they did not do what was reasonable in the circumstances to minimize the damage or loss they incurred. However, rather than dismissing the Landlords' claim altogether, in this set of circumstances I find that the Landlords suffered a loss, and as a result, I award them a nominal amount of 15% of their claim or **$187.50** for this claim, pursuant to Policy Guideline #16.

2. **<u>Cleaning Fees</u> → $80.00**

Section 37 of the Act states that tenants must leave the rental unit "reasonably clean and undamaged".

Policy Guideline #1 helps interpret section 37:

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).
>
> . . .. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.
>
> [emphasis added]

The Landlords have the burden of proof in this matter, and if I am not persuaded on a balance of probabilities to accept their position, then the Landlords have not met their burden of proof.

According to section 7(2) of the Act, step four in the Test, and Policy Guidelines #5 and 16, the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible.

The Landlord referred to the Tenants having left food behind in cupboards and the refrigerator, as well as furniture that the new tenant did not want. I find that dealing with this would have taken more time than standard cleaning would have taken; however, the Landlord did not comment on the other aspects of the rental unit that required this much of cleaning. Further, the Landlord did not direct me to a receipt or an invoice for the cleaning that was done. Based on the Act, Policy Guidelines, and the evidence before me overall in this matter, I find that the Landlords did not meet the burden of proof in this regard, and I dismiss this claim without leave to reapply.

3. Change Locks, Keys → $208.30

Section 25 of the Act addresses parties' responsibilities regarding keys and changing locks of a rental unit.

Rekeying locks for new tenants

25 (1) At the request of a tenant at the start of a new tenancy, the landlord must

(a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and

(b) pay all costs associated with the changes under paragraph (a).

(2) If the landlord already complied with subsection (1) (a) and (b) at the end of the previous tenancy, the landlord need not do so again.

As a result, I find that section 25 of the Act precludes the Landlord from requiring the Tenants to pay for this cost, as it is clearly the responsibility of a landlord, not a tenant under the Act. Accordingly, I dismiss this claim without leave to reapply.

TENANT'S CLAIMS

The Tenants' claim is for recovery of the $875.00 security deposit. Section 38 of the Act states:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that pursuant to section 90 of the Act, the Tenants provided their forwarding address to the Landlords on December 6, 2019, five days after it was mailed. I also find that the tenancy ended on October 30, 2019. Therefore, pursuant to section 38(1), the Landlords were required to return the $875.00 security deposit within fifteen days of December 6, 2019, namely by December 21, 2019, or to apply for dispute resolution to claim against the security deposit. The Landlords provided no evidence that they returned any of the deposit, and according to RTB records, the Landlords applied to

claim against the deposits on January 3, 2020. Therefore, I find the Landlords failed to comply with their obligations under Section 38(1).

The consequences for a landlord failing to comply with the requirements of section 38(1), are set out in section 38(6)(b) of the Act:

> (6) If a landlord does not comply with subsection (1), the landlord
>
> (a) may not make a claim against the security deposit or any pet damage deposit, and
>
> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the Act and the evidence before me, overall, I find that the Landlords must pay the Tenants double the amount of the security deposit. There is no interest payable on the security deposit. I award the Tenants $1,750.00 for double the return of the security deposit from the Landlords. Given their success, I also award the Tenants recovery of the $100.00 application filing fee for a total award of **$1,850.00**.

Set-Off of Claims

The results of the analyses of evidence for the Landlords' claims resulted in the following:

1.	Rent Shortage:	$187.50
2.	Cleaning:	$ 0.00
3.	Keys/lock replacement:	$ 0.00
	Total	**$187.50**

I granted the Landlords a nominal monetary award of $187.50 for rent shortage, and the Tenants a monetary award of $1,850.00 for return of double the security deposit and recovery of the application filing fee. After setting off these two awards, I grant the Tenants a Monetary Order of **$1,662.50** from the Landlords, pursuant to sections 38, 67, and 72 of the Act.

Conclusion

The Landlords were unsuccessful in their claims, because they provided insufficient evidence to support their claims beyond a nominal award of $187.50 for rent shortage.

The Tenants' claim for recovery of the security deposit is successful in the amount of $1,750.00, as the Landlords failed to comply with section 38 of the Act in returning the security deposit or applying to the RTB to keep it within the legislated time frame. The Tenants are also awarded recovery of the $100.00 Application filing fee. After setting off the awards, I grant the Tenants a Monetary Order under section 67 of the Act from the Landlords in the amount of **$1,662.50**.

This Order must be served on the Landlords by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 15, 2020

Residential Tenancy Branch