Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

On March 6, 2020, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the "*Act*"), seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing; however, the Landlord did not attend during the 84-minute hearing. All in attendance provided a solemn affirmation.

The Tenants advised that the Notice of Hearing package was served to the Landlord by registered mail on March 12, 2020 (the registered mail tracking number is listed on the first page of this Decision). The tracking history indicated that this package was delivered on March 13, 2019 and signed for by a person with the same last name as the Landlord. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

The Tenants also advised that they served their evidence by posting it to the Landlord's door on June 25, 2020. Based on Rule 3.14 of the Rules of Procedure, this would have been the last day that the Tenants could have served evidence to the Landlord and service must have been by hand. I find it important to note that Section 60 of the *Act* permits a party to make an Application for Dispute Resolution within two years of the tenancy ending and it appears as if the Tenants waited until just before this deadline to make this Application. While they stated that the reason for this was because they were busy with work and their lives, G.K. did state that they were cognizant of these deadlines.

As they had ample time after the tenancy ended to make this Application and ample time after making the Application to serve their evidence, and as they were aware that there were timeframes that they were required to comply with, I find it more likely than not that this was an intentional attempt to provide the Landlord with the evidence at the last possible moment. Based on this, and as this evidence was not served in accordance with Rule 3.14., the Tenants' evidence will not be accepted or considered when rendering this Decision. The Tenants were permitted to provide testimony with respect to this evidence during the hearing.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a return of double the security deposit?
- Are the Tenants entitled to monetary compensation?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenants stated that the tenancy started on September 1, 2014 and ended when they gave up vacant possession of the rental unit on March 8, 2018 when they provided the Landlord with their 10-day notice to move early, on February 27, 2018, after being served a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"). Rent was established at $900.00 per month and was due on the first day of each month. A security deposit of $425.00 was also paid.

They advised that their forwarding address in writing was on their 10-day notice to move early, and this was posted to the Landlord's door on February 27, 2018. As well, they emailed the Landlord with their forwarding address on March 15, 2018. They stated that he has not returned their deposit and they never gave him written consent to keep any of it. As it is their belief that the Landlord has not complied with the *Act*, they are seeking

a return of double the security deposit pursuant to Section 38 of the *Act*, in the amount of **$850.00**.

G.K. stated that the Landlord served the Notice to the Tenants on January 19, 2018 by posting it to their door. The reason the Landlord checked off on the Notice was because "The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant." The effective end date of the tenancy on the Notice was noted as April 1, 2018.

The Tenants did not submit a copy of the Notice for consideration. As I was unable to view the relevant Notice to determine if it complied with Section 52 of the *Act*, in accordance with Rule 3.19 of the Rules of Procedure, I provided direction on requesting late evidence. A copy of the Notice, that is the subject of this dispute, was requested to be provided by the Tenants as it is essential to the matter at hand. A copy of this Notice was provided by uploading it into the Dispute Management System during the hearing.

She stated that after receiving the Notice, they gave their 10-day written notice to end their tenancy early pursuant to Section 50 of the *Act*. They served their notice to the Landlord by posting it to his door on February 27, 2018 that stated they would be giving up vacant possession of the rental unit on March 8, 2018. They paid their rent from March 1 to March 8, 2018. They are seeking compensation in the amount of **$900.00** as they did not receive one month's rent compensation that they are entitled to after being served the Notice, pursuant to Section 51(1) of the *Act*.

In addition, she stated that they are seeking compensation in the amount of **$1,800.00** because the Landlord served the Notice and did not use the property for the stated purpose on the Notice. Therefore, they are owed compensation in the amount of two months' rent pursuant to Section 51 of the *Act*. She stated that the Landlord posted the rental unit for sale on April 25, 2018, but it was not sold. As well, she stated that the Landlord posted the rental unit as available for rent for June 1, 2018 for $1,400.00 per month. She noted that the pictures in this online ad were exactly the same as when they rented the unit and that this demonstrates that the Landlord did not conduct any renovations.

She also advised that they rented a property nearby and that they would often drive by or walk past the rental unit. They never saw the Landlord conduct any renovations to the rental unit. Furthermore, when they posted their evidence to the Landlord's door on June 25, 2020, they saw no changes or renovations to the rental unit.

The Tenants were also seeking compensation in the amount of **$2,700.00** because the Landlord disrupted their right to quiet enjoyment of the rental unit. They calculated this loss as 50% of the rent for six months of the tenancy. G.K. advised that from the start of the tenancy to the end, during the summers, they would have fans operating. However, when the Landlord observed this, he would always tell them that they could not use the fans as it would increase the hydro bill. As they did not know any better, they accepted this, stopped using their fans, and avoided doing anything to correct the Landlord's behaviour.

She stated that from the start of the tenancy to the end, during the winters, the Landlord would turn off the heat. She submitted that they had a thermostat, but it did not work. When they asked the Landlord about the heat, he told them that the boiler was not functioning. They purchased portable heaters; however, when the Landlord observed this, he would always tell them that they could not use the heaters and to put on clothing. They would talk to the Landlord's wife and daughter about this issue. G.K. advised that their parents, who were staying with them, confirmed that the Landlord told them to turn off the heat in December 2017. They did not have any evidence to demonstrate that they brought up this heating issue with the Landlord. They eventually stopped opening their blinds so that the Landlord could not see into their rental unit to tell them to stop using these appliances.

She stated that the Landlord would tell them that their cooking was smelly and that they were not to cook some foods anymore. She submitted that she was advised of this twice by the Landlord's daughter.

She submitted that in 2016, the dryer would "throw lint" in the home and they advised the Landlord of this problem. They also sent the Landlord emails and pictures of this issue over two or three months; however, the Landlord did not rectify this problem. She stated that they had to go outside to do laundry until the Landlord's son came into the rental unit to address the problem.

G.K. advised that the Landlord's wife was cleaning the roof in 2015 and water leaked onto the Tenants' dining table. She showed this to the Landlord, and he told her that they would stop washing the roof. He did not ever fix the roof, so they would put a bucket on their dining table whenever there was a heavy rain.

She stated that for approximately two years from the start of the tenancy, they would keep their bike in a common area; however, the Landlord stopped allowing them to store their bike in the area and restricted their access to the common area.

She stated that from the start of the tenancy, the Landlord would oftentimes lock up the garbage cans when they were full and would tell them to keep their garbage in the rental unit.

She also advised that the fuses would often blow when they were using appliances. She stated that the Landlord would yell at them and would not reset the breakers immediately. She stated that this would happen every week and the Landlord would become increasingly rude about it.

Lastly, she stated that their parents had been living with them for a time and they were paying extra for this. She stated that her mother had broken her arm and the Landlord would not let the parents stay there any longer. Their parents had flights scheduled but because the Landlord would not let them stay, they had to re-book flights and pay for these extra costs.

Finally, the Tenants advised that were seeking compensation in the amount of **$1,000.00** for “discrimination and intimidation after end of tenancy.” The Tenants were advised during the hearing that as the tenancy was over and these issues happened after the end of the tenancy, this claim for compensation would be dismissed without leave to reapply.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants’ forwarding address in writing, to either return the deposit in full 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 pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

The undisputed, solemnly affirmed testimony is that the Tenants' forwarding address in writing was provided to the Landlord on February 27, 2018 and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on March 8, 2018. As the Tenants did not provide written authorization for the Landlord to keep any amount of the deposit, and as the Landlord did not return the deposit in full or make an Application to keep the deposit within 15 days of March 8, 2018, I find that the Landlord did not comply with the requirements of Section 38 and illegally withheld the deposit contrary to the *Act.*

Consequently, I am satisfied that the Tenants have substantiated a monetary award amounting to double the original security deposit. Under these provisions, I grant the Tenants a monetary award in the amount of **$850.00**.

With respect to the Tenants' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

Regarding the Tenants' claim for compensation owed to them in the amount of one month's rent after being served the Notice pursuant to Section 51 of the *Act*, based on the undisputed testimony before me, I am satisfied that the Landlord did not compensate the Tenants in this amount required by law. As a result, I grant the Tenants a monetary award in the amount of **$900.00**.

With respect to the Tenants' claim for compensation owed to them as the Landlord did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was served on January 19, 2018 and Section 51 of the *Act* at the time the Notice was served reads in part as follows:

> ***51*** *(2) In addition to the amount payable under subsection (1), if*

> *(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or*
>
> *(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,*
>
> *the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.*

I also find it important to note that Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

> ***51*** *(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if*
>
> > *(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or*
> > *(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*
>
> *(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from*
>
> > *(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or*
> > *(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

When reviewing the totality of the evidence before me, at the time the Notice was served, the applicable *Act* stated that once the Notice is served, the Tenants are entitled

to the amount of two months' rent if the Landlord does not use the property for the stated purpose on the Notice. This provision is irrespective of whether the Notice was served in good faith as this requirement pertains to the updated legislation. Had this Notice been served after the legislation changed on May 17, 2018, Section 51(2) requires that the Tenants be entitled to 12 months' compensation, and Section 51(3) allows for consideration of the compensation to be excused in extenuating circumstances.

Based on the undisputed, solemnly affirmed testimony, I am satisfied that the Landlord did not "have the necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant." In addition, as this rental unit was advertised for rent as of June 1, 2018, I find it more likely than not that it was rented again within six months of the effective date of the Notice. Therefore, I find that the Landlord failed to use the rental unit for the stated purpose on the Notice for at least six months after the effective date of the Notice. As such, I am satisfied that the Tenants have substantiated their claim that they are entitled to a monetary award of double the monthly rent pursuant to Section 51 of the *Act*. Consequently, I grant the Tenants a monetary award in the amount of **$1,800.00** pursuant to this Section.

Finally, with respect to the Tenants' claims for compensation in the amount of $2,700.00, Section 28 of the *Act* outlines the Tenants' right to quiet enjoyment of the rental unit and states that they are entitled to: "reasonable privacy, freedom from unreasonable disturbance, 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]*, and use of common areas for reasonable and lawful purposes, free from significant interference."

As noted above, 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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

When reviewing the undisputed, solemnly affirmed testimony of the Tenants, I accept that from the outset of the tenancy in 2014, the Landlord acted in an unacceptable manner that breached the Tenants' right to quiet enjoyment of the rental unit. However, as per the four-part test above, a component of assessing whether compensation is warranted is if the Tenants acted reasonably to minimize this loss. As there is little evidence before me to indicate that the Tenants did anything at the time of these breaches to notify the Landlord that he was acting in contravention of the *Act*, to advise him to correct this behaviour, and then to take the appropriate action at the time if he continued to act in this manner, I am not satisfied that the Tenants have established that they should be awarded the amount that they are seeking.

Given that I am satisfied that the Landlord breached the *Act* on multiple occasions up until the end of the tenancy, but given the limited evidence provided by the Tenants that they took any steps to correct the Landlord's contraventions of the *Act* that started in 2014, I find that the Tenants are only entitled to a nominal monetary award in the amount of **$200.00**.

As the Tenants were partially successful in their claims, I find that the Tenants are entitled to recover the $100.00 filing fee paid for this Application.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Item	Amount
Double the security deposit	$850.00
One month's rent compensation	$900.00
Two months' rent compensation	$1,800.00
Loss of quiet enjoyment	$200.00
Recovery of Filing Fee	$100.00
Total Monetary Award	**$3,850.00**

Conclusion

I provide the Tenants with a Monetary Order in the amount of **$3,850.00** in the above terms, and 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.

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 15, 2020

Residential Tenancy Branch