



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant, A.S. attended the hearing via conference call and provided undisputed affirmed testimony on behalf of N.M.-S. (the tenants). The landlord did not attend or submit any documentary evidence.

The tenants were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The tenants stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 23, 2021. The tenants submitted a photograph of the Canada Post Receipt and Tracking label which shows the landlord's mailing address as listed on the signed tenancy agreement. The tenants stated that the package was returned as "unclaimed" after Canada Post had attempted to serve it. I accept the undisputed affirmed evidence of the tenants and find that the landlord was sufficiently served as per sections 88 and 89 of the Act. Despite not claiming or attending the hearing, the landlord is deemed served as per section 90 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation, for return of double the security deposit and recovery of the filing fee?

Background and Evidence

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

This tenancy began on May 1, 2019 on a fixed term tenancy ending on April 30, 2021 as per the submitted copy of the signed tenancy agreement dated April 5, 2019. The monthly rent was \$4,200.00 payable on the 1st day of each month. A security deposit of \$2,100.00 was paid.

The tenants seek a monetary claim of \$17,708.13 which consists of:

\$2,033.12	Compensation, \$500.00 discount for landlord refusing to fix dishwasher, July 20 to November 22, 2020
\$5,459.82	Compensation, 1/3 of rent for landlord refusing to remedy mold, August 20 to November 22, 2020
\$1,414.00	Compensation, 10% of rent for landlord refusing to fix the deck and access to backyard, August 20 to November 22, 2020
\$1,120.00	Compensation, 100% of Rent for landlord refusing to fix the door and the only toilet, November 23 to December 31
\$500.00	Compensation, Stress, inconvenience of living without a home during government stay at home order
\$681.19	Compensation, Moving Expenses
\$100.00	Filing Fee
\$4,200.00	Security Deposit held unreasonably past the 15 days

\$15,508.13

The tenants clarified that the monetary claim filed of \$17,708.13 was a clerical error and should be \$15,508.13 as per the submitted copy of the completed monetary order worksheet. On this basis, the tenants claim will proceed based upon the submitted monetary order worksheet with a total claim of \$15,508.13.

The tenants provided undisputed affirmed evidence that the tenancy ended on December 31, 2020 but had vacated the rental unit on November 23, 2020.

The tenants seek compensation of \$2,033.12 based upon an estimate for the loss of use of a dishwasher for the period July 20 to November 22, 2020. The tenants reported the non-functioning dishwasher to the landlord who then refused to make the necessary repairs. The tenants stated that they suffered the loss of use of the dishwasher as a result from July 20 to November 22, 2020 before they vacated the rental unit. The tenants stated that the estimate for the loss of use of a dishwasher was obtained using the professional opinion of a real estate agent who provided an email "Exhibit H" an email dated January 17, 2021 who states in part that he has never seen a home being rented for \$4,000.00 on the North Shore without a dishwasher. The realtor's opinion states in part that a \$500.00 discount per month would have to be given to motivate a potential tenant to sign an agreement for a rental without a dishwasher.

The tenants provided undisputed affirmed evidence that they suffered a loss of use of 1/3 of the rental unit when mold was detected. The tenants seek compensation of \$5,459.82 based upon rent paid for the period August 20 to November 22, 2020. The tenants stated that the rental property consisted of a 3 bedroom and 2 full bathroom rental with a kitchen and living room on one side and a "suite", a 1 bedroom and 1 full bathroom with living room and kitchen. The tenants stated that the landlord was verbally notified of a leak in the "suite" in August 2019. The landlord was again requested to resolve the mold issue on July 25, 2020. The tenants stated that the landlord took no action to resolve it. The tenants stated that as a result they lost the use of the "suite" due to the mold and had abandoned that portion of the rental unit.

The tenants seek \$1,414.00 in estimated compensation for the loss of use of the backyard and deck for 10% of the monthly rent for the period August 20 to November 22, 2020. The tenants claim that the backyard can only be accessed by the deck and the deck was found to be extremely unsafe to use. The landlord was notified of the

issue and had refused to make any repairs. The tenants as a result lost the use of the deck and access to the backyard due to the unsafe condition of the deck.

The tenants seek \$1,120.00 in compensation equal to 100% of the monthly rent for the period November 23 to December 31, 2020. The tenants stated that the front entry door was not able to be opened properly which caused the a huge security risk in not being able to secure the rental property. The tenants also stated that the loss the use of the only remaining toilet in the rental property due to it backing up and leaking. The remaining two toilets were not able to be used due to the excessive mold and the tenants abandoning them for safety concerns. The landlord was notified of these issues on November 23, 2020, but the landlord did not respond until November 24, 2020. The tenants stated that as such they were forced to abandon the rental unit on November 23, 2020. The landlord's response on November 24, 2020 was that no repairs would be made.

The tenants seek \$500.00 as compensation for "stress, inconvenience of living without a home during a government stay home order". The tenants stated that this was an arbitrary amount not based on any calculations and only on the tenants' opinion. The tenants stated that with the loss of use of the only remaining bathroom, the tenants were forced to vacate the rental unit and live with friends until January 1, 2021 when a new rental agreement was made.

The tenants seek \$681.19 to recovery moving expense incurred to re-locate after abandoning the rental unit on November 23, 2020. The tenants re-argued that as they had lost the use of the only remaining bathroom on the rental property they had no choice but to leave. The tenants stated that they were a family of two adults and 2 children and living without a working toilet was an issue. The tenants stated that this move had occurred during a stay at home order by the government during the pandemic.

The tenants also seek \$4,200.00 for the return of the original \$2,100.00 security deposit and compensation of \$2,100.00 for failing to comply with the Act under section 38 (6). The tenants confirmed in their undisputed affirmed evidence that this tenancy ended on December 31, 2020 despite moving out on November 23, 2020. The landlord was emailed their request for return of the security deposit and provided with their forwarding address. The tenants stated that the emailed letter was later mailed to the landlord on January 18, 2021. The tenants submitted a picture of the envelope date stamped January 18, 2021 by Canada Post as confirmation of service. The tenants stated that at

no time was the landlord given consent to retain it nor are the tenants aware of an application filed by the landlord to retain it.

Analysis

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, I accept the undisputed affirmed evidence of the tenants and find on a balance of probabilities that the tenants have established a claim for the filed amount of \$15,508.13. The tenants provided undisputed affirmed evidence that they suffered the loss of use of a dishwasher for the period July 20 to November 22, 2020; the loss of use of 1/3 of the rental unit which consisted of 1 bedroom, 1 bathroom in the “suite” out of the entire rental which is a 3 bedroom and 3 bath unit for the period August 20 to November 22, 2020; the loss of use of the deck and backyard at 10% of the monthly rent due to the unsafe deck; for 100% of the rent for the period November 23 to December 31, 2020 in which the rental was abandoned due to the loss of use of the last working toilet in the rental unit; the arbitrary compensation request of \$500.00 for stress and inconvenience; and the moving expenses incurred due to the tenants’ abandoning the rental unit. I find that the tenant provided undisputed affirmed evidence that the landlord was aware of all these issues and chose to ignore the tenants’ request for repairs.

Section 38 of the *Act* requires the landlord to either return all of a tenant’s security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant’s provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the *Act* equivalent to the value of the security and/or pet damage deposit(s).

In this case, the tenants provided undisputed affirmed evidence that despite vacating the rental unit on November 23, 2020, the tenancy ended on December 31, 2020 and the landlord was provided with the tenants forwarding address in writing via email and

again in a letter mailed on January 18, 2021. The tenants provided undisputed affirmed evidence that the landlord was not given their consent to retain the security deposit nor has the tenants been served with notice that the landlord will apply for dispute of returning it. As such, the tenants are entitled to return of the \$2,100.00 security deposit.

I also find that as the landlord has failed to comply with section 38 (1) of the Act regarding the \$2,100.00 security deposit, the landlord is liable for an amount equal to the security deposit for failing to comply under section 38(6) of the Act.

The tenants are entitled to a monetary claim of \$15,408.13. The tenants are also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenants are granted a monetary order for \$15,508.13.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the 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: May 28, 2021

Residential Tenancy Branch