Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- an order for the landlord to return the security deposit, pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, under section 67; and
- an authorization to recover the filing fee for this application, under section 72.

This hearing was originally convened on July 19, 2021 and adjourned to August 17, 2021 due to time constraints. This decision should be read in conjunction with the interim decision dated July 23, 2021 (the interim decision).

Tenants JO and AC and landlords LF and JF, represented by advocate XJ, attended the hearing on July 19. Tenants JO and AC and counsel KP and landlord LF attended the hearing on August 27, 2021. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearings the parties affirmed they understand it is prohibited to record the hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000.”

I note that service of the application was addressed in the interim decision.

Preliminary Issue – Jurisdiction

The tenants' application was amended on July 19, 2021 to reduce claim four in the monetary order worksheet dated March 01, 2021 ('uhaul, moving expenses') to $116.00. On August 27, 2021 the tenants amended again their application to reduce claim number eight ('loss of business and pain and suffering') to $12,000.00. The tenants' eleven claims listed in the monetary order worksheet are for a total amount of $32,858.63.

Pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the tenants' application for a monetary claim to $32,858.63.

The notice of hearing indicates the tenants are claiming for an order for the return of double the security deposit in the amount of $1,100.00 and for an authorization to recover the $100.00 filing fee.

Thus, the tenants' application is for an order in the total amount of $33,958.63.

Issues to be Decided

Are the tenants entitled to:

1. an order for the landlord to return the security deposit?
2. a monetary order for compensation for damage or loss?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenants' obligation to present the evidence to substantiate the application.

Tenant JO affirmed the tenancy started on October 01, 2019 and ended on January 01, 2021. Monthly rent was $1,100.00, due on the first day of the month. At the outset of the tenancy the landlord collected and currently holds a security deposit in the amount of $550.00.

LF stated she is not the landlord, she did not rent the rental unit and that she did not receive the security deposit.

LF testified she found the tenancy agreement on August 25, 2021. A copy of the tenancy agreement was not submitted into evidence. During the hearing on July 19, 2021 LF said she was the landlord. I inquired LF why she changed her testimony and she affirmed again that she is not the landlord.

Tenant JO submitted into evidence an electronic payment confirmation indicating "E-TRANSFER LF: 550.00" in September 2019 and the text messages to LF on September 30, 2019:

> Landlord: Sorry, I may forgot to mention I prefer the rent by cash. If that ok for you?
> Tenant: That works
> Landlord: Thanks. I received the deposit $550.00. Thanks.

Tenant JO stated he provided his forwarding address in writing and did not authorize the landlord to retain the security deposit. The text message to LF dated January 01, 2021, with a reading receipt, was submitted into evidence:

> Tenant: Let this serve as you having received our new forwarding address which is: [redacted for privacy]. Thank you kindly.
> Landlord: Pls don't contact me at the holiday, thanks.

A copy of the condition inspection report (the report) was submitted into evidence. It indicates the landlord is LH. KP stated LF used the names LF and LH during the tenancy. LF testified she only used the name LF.

The tenants are claiming compensation for the registered mail cost to serve the application in the amount of $23.16 (claim 1 in the monetary order worksheet).The tenants are claiming compensation for the cost to obtain the rental unit property title served as evidence of this application in the amount of $35.72 (claim 2).

The tenants are claiming compensation for business losses in the amount of $1,029.00 (claim 3) and $1,460.00 (claim 6). KP said the tenants own a small business and paid $1,029.00 to join a networking group and $1,460 for a business service. The tenants got sick because of the mould in the rental unit and could not attend the group meetings and use the business service hired. The tenants submitted photographs into evidence showing mould in the rental unit. Tenant JO affirmed he got sick two weeks after the tenancy started and his health problems got worse during the tenancy. The tenants concluded the mould in the rental unit was responsible for their health problems when the weather got colder and asked the landlord to address the mould issue. The tenants

submitted five emails confirming medical appointments from June 19 to December 14, 2020.

The tenants are claiming compensation for moving expenses in the amount of $116.00 (claim 4). The tenants served the landlord a tenants' notice to end tenancy because of the mould and paid $116.00 to rent a moving truck.

The tenants are claiming compensation for cat related expenses in the amount of $500.00 (claim 5). Tenant JO stated he has a cat and the landlord did not authorize pets in the rental unit, so the tenants paid a friend $500.00 to care for their cat. The landlord authorized the tenants to bring their cat to the rental unit after they found rodents in the rental unit as a way to mitigate the rodents issue.

The tenants are claiming compensation for medication in the amount of $957.75 (claim 7). The tenants purchased medication to treat the health issues caused by the mould in the rental unit.

The tenants are claiming compensation for aggravated damage, pain and suffering and loss of business opportunities in the amount of $12,000.00 (claim 8). KP testified that the tenants suffered significant damage and losses due to the landlord's negligence to treat the mould in the rental unit.

The tenants are claiming compensation for rent increase in the amount of $140.00 (claim 9). The tenants said the landlord increased rent by $20.00 per month to clean the rental unit monthly. Tenant JO agreed to the rent increase and paid this amount for 7 months, but the rental unit was not cleaned.

The tenants are claiming compensation for rodents traps in the amount of $100.00 (claim 10). The tenants affirmed they purchased rodents traps often during the tenancy because the landlord encouraged them to do so a few weeks after the tenancy started. The tenants estimate they spent more than $100.00 buying rodents traps.

The tenants are claiming compensation for all the rent paid in the amount of $16,500 (claim 11). The tenants stated the rental unit did not meet the sanitary standards required by the Act.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It 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 who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Security Deposit

Based on the tenant's cohesive testimony, the electronic payment confirmation and the text messages dated September 30, 2019 and January 01, 2021, I find that JF is the landlord, she rented the unit to the tenants, collected and holds in trust the security deposit in the amount of $550.00. I note that in the July 19, 2021 hearing LF affirmed that she is the landlord and she did not explain why she changed her testimony in the August 27, 2021 hearing.

Section 38(1) of the Act requires the landlord to either return the tenant's deposit in full or file for dispute resolution for authorization to retain the deposits 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

Based on the tenant's cohesive testimony and the text message and reading receipt dated January 01, 2021, I find the tenants sufficiently served the landlord their forwarding address, per section 71(2)(b) of the Act. I find the landlord received the tenants' forwarding address in writing on January 01, 2021.

Pursuant to section 38(6) of the Act, the landlord must pay a monetary award equivalent to double the value of the deposit:

> (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.
> […]
> 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.

Residential Tenancy Branch Policy Guideline 17 is clear that the arbitrator will double the value of the security deposit when the landlord has not complied with the 15 day deadline; it states:

> B. 10. The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.
> […]
> 11. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

> […]
> 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;

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenants are entitled to a monetary award of $1,100.00 ($550.00 x 2). Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit.

Registered mail and title search (claims 1 and 2)
Obtaining and serving documents are actions related to the dispute process.

Section 72 of the Act only authorizes the recovery of the filing fee. Expenses related to obtaining and serving documents, such as the cost of registered mail and fees to obtain title documents, are not authorized under the Act to be reimbursed.

As such, I dismiss the tenants' claim for compensation for registered mail and title search expenses.

Moving expenses (claim 4)
The tenants served a notice to end tenancy and moved out voluntarily.

Based on the tenants' testimony, I find the tenants failed to prove, on a balance of probabilities, that they suffered a loss due to the landlord's non-compliance with the Act.

I dismiss the tenants' claim for compensation for moving expenses.

Cat expenses (claim 5)
The tenants entered a tenancy that did not allow pets.

Based on the tenants' testimony, I find the tenants failed to prove, on a balance of probabilities, that they suffered a loss due to the landlord's non-compliance with the Act.

I dismiss the tenants' claim for compensation for cat expenses.

Claims 3 and 6 to 11

Section 32 of the Act states that a landlord must provide and maintain the residential property in a state of decoration and repair that:

> (a)complies with the health, safety and housing standards required by law, and
> (b)having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Based on the tenants' testimony and the photographs submitted into evidence, I find the rental unit had mould contamination and rodents infestation, the tenants asked the landlord to address these issues two weeks after the tenancy started and suffered losses due to the landlord non-compliance with section 32 of the Act. I further find the tenants agreed to pay $20.00 extra per month for cleaning and the landlord did not clean the unit.

The tenants' testimony regarding when they concluded that the mould in the rental unit was responsible for their health problems was vague.

Residential Tenancy Branch Policy Guideline 05 explains the duty of the party claiming compensation to mitigate their loss:

> B. REASONABLE EFFORTS TO MINIMIZE LOSSES
> **A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided. In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss**. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:
> • remove and dry the possessions as soon as possible;
> **• promptly report the damage and leak to the landlord and request repairs to avoid further damage;**
> **• file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.**
> Compensation will not be awarded for damage or loss that could have been reasonably avoided.
> Partial mitigation

> Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. If in the above example the tenant reported the leak, the landlord failed to make the repairs and the tenant did not apply for dispute resolution soon after and more damage occurred, this could constitute partial mitigation. In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred.
>
> (emphasis added)

As the tenants noticed mould in the rental unit two weeks after the tenancy started and did not submit an application for dispute resolution asking for an order for the landlord to repair the unit, I find the tenants failed to mitigate their damages. The tenants did not explain why they paid $20.00 per month for 7 months and did not submit an application for dispute resolution asking for an order for the landlord to provide the cleaning services.

Thus, I dismiss the tenants' claims 3 and 6 to 11.

Filing fee and summary

Per section 72(1) of the Act, the tenants are entitled to recover the $100.00 filing fee.

In summary, the tenants are entitled to $1,200.00.

Conclusion

Pursuant to sections 38 and 72 of the Act, I grant the tenants a monetary order in the amount of $1,200.00. This order must be served on the landlord by the tenants. If the landlord fails to comply with this order, the tenants may file the order in the Provincial Court (Small Claims) to be 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: September 01, 2021

Residential Tenancy Branch