



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND MNSD FF
Tenant: MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on November 30, 2023 and February 27, 2024. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlord attended both hearings. However, the Tenants only attended the first hearing.

Tenants’ Application ending in file #6261

The Landlord confirmed receipt of the Tenant’s Notice of Dispute Resolution Proceeding for this application. The Tenants stated that they also sent their evidence as part of this package, but they did not have any further proof of service to corroborate or substantiate that they included their evidence with this package. Without further proof of service, I find the Tenants have failed to demonstrate that they sufficiently served the Landlord with their evidence. I find the evidence submitted by the Tenants is not admissible. That being said, I find the Notice of Dispute Resolution Proceeding was sufficiently served.

Tenants’ Application ending in file #8093

The Tenants stated that they sent their Notice of Dispute Resolution Proceeding and evidence for this application to the Landlords by registered mail. The Tenants did not have any mail tracking information and did not have any further proof of service. The Landlord denies getting this package or any of the evidence. Without further proof of service, I find the Tenants have failed to sufficiently demonstrate that they served the

Landlord with his Notice of Dispute Resolution Proceeding and evidence for this file number. I dismiss this application (which pertains to the security deposit), in full, without leave to reapply, and I find the Tenants evidence is not admissible, as they were unable to prove it was served to the Landlord.

This application by the Tenants is dismissed without leave because the matters will be addressed as part of the Landlord's application against that deposit, below.

Landlord's Application

One of the Tenants confirmed that she received the Landlord's Notice of Dispute Resolution Proceeding and evidence package. The other Tenant stated that he was okay to proceed with the Landlord's application and evidence even though he never received it. Since the Tenants were willing to proceed, I find they were sufficiently served for the purposes of this application made by the Landlord. The Tenant did not provide any evidence to show he served the Landlord with his evidence for this application, and the Landlord denied getting any evidence for any of the files from the Tenants. The Landlord stated he only received the first Notice of Dispute Resolution Proceeding package from the Tenants, with no evidence. I find there is insufficient evidence showing the Tenants served the Landlord with their evidence for the Landlord's application, and it will not be considered further.

All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters – Second hearing attendance

The Landlord and the Tenants both attended the first hearing and provided affirmed testimony. With respect to the second hearing, the Landlord attended, but the Tenants did not.

At the first hearing, the Landlord's application was discussed, and both parties had a chance to speak to that application. The second hearing was set to hear the Tenant's application for monetary compensation. However, the Tenants failed to attend the hearing to support and present their application. The phone line was monitored for 15

minutes and the Tenants did not attend the hearing but the Landlord was present and was ready to proceed. Since the Tenants/applicants did not attend the second hearing and did not present their own application, I dismiss it (file # ending in 6261) in full, without leave to reapply.

The Landlord's application will be addressed below.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for damage to the rental unit?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Background and Evidence

Both parties agree that:

- monthly rent was \$2,300.00 and was due on the first of the month.
- The tenants moved in on or around September 20, 2022, and moved out on or around March 20, 2023.
- The Landlord still holds a security deposit in the amount of \$1,150.00

A move-in and move-out inspection was completed and the Landlord provided a copy of the condition inspection report. The inspection report was not signed by either the Tenant or the Landlord at the start or the end of the tenancy, and only contained the Landlord's typed name, rather than a signature.

The Landlord filed his application against the deposit on May 14, 2023.

Landlord's Application

The Landlord provided a monetary worksheet which shows he is seeking the following item:

- 1) \$798.00 – Damaged bathtub and kitchen cabinet

The Landlord stated that the bathtub and the kitchen cabinet door was in good condition, with no issues, at the start of the tenancy. The Landlord pointed to the move-in condition inspection report to show that no damage was noted. The Landlord also pointed to photos he stated he took before the tenancy started.

The Landlord also pointed to the photos he took at the end of the tenancy, after the Tenants moved out, to show there was a damaged corner in the bathtub and also a broken kitchen cabinet door. The Landlord asserts that the Tenant broke the kitchen cabinet door after they had completed the move-out inspection out of spite on his way out.

A receipt was provided showing this expense was incurred by the Landlord.

The Tenant denied that he did any damage to either of these items, and asserts that the bathtub was damaged at the start of the tenancy, and he also asserts that the kitchen cabinet was in fine condition at the end of the tenancy when he moved out. He asserts it was the Landlord who caused the damage to the cabinet after he moved out.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

The applicant bears the burden of proof to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Landlord's Application

Next, I turn to the Landlord's claim for monetary compensation. I note the Landlord has provided a copy of the condition inspection report. However, I find it has not been completed in accordance with the regulations (20(1)) in that it lacks a signature of both parties. I do not find a typed name is equivalent to a signature. I do not find the Landlord sufficiently followed up with the Tenant after the move-in inspection to obtain a signature after it was filled out. Since the report has not been filled out in accordance with the regulations, and signed by both parties, I assign it little to no weight.

Despite the lack of condition inspection report, I have considered the testimony of the parties with respect to the damages noted. I have also considered the photos provided by the Landlord, taken both before and after the tenancy.

As noted above, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I note the Tenants deny doing any of the damages noted to the bathtub and the kitchen cabinet. However, they had no admissible documentary evidence to support this. In contrast, the Landlord had photos taken both before and after the tenancy, and he provided a compelling explanation regarding the damages and how he knew them to be caused by the Tenants. I find the Landlord has provided a more detailed and compelling explanation, and I find it more likely than not that the Tenants caused the damages noted. I award these items, \$798.00, as per the invoice provided.

Further, pursuant to section 72 of the Act, I award the Landlord \$100.00 for the recovery of the filing fee he paid.

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

The Landlord currently holds \$1,150.00 in security deposits. Since the Tenants were not present to explain how and when they served the Landlord with their forwarding address, I decline to award the return of double the deposits. However, I note the following section of Policy Guideline #17:

C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION

- 1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:*
- a landlord's application to retain all or part of the security deposit; or*
 - a tenant's application for the return of the deposit.*

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the

deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

In this case, I authorize the Landlord to retain \$898.00 from the deposit held to satisfy the amounts awarded above. I order the Landlord to return the remainder of the security deposit, plus interest, to the Tenants at the address for service they provided by way of this dispute resolution proceeding, or by email money transfer.

Interest is payable on the original deposit, but only for 2023 and 2024 in the amount of \$27.43. This brings the total deposit held to \$1,177.43. I order this be returned to the Tenants.

In summary, the Landlord may retain \$898.00 from the deposit of \$1,177.43. The Landlord must return \$279.43.

Conclusion

The Landlord's application is successful.

Both of the Tenant's application are dismissed, in full, without leave to reapply.

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$279.43**. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and 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: March 4, 2024

Residential Tenancy Branch