



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rio Lane Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, MND, MNDC, FF

Introduction

This hearing was reconvened from the original date of September 24, 2013 and pursuant to an Interim Decision of the same date which stated as follows.

The tenant filed on June 18, 2013 pursuant to the Residential Tenancy Act (the Act) for Orders as follows:

- 1. An Order for return of the security deposit - Section 38*
- 2. A monetary Order for loss - Section 67*

The landlord filed on September 11, 2013 for Orders as follows,

- 1. A monetary Order for damages – Section 67*
- 2. An Order to retain the security deposit - Section 38*
- 3. An Order to recover the filing fee for this application (\$50) - Section 72.*

Both parties attended both hearing dates. The parties provided testimony and were provided the opportunity to present their evidence orally and in written or documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and document evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are addressed in this Decision.

Preliminary matters

The Interim Decision advised the parties that the adjournment of proceedings, in part, was not an opportunity to amend or increase their claims. The tenant provided additional claims and document evidence in support of them, and the landlord stated

they had other claims as well but had complied with the Interim Decision. Any merits respecting the added portions to the tenant's application were not heard nor have been considered and are effectively dismissed, with liberty to reapply. If the landlord has additional claims it is equally available to them to make new application. The hearing advanced on the merits of the parties original claims.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

An abundance of document evidence has been received from the parties, most of which is in dispute. It must also be noted that there are identified discrepancies in some of the document evidence. None the less, the parties' *agreed testimony* is that the tenancy began in August 2010. At the outset of the tenancy the landlord collected a security deposit in the amount of \$550.00 which the landlord retains in trust. The tenant's testimony is that they determined to cease occupying the rental unit April 15, 2013 although they left some minor belongings in the rental unit until the legal end to the tenancy, in concert with a claimed notice to end tenancy to the landlord they were legally ending their tenancy May 31, 2013. Further in concert with the tenant's notice to end the tenancy the tenant paid the rent to the legal end of the tenancy. The tenant testified that they removed the balance of their minor effects and returned the keys on May 31, 2013. At the legal end of the tenancy the landlord did not conduct a move out inspection. The landlord testified they noticed that the glass of the exterior sliding glass door to the sundeck / balcony was broken when a new tenancy was started on June 01, 2013. The landlord provided into evidence a signed narrative from the new tenant stating they viewed the rental unit on May 28, 2013 at which time the sliding door was not broken and there remained a large number of pots and plants on the balcony side of the sliding door, and in their opinion it appeared that the plants were being tended.

The landlord claims that they did not notice breakage to the sliding door prior to June 01, 2013, therefore attributed the breakage to conduct of the tenant prior to May 31, 2013. The tenant disputes they broke the door. Their evidence is that they periodically visited the rental unit from April 15 to the end of the tenancy and specifically on May 31, 2013 to remove all of their remaining belongings, and the sliding door was not broken on that last date. The landlord is claiming the cost to replace the door and provided the invoice for a used sliding door and the ancillary costs in respect to its installation.

The parties agree that there was a water leak from the ceiling of the unit on April 08, 2013. The parties further agree that the landlord repaired the leak April 10, 2013. The tenant claims the repairs left debris and an opening in the ceiling covered with plastic without clear indication from the landlord as to further remedy. The landlord testified a short period of drying was appropriate. None the less, a City inspector attended the following day April 11, 2013, followed by a letter to the landlord 5 days later identifying the apparent leak-associated deficiencies as well as a flooring issue with the sundeck / balcony. The day following, on April 12, 2013, the tenant claims they created a Notice to End the tenancy effective May 31, 2013 and planned to vacate within days because of potential or perceived health issues associated with the water leak. The tenant testified that on April 15, 2013, they moved the majority of their belongings to their current accommodations which were available to them as incoming *resident managers* of another residential property. The tenant seeks compensation for a loss of quiet enjoyment and moving costs, testifying that the rental unit was not sufficiently or comfortably available to them following their move out from the unit, to the legal end of the tenancy. The tenant also claims that during the period of April 15 to May 31, 2013 the landlord did not properly notify them in order to access the rental unit to enact repairs. The landlord testified that they provided notices as required by the Act but that the tenant was not available to receive the notices as they had moved out and sometimes came upon notices after the fact or following repairs. The landlord testified that all repairs were completed days before May 31, 2013.

The tenant further seeks compensation of double the security deposit because the landlord did not return the deposit within the time established by Section 38 of the Act. The tenant claims that on April 24, 2013 they provided the landlord's office with their Notice to End, dated April 12, 2013, which included their forwarding address. The tenant submitted a copy of the Notice to End purportedly hand-delivered and received by an employee of the landlord, indicated by their signature and date stamp, which the landlord claims was not made available to them by their employee. The landlord claims that the envelope they received from the employee was, in fact, empty. The landlord claims that in the absence of a Notice to End they were unaware of how or where to contact the tenant.

Analysis

On the preponderance of the relevant document evidence and relevant testimony of the parties, I find as follows:

Tenant's claim

I accept the parties' evidence there was a leak in the rental unit. I find the landlord

attended to its remedy and as a result of issues associated with the repair, such as debris, dust, moisture, and concerns of possible contaminants the tenant determined to no longer occupy the unit and several days after the repair moved the bulk of their belongings, but maintained minor belongings in the unit until the legal end to the tenancy – May 31, 2013. I find the involvement of the City inspector simply confirmed what the parties already knew and served to notify the landlord to correct the apparent deficiencies without articulating any claimed health concerns. It was available to the tenant to leave the rental unit temporarily; however, they instead effectively chose to move and gave the landlord Notice to End. I find the tenant has not provided sufficient evidence establishing cause to permanently vacate the rental unit because of repairs. As of April 15, 2013 the tenant continued paying the rent to its legal end but did not occupy the unit or endure ongoing conditions contributing to a loss of quiet enjoyment. Therefore, **I dismiss** the tenant's claim of compensation for loss of quiet enjoyment and the associated claim for moving costs. None the less, I accept the tenant suffered a loss as a reduction in the value of the tenancy and loss of use of the rental unit due to the water leak, for which the tenant is owed some compensation. As a result I grant the tenant the set amount of **\$250.00**.

I find that I prefer the tenant's evidence indicating they provided the landlord with a Notice to End on April 24, 2013, dated April 12, 2013, which included the tenant's forwarding address. As a result:

Section 38(1) of the Act provides as follows (**emphasis for ease**)

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

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and the

tenancy legally ending on May 31, 2013 and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$550.00 and was obligated under Section 38 to return this amount. The amount which is doubled is the original amount of the deposit, with no applicable interest. As a result I find the tenant has established an entitlement claim for **\$1100.00**.

Landlord's claim

If a claim is made by the landlord for damages to property, the normal measure of damage is the cost of repairs or replacement. The onus is on the tenant to show that the expenditure is unreasonable, and the landlord is required to mitigate their costs accordingly. It must further be emphasized that the landlord must provide sufficient evidence that the costs for which they claim compensation are for conditions beyond reasonable wear and tear, and are the result of the conduct or neglect of the tenant. In this matter the tenant denies responsibility for damage. On preponderance of the evidence I accept the landlord's evidence that on or about May 28, 2013 the rental unit remained mostly vacant except for a quantum of pots and plants on the balcony of the unit, and that the sliding glass door was unbroken. I further accept the tenant's evidence that on May 31, 2013 they were in the rental unit removing the balance of all their items and returning the keys. I prefer the landlord's evidence that the sliding glass door was unbroken on May 28, 2013 and that after the tenant's activities on May 31, 2013, the sliding door was found broken. On balance of probabilities, I accept the landlord's version of events that the tenant's final moving activities on May 31, 2013 somehow resulted in breakage to the sliding glass door.

I find that the landlord acquired a used sliding glass door for \$300.00 thus mitigating their claim, and I find the associated costs to replace the door are not extravagant. As a result, I grant the landlord the sum of \$825.00 for the broken glass door. As the landlord was successful in their claim they are further entitled to recover their filing fee of \$50.00 for a total award of **\$875.00**.

Therefore, *Calculation for Monetary Order:*

Tenant's total award	\$1350.00
Landlord's award	-\$875.00
Total Monetary Award for tenant	\$475.00

Conclusion

The parties' respective applications, in part, have been granted.

I grant the tenant a Monetary Order under section 67 for the amount of **\$475.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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: November 12, 2013

Residential Tenancy Branch

