Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNR, MNDC, MNSD, OLC, ERP, FF, SS, O

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- 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 cost of emergency repairs to the rental unit pursuant to section 33;
- authorization to obtain a return of her pet damage and security deposits (the deposits) pursuant to section 38;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlords to make emergency repairs to the rental unit pursuant to section 33;
- authorization to serve documents or evidence in a different way than required by the *Act* pursuant to section 71;
- authorization to recover her filing fee for this application from the landlords pursuant to section 72; and
- other unspecified remedies, which appear to have included an order requiring the landlord(s) to pay the tenant's witness for work he performed for Landlord JL (the landlord).

The landlords did not attend this hearing, although I waited until 2:15 p.m. in order to enable them to connect with this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. Although the tenant's witness (the witness) claimed at the commencement of this hearing that he was a co-applicant in this matter, I noted that the application was filed solely by the tenant. As such, I did not allow the witness to attend or participate in this hearing until such time as the tenant had

completed giving her sworn testimony. Once the tenant was finished presenting her evidence, I reconnected the witness into this teleconference hearing to enable him to present his sworn testimony.

At the commencement of the hearing, the tenant said that she was not certain whether some of the items listed in her application were correctly identified. After some discussion, it became apparent that the tenant was not intending to cancel a 1 Month Notice issued by the landlords as no such notice had ever been given. She also confirmed that there was no present need for an order requiring the landlords to undertake emergency repairs, as this tenancy ended by February 1, 2013, when the tenant vacated the rental unit. The tenant withdrew her applications for the following:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order to the landlords to make emergency repairs to the rental unit pursuant to section 33;

These portions of the tenant's application are withdrawn.

Issues(s) to be Decided

Are all three respondents landlords for the purpose of the *Act*? Is the tenant entitled to an order allowing the tenant to serve documents including her dispute resolution hearing package substitutionally to the landlords? Has the tenant served the landlords with her dispute resolution hearing package? Is the tenant entitled to a monetary award for the return of her deposits? Is the tenant entitled to a monetary award equivalent to the amount of her deposits as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to a monetary award for losses arising out of this tenancy? Is the tenant entitled to recover the filing fee for her application from the landlords? Should any other orders be issued arising out of this tenancy?

Background and Evidence

The tenant moved into a basement suite in this rental property on January 4, 2013. Although she had spoken with the landlord a number of times, she never received a signed copy of the written Residential Tenancy Agreement (the Agreement) the landlord asked her to prepare to outline the terms of this tenancy. The tenant testified that the landlord requested that she complete the terms of their Agreement on a standard Agreement form prepared by the Residential Tenancy Branch (the RTB), sign and date it, and send it to him by email. The tenant entered into written evidence a copy of the Agreement she signed and forwarded to the landlord for his signing. According to the tenant's Agreement, monthly rent for this periodic tenancy was set at $1,000.00, payable in advance on the first of each month. The tenant supplied copies of her

payments of her first month's rent, her $450.00 security deposit paid on January 2, 2013, and her $250.00 pet damage deposit also paid on January 2, 2013. All of these payments were deposited directly into the landlord's bank account. Although the tenant obtained keys to the rental unit from the upstairs tenant and did take occupancy of the basement suite on January 4, 2013, the tenant testified that the landlord never sent her a copy of the completed Agreement, signed by the landlord. She also testified that the landlord refused to give her his mailing address for the purposes of this tenancy, another requirement of the *Act*.

When the tenant applied for dispute resolution earlier this year, she sent her application for dispute resolution to the landlord by registered mail at the dispute address, the only address she had for the landlord. Her hearing package was returned to her by Canada Post as unclaimed. Due to difficulties the tenant encountered with her access to the telephone system, she was unable to attend the original hearing of her previous application. Her application was dismissed with leave to reapply.

During the intervening period, the tenant gave sworn testimony that both she and her witness had sporadic communication with the landlord by email. Since the landlord does not live in the same community as the dispute address, the tenant advised that the landlord told her to make any enquiries regarding her tenancy with his sister, named as Respondent TALA (the female respondent) in the tenant's current application, or his brother-in-law, named as Respondent GJA (the male respondent) in the tenant's current application.

As the tenant was uncertain as to whether the landlord continued to own the rental property, she undertook a title search and discovered that the landlord and the two Respondents are listed as owners of the rental property. After some communication with the landlord by email and with the other two respondents, the tenant sent copies of her current application for dispute resolution to all three respondents at the mailing address for the male respondent, the only address she had for the three respondents.

The tenant's application for a monetary award of $1,903.48 included the following:

Item	**Amount**
Return of Security Deposit	$450.00
Return of Pet Damage Deposit	250.00
Recovery of Title Search Fee	35.00
Photographs/Registered Mailing Costs	65.96
Repairs Conducted by Witness	603.59

Invoice from Tenant for Work Conducted or Items Purchased by Tenant	388.61
Registered Mailing Costs	6.32
Recovery of Filing Fees for this Hearing and Previous Hearing	100.00
Total of Above Items	**$1,899.48**

At the hearing, the tenant testified that she has never given the landlords her written authorization to retain her deposits nor has she agreed to waive her right to obtain a return of double her deposits due to the landlords' failure to return her deposits in accordance with the time frames established under the *Act*.

Analysis – Are all Three Respondents Landlords for the purposes of the Act?
Section 1 of the *Act* defines a landlord as follows:

> ***"landlord"****, in relation to a rental unit, includes any of the following:*
>
> *(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,*
>
> *(i) permits occupation of the rental unit under a tenancy agreement, or*
>
> *(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;*

The tenant has supplied copies of a search of Land Title Office records which show that the landlord holds a 99% interest in this rental property and the other two respondents hold 1 % interests in this property. Based on this undisputed evidence, I find that all three respondents are correctly identified by the tenant as owners of the rental unit and hence '"landlords" for the purposes of the *Act* and as defined above. As such, I find that the tenant has correctly identified all three landlords as respondents in her application for dispute resolution.

Analysis- Substitutional Service Application
Section 71 of the *Act* allows a party to seek an order that documents not otherwise served in accordance with the provisions of sections 88 or 89 of the *Act* may be considered served for the purposes of the *Act*. In considering applications for substituted service, I must taken into consideration *RTB Policy Guideline #12*, which deals with the service of documents. With respect to orders for substitutional service, Guideline 12 states:

An application for substituted service may be made at the time of filing the application or at a time after filing. The party applying for substituted service must be able to demonstrate two things:

- *that the party to be served cannot be served by any of the methods permitted under the Legislation, and*
- *that the substituted service is likely to result in the party being served having actual knowledge of what is being served...*

The tenant has served her documents, including her dispute resolution hearing package, which includes the notice of this teleconference hearing, to all three respondents by addressing them to the business address of the male and female respondent. She provided written evidence and sworn testimony that the landlord, the person she was dealing with during her tenancy, did not provide her with his mailing address. After her tenancy ended and she attempted to secure a return of her deposits and payments for losses she claimed to have incurred as a result of this tenancy, she said that she was directed to the landlord's sister by the landlord. She provided copies of a series of emails exchanged with the landlord and with the landlord's brother-in-law. These emails revealed that the landlord's brother-in-law (the male respondent) has been taking an active part in attempting to resolve issues in dispute arising out of this tenancy.

I will first consider the tenant's request for a substituted service regarding the landlord. I find that from the commencement of this tenancy, the landlord has contravened the requirement in the *Act* that a landlord provide a tenant with a mailing address where the landlord could be contacted. There is also undisputed evidence that the landlord did not provide the tenant with a signed or dated copy of the completed Agreement, and even offloaded responsibility for preparing the Agreement to the tenant. Without any other mailing address where she could contact the landlord after she ended her tenancy, the tenant sent a copy of her dispute resolution package for her previous application to the landlord by registered mail to the dispute address. Since this package was returned to her as unclaimed and since the landlord has not provided the tenant with any other address where he could be served with documents pertaining to this tenancy, I find that the tenant has met the first of the two tests outlined above as set out in *RTB Guideline 12*. I find that the landlord could not be served by any of the methods established under section 89(1) of the *Act*.

I have also considered whether the tenant has demonstrated to the extent required that the landlord is likely to have been served with her hearing package and written evidence

by sending these documents to him by registered mail at the business address for the other two respondents. Based on the copies of emails exchanged with the other two respondents in this matter, I find that both of these respondents were aware of the tenant's application for dispute resolution and, in fact, the male respondent was actively attempting to reach a resolution of the issues in dispute. In addition, both the tenant and her witness gave sworn testimony that they spoke with the landlord on September 25, 2013 at 3:44 p.m. and that he was clearly aware of their application to recover funds owed to them by the landlord and the scheduled teleconference hearing. In that telephone conversation, the tenant and her witness gave sworn testimony that the landlord had committed to resolve the tenant's concerns and send payments the following day for repairs, cleaning, and the return of the tenant's deposits. Based on this undisputed testimony and the written evidence provided, I am satisfied that the tenant has demonstrated that her service of documents to the landlord at the business address of the other two respondents has in fact resulted in the landlord having knowledge of the hearing and what was being served to him in this manner. Under these circumstances and in accordance with the powers delegated to me under sections 71 and 90 of the *Act*, I find that the landlord has been deemed substitutionally served with notice of this hearing, the tenant's dispute resolution hearing package and the tenant's written evidence package on the fifth day after their registered mailing by the tenant.

I have also considered the tenant's application for a similar order of substitutional service to the other two respondents in this application, the landlord's sister and brother-in-law. During the course of her tenancy, the tenant understood that the property was owned solely by the landlord. She testified that her communication with the landlord's sister and brother-in-law did not begin until after she ended her tenancy and at the urging of the landlord. Although the landlord's sister and his brother-in-law over time started performing some of the duties of an agent acting on behalf of the landlord, the tenancy had clearly ended by the time of their involvement in this matter. While the other two respondents did not agree to accept the tenant's documents at the business address the tenant selected, there is no evidence that they provided the tenant with a different address where they could be served documents relating to this tenancy. As they did not consider themselves landlords for the purposes of this tenancy, this may have explained their actions, and why they directed the tenant back to the landlord at various stages. However, as noted above, I am satisfied that their ownership stake in this property qualified them as landlords as defined under the *Act*. As such, and certainly after they assumed a role in interacting with the tenant with respect to her requests for a return of her deposits and other funds she maintained were owed to her, the other two respondents were required to provide the tenant with a mailing address where they could be contacted. As they did not do so, I find that the tenant had no

address where she could serve the other two respondents with her documents pursuant to sections 88 and 89(1) of the *Act*. I also find that the tenant's sworn testimony supported by convincing written evidence of email exchanges leaves little doubt that the tenant's service of her documents to the other two respondents (i.e., the landlord's sister and brother-in-law) alerted them to her application and to the issues she was pursuing through her application for dispute resolution. In this regard, I find that emails from the male respondent clearly demonstrated that he was fully aware of the matter that was scheduled for this dispute resolution hearing. For these reasons, I find that the other two respondents have been substitutionally served with notice of this hearing, the tenant's dispute resolution hearing package and the tenant's written evidence package on the fifth day after their registered mailing by the tenant. I make these determinations pursuant to section 71 and 90 of the *Act*.

Analysis – Return of Tenant's Deposits

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, to either return the deposit 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 return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

The following provisions of *RTB Policy Guideline 17* are also of relevance to the consideration of this application:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION
3. 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;…*
- *whether or not the landlord may have a valid monetary claim...*

In this case, the tenant gave undisputed sworn testimony that she has provided her forwarding address to the landlords a number of times and ended her tenancy on February 1, 2013. She also entered into written evidence copies of her provision of her forwarding address to the landlord(s). I find that the landlord has not returned the deposits within 15 days of receipt of the tenant's forwarding address. The landlords did not file an application for dispute resolution within 15 days of receiving the tenant's forwarding address, nor did they obtain the tenant's written permission to withhold these funds. As noted in Guideline 17, the validity of any monetary claim that the landlords may have against the tenant has no bearing on the landlords' obligation to return the entire security deposit to the tenant in accordance with section 38 of the *Act*. The tenant is therefore entitled to a monetary order amounting to double the deposit with interest calculated on the original amount only.

As the tenant has been successful in her application, I allow her to recover her $50.00 filing fee for this application from the landlords. I dismiss her application to recover her filing fee for the previous application as the landlords are in no way responsible for her need to file a second application for dispute resolution.

Analysis – Tenant's Claims for Losses Arising out of this Tenancy

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.

There are three separate major elements to the tenant's application for a monetary award for losses arising out of this tenancy.

The tenant maintained that the landlord recognized that the rental unit needed cleaning when the tenant first took occupancy of the rental unit and raised objections to the condition of the rental unit. Rather than hire a professional cleaner to make the rental unit habitable for the tenant, the tenant said that the landlord agreed to pay her to conduct this cleaning at a rate of $20.00 per hour. The tenant supplied copies of emails exchanged with the landlord as well as a January 22, 2013 invoice for $100.00 for 5 hours of cleaning she subsequently submitted to the landlord. After this tenancy ended and the male respondent became involved in trying to negotiate a resolution of this

matter, the tenant resubmitted this portion of her request, which was identified by the male respondent as “approved invoiced expenses.”

Based on a balance of probabilities, I find that the tenant has submitted sufficient oral and written evidence to support her claim for $100.00 in cleaning that she performed for the landlord after he gave his authorization to conduct this task for him at the beginning of this tenancy. I issue a monetary award in the tenant’s favour in the amount of $100.00 for this item.

A second category of expenses claimed by the tenant was the remainder of her $388.61 claim outlined her January 22, 2013 invoice. These items included the following:

Item	**Amount**
Garment Rack	$12.93
Shower Curtain	14.97
Shower Curtain Liner	2.43
Plastic Curtain Hooks	2.43
Exterior Sensor Light	12.34
Two Towel Stands	59.94
Two Mats for Doorway	9.76
Kitchen Light Unit	107.17
HST on Above Items	26.64
Shopping Time (2 Hours @ $20.00 = $40.000)	40.00
Total of Above Items	**$288.61**

I have given careful consideration to the tenant’s sworn testimony that she received the landlord’s authorization to purchase the above items for this rental unit and for her time to purchase these items. While I have no doubt that she purchased these items, I do not find that the confusing and unclear set of emails she submitted demonstrated to the extent necessary that the landlord agreed to absorb the costs for these purchases or that he authorized her to purchase these items on his behalf. In this regard, I also note that at one point the tenant described herself as having obtained the landlord’s permission to purchase the above items for the rental unit. At other times, she claimed that she was “employed” by the landlord to make these purchases. As noted at the hearing, the *Act* does not cover disputes between employees and employers.

Section 67 of the *Act* allows me to issue a monetary award to a tenant who pays for emergency repairs to a rental unit. However, section 33 of the *Act* provides very specific guidance as to the type of repairs that could be defined as “emergency repairs”

and for which a tenant can claim, under certain specific circumstances, for recovery of his or her emergency repair costs. I find that the items purchased by the tenant as listed above do not qualify as emergency repairs under section 33 of the *Act*. I also find that the tenant has not demonstrated that she is entitled to recover any of the $288.61 in costs outlined above from the landlords. I dismiss the tenant's claim for the above items without leave to reapply.

The final major type of losses the tenant was claiming was for $603.59 in repairs conducted by her witness, her uncle, who undertook repairs to the rental unit during her short tenancy. At the hearing, the witness testified that he understood at the time that he was working directly for the landlord. The tenant submitted written evidence of a request from the landlord to examine the qualifications of the witness before he agreed to hire the witness to conduct the required repairs. The witness confirmed that he has submitted a number of invoices directly to the landlord, with copies only to the tenant. The witness testified that he spoke with the landlord on September 25 at which time the landlord committed to make arrangements to pay him for the $603.59 in work the witness had performed on the rental property.

As the witness has not been paid by the landlord for work the witness conducted for the landlord, the tenant has requested compensation from the landlords under the *Act*, so that she can pay the witness, her uncle for this work. I can understand why the tenant would feel responsible for involving her uncle in this matter and would take measures to try to help him obtain payment from her former landlord. However, I am tasked with determining whether the tenant has experienced losses for which **she** is entitled to a monetary award from the landlord(s). Both the tenant and the witness testified that the tenant has not paid the witness any portion of the $603.59 she is claiming for this item from the landlords. As discussed at the hearing, I find that this is a matter between the landlord(s) and the witness. The tenant has not demonstrated any eligibility for recovery of losses from the landlords arising out of the work performed by the witness at this rental property. I dismiss the tenant's claim for the recovery of $603.59 she claimed is owed by the landlord to the witness without leave to reapply. I do so as there is no evidence that these are her losses. Rather, these are losses incurred by the witness, which are not eligible for recovery through the *Residential Tenancy Act*.

I also dismiss without leave to reapply the tenant's application for items such as her photography and registered mailing costs and her title search costs as these are costs that an applicant for dispute resolution must absorb as part of the hearing process.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant to obtain a return of her deposits, a monetary award equivalent to the amount of her deposits, a monetary award for losses arising out of this tenancy and the recovery of her filing fee:

Item	**Amount**
Return of Pet Damage & Security Deposits ($450.00 + $250.00= $700.00)	$700.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the *Act*	700.00
Tenant's Recovery of Cleaning Costs (5 Hours @ 20.00 = $100.00)	100.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	**$1,550.00**

The tenant is provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The tenant's applications for the cancellation of a 1 Month Notice and for emergency repairs are withdrawn. All other portions of the tenant's application are dismissed without leave to reapply.

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: October 18, 2013

Residential Tenancy Branch