



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF, O

Introduction

This is an application by the tenants for a monetary order for return of double the security deposit, for a monetary order for money owed or compensation for damage or loss under the Act and to recover the filing fee for the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary and procedural Issue

In this case, the tenants filed their application for dispute resolution on May 13, 2013, all available evidence, such documents and photographs were to be filed with their application to the extent possible.

On August 7, 2013, the tenants their filed evidence with the Residential Tenancy Branch and that evidence were sent to the landlord and receive on August 8, 2013.

Under the Residential Tenancy Branch Rules of Procedure the tenants were required to provide all evidence "at least" five days in advance of the dispute resolution hearing. When calculating the time expressed as "at least" a number of days, the first and last day must be excluded. Weekend and holidays are not included in the calculation of days.

In this case, the tenants did not comply with the Rules of Procedure and as a result, the tenants' evidence was excluded as it would be prejudicial to the landlord.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Are the tenants entitled to a monetary order for return of double the security deposit?

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the Act?

Background and Evidence

The tenancy began in October 2008. Rent in the amount of \$650.00.00 was payable on the first of each month. A security deposit of \$325.00 was paid by the tenants. The tenants vacated the premises on May 31, 2013. The tenant provided the landlord with a written notice of the forwarding address to return the security deposit to.

The parties agreed that neither incoming nor outgoing condition inspection reports were completed in accordance with the Act.

The tenants claim as follows:

a.	Double security deposit	
b.	Right to quiet enjoyment	
c.	Cost of rented mail box	
d.	Cost of freezer and contents	
e.	Stress, damages arising from.	
f.	Filing fee	
	approx claimed	\$2,000.00

Double security deposit

The tenants testified that they provided the landlord with their forwarding address, when they gave him notice to end the tenancy. The tenants stated that the landlord did return a portion of their security deposit in the amount of \$175.00. The tenants stated the landlord retain \$150.00, which they were not authorized to do so.

The landlord testified that he retain the amount of \$150.00, for the cost of hydro from the tenants security deposit.

Right to quiet enjoyment

The tenants testified that there was problem with rats and cats entering a hole in the rental unit. The tenants stated that they had spoken with the landlord, but they have never provided the landlord with a formal written complaint. The tenants stated they did not take any further action to resolve the issue with the landlord.

The tenants testified on May 5, 2013, the parties had agreed to meet at 8:30am at the rental unit so the landlord could view the unit. The tenants stated that the landlord did not attend until 6:30 pm that evening and they refused him entry. The tenants stated the landlord was very upset and left. The tenants stated the landlord returned at approximately 8:10 pm with two pieces of papers which the landlord claimed he had the right to enter, however they did not granted access to the rental unit.

Cost of rented mailbox

The tenants testified that when they rented the unit in 2008, that they were told that they were required to make alternate arrangements regarding their mail as a mailbox would not be provided with their tenancy, as the mailbox that was provide for that address was being used by another rental unit on the property. The tenants stated they now feel that they should have been allowed to use the free community mailbox.

Cost of freezer and contents

The tenants testified that in July 2012, they went away for five days and when they returned they found that the meat in their freezer has spoiled due to the electrical circuit breaker tripping. The tenants stated that their freezer was kept in a little hut on the property that they were allowed to use and they discovered that the electrical circuit breaker for this hut was in the main panel of the main house. The tenants stated that as soon as they notified the landlord that he attended and had the power to the electrical circuit breaker on. The tenants seek to recover the cost of the loss of food.

The landlord testified that he cannot be held responsible for a problem that he was not aware of. The landlord stated the tenants' daughter had been living in the hut for two years and there was never any issue with the electrical circuit breaker. The landlord stated that the tenants should be claiming any loss with their insurance company.

Stress, damages arising from.

The tenants have not provided any details of this dispute in their application.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the tenants have the burden of proof to prove their claim.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Double security deposit

There was no evidence to show that the tenants had agreed, in writing, that the landlord could retain any portion of the security deposit.

There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenants, to retain a portion of the security deposit, plus interest.

By failing to perform incoming or outgoing condition inspection reports the landlord has extinguished their right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the Act.

The landlord has breached section 38 of the Act. The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlord has breached the Act, and is not entitled to retain any portion of the security deposit.

Section 38(6) of the Act states, that if a landlord does not comply with section 38 the landlord must pay the tenant double the amount of the security deposit, the legislation does not provide any flexibility on this issue.

Having made the above finding, I must order, pursuant to section 38 and 67 of the Act, that the landlord pay the tenant the sum of **\$651.23**, comprised of double security deposit (\$325.00) and the interest (\$1.23) on the original amount. However, that amount is reduced by the partial amount returned to the tenants (\$175.00). Therefore, I find the tenants are entitled to the return of **\$476.23**.

Right to quiet enjoyment

Every tenancy agreement contains an implied covenant of quiet enjoyment. At common law, the covenant of quiet enjoyment promises the tenants shall enjoy the possession and use of the premises in peace without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyments protects the tenants' right to freedom from serious interferences with his or her tenancy. Such interference might include entering the rental premises frequently, without notice or permission or the inaction by the landlord which permits the premises to fall into disrepair, so the tenant cannot safely continue to live there.

The evidence of the tenants was that they had rats and cats entering a hole in their rental unit during the tenancy. The evidence was that they had verbally informed the landlord, however, they never put that complaint in writing and took no further action.

I find the tenants have failed to prove that they took reasonable step to mitigate any loss or damage as it would have been reasonable that if the problem was seriously interfering with their rights to quiet enjoyment during their tenancy of approximately five years that it would have been reasonable for the tenants to notify the landlord in writing that a problem existed.

Further, if the landlord had failed to take action to resolve the complaint within a reasonable amount of time, then it would have been reasonable for the tenants to apply for dispute resolution and have an arbitrator order the landlord to rectify the problem if one was found to exist. I find that the tenants have failed to prove that a problem existed which affected their rights to quiet enjoyment. I find the tenants have failed to prove a violation of the Act by the landlord.

On May 5, 2013, the parties agreed that the landlord was to attend the rental unit at 8:30 am, the landlord did not appear until 6:30 pm that evening and was denied entry and left the rental unit upset. The landlord returned at 8:10 pm with two pieces of paper to show the tenants that he had the right to enter. However, the landlord was not granted access. While the landlord was late for the scheduled appointment, I find the tenants have failed to prove that the landlord has violated their rights of quiet enjoyment.

In light of the above, I find the tenants have failed to prove that the landlord has breached their rights to quiet enjoyment. Therefore, this portion of the tenants' claim is dismissed without leave to reapply.

Cost of rented mailbox

The evidence of the tenants was that the landlord informed them at the start of the tenancy in 2008, that they would not be provided a mailbox and that they would have to seek an alternative solution. The evidence of the tenants was they are now seeking to recover the cost of having to pay for a mailbox. I find the tenants have failed to prove a violation of the Act by the landlord, as the tenants knew a mailbox was not provided as a term of their tenancy agreement. Therefore, this portion of the tenants' claim is dismissed without leave to reapply.

Stress, damages arising from.

The tenants write in their application that they seek compensation for “Stress damages arising from.”

[Reproduced as written]

Section 59 (2) of the Act states an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

In this case, the tenants have not provided any particulars on the issue of stress, and damages in their application. I find it would have been reasonable for the tenant to provide details when claiming compensation to give the landlord a fair opportunity to prepare for the hearing. As a result, I find the tenants have failed to comply with section 59 of the Act. Therefore, I dismiss this portion of the tenants’ claim without leave to reapply.

I find that the tenants have established a total monetary claim of **\$526.23** comprised of the above described amount and the \$50.00 fee paid for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenants are granted a monetary in the above amount.

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: August 15, 2013

Residential Tenancy Branch

