



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, MNDC, OLC

Introduction

This hearing dealt with applications from both the landlords and the female tenant under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- authorization to retain all or a portion of the tenants' pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The female tenant named the female landlord as the sole Respondent in her application for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants confirmed that they received the landlords' 2 Month Notice to End Tenancy for Landlord's Use (the 2 Month Notice) posted on their door by the landlords on July 16, 2013. I am satisfied that the landlords served this Notice requiring the tenants to vacate the rental unit by September 30, 2013, in accordance with the *Act*.

The female tenant testified that on September 5, 2013, the tenants posted a copy of their notice to end this tenancy early on the landlords' door. In that notice, the tenants advised that they were planning to end their tenancy by September 15, 2013. Although the female landlord confirmed that the tenants had sent her text messages indicating that they were planning to leave their tenancy before the September 30, 2013 date identified in the landlords' 2 Month Notice, the landlords testified that they received no written notice from the tenants to confirm their plans to end this tenancy early. They

said that they returned to the rental property on September 15, 2013, to discover that the tenants had left their keys on a table, left their forwarding address and vacated the rental unit. Although the male tenant testified that the tenants took a photograph of their notice to end tenancy early posted on the landlords' door, the tenants did not submit this photograph or any other written or photographic evidence to the Residential Tenancy Branch (the RTB) for this hearing.

The tenants confirmed that they both received copies of the landlords' dispute resolution hearing package sent by the landlords by registered mail on October 3, 2013. The female landlord confirmed that she received a copy of the female tenant's dispute resolution hearing package sent by registered mail on October 6, 2013. I am satisfied that the parties served one another with copies of their hearing packages in accordance with the *Act*.

The female landlord testified that on December 31, 2013, the landlords sent a copy of their written evidence package to both tenants by Canada Post's ExpressPost service, which required a signature for delivery. She provided the Canada Post Tracking Numbers to confirm these mailings and testified that Canada Post's Online Tracking System indicated that these items were successfully delivered to the post office box listed as the tenants' mailing address on January 3, 2014. Although the tenants testified that they have not received the landlords' written evidence package, the male tenant said that this is a shared business mailing address. The female tenant testified that the tenants have not checked their mail since the beginning of January. In accordance with sections 88 and 90 of the *Act*, I find that the landlords' written evidence packages are deemed to have been served to the tenants on January 6, 2014, the fifth business day after their registered mailing.

The tenants confirmed that they have received copies of most of the documents included in the landlords' written evidence package. The only substantive documents they did not have were copies of the landlords' \$34.71 receipt for the rental of a carpet shampoo machine and a \$63.00 receipt for a second garage remote opener and the recalibration of the garage opening system to accommodate the new opener.

Issues(s) to be Decided

Are either of the parties entitled to monetary awards for damages or losses arising out of this tenancy? Which of the parties are entitled to the tenants' deposits? Are the landlords entitled to recover their filing fee for their application from the tenants? Should any other orders be issued with respect to this tenancy?

Background and Evidence

This periodic tenancy began on November 1, 2012. Monthly rent was set at \$1,000.00, payable in advance on the first of each month. The landlords still hold the tenants' \$500.00 security deposit paid on October 28, 2012, and \$250.00 pet damage deposit paid on November 15, 2012.

The parties agreed that they participated in joint move-in and joint move-out condition inspections on November 1, 2012 and September 30, 2013. The landlords entered into written evidence a copy of the reports they issued and provided to the tenants following those two inspections. The joint move-out condition inspection report included a statement signed by both the female landlord and the female tenant in which the female tenant agreed to allow the landlord(s) to keep \$100.00 from their security deposit for cleaning. There were also notations that the furnace intake vents were dirty and that the tenant needed to provide a receipt for carpet cleaning that they had undertaken at the end of this tenancy.

The landlords' application for a monetary award of \$287.73 included requests for reimbursement of cleaning, carpet cleaning, and the replacement of a second garage door opener and the recalibration of the garage opener mechanism to accommodate the replacement garage door opener. In addition to the \$97.71 in receipts submitted by the landlords, the male landlord said that the requested monetary award was to provide them with four hours of labour to conduct the cleaning.

The female tenant's application for a monetary award of \$1,216.67 included a request to return all of their deposits plus the recovery of rent for the final 14 days of September 2013.

Analysis – Tenant's Application to Recover Rent paid for last 14 days of September 2013

Section 51 of the *Act* reads in part as follows:

51 (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

Section 50(1) of the *Act* allows a tenant who receives a notice to end tenancy for landlord's use of the property (pursuant to section 49 of the *Act*) under these circumstances to end the tenancy early by "giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice." Section 52 of the *Act* requires that to be effective "a notice to end tenancy must be in writing.'

In this case, although there was some communication by text messages between the parties to alert the landlords that the tenants were planning to end their tenancy early, the landlords testified that they did not receive the written notice to end tenancy the tenants maintained they posted on the landlords' door on September 5, 2013. Section 88(g) of the *Act* would allow service of a notice to end tenancy to the landlord by posting on the landlords' door. However, in the absence of a witness to this posting, a photograph of the notice, or even a copy of the tenant's notice, I am not satisfied that the tenants have demonstrated to the extent required that they served the landlords with a written notice to end their tenancy early as required by the *Act*.

Based on the above determination, I find that the landlords could not have been certain that this tenancy ended until the female landlord conducted the joint move-out condition inspection with the female tenant on September 30, 2013, the effective date identified in the only legally served written notice to end this tenancy. The parties agreed that the tenants did not pay any rent for September 2013. For the reasons outlined above, I find that the tenants are not entitled to any monetary award pursuant to section 51 of the *Act*. They have already obtained the benefit of having their rent for September 2013 waived as compensation for the landlord's issuance of the 2 Month Notice. As the tenants have not adequately demonstrated that they served their notice to end tenancy early in writing, I find that this tenancy continued until September 30, 2013, when the parties conducted a joint move-out condition inspection,

Analysis – Security and Pet Damage Deposits

I should first note that there were flaws in the ways that both parties submitted their applications for dispute resolution. Although the tenant's application clearly sought authorization to obtain a return of the deposits, her application did not specifically cite this was one of the objectives in her application. The landlords' application did ask for authorization to retain a portion of the deposits, but did not specifically cite that the reason for seeking this authorization resulted in part from damage (i.e., a failure to clean the premises properly) arising out of this tenancy. Under these circumstances and after reading the details of the dispute as described by the parties in their applications for dispute resolution, I have accepted that the tenant's application included, in part, a request to obtain a return of the deposits for this tenancy. Similarly, I have also

accepted that the landlords' application included a request that they be allowed to retain a portion of the deposits for damage arising out of this tenancy.

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 in writing, to either return the deposits or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposits. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposits, and the landlord must return the tenant's deposits plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the deposits (section 38(6) of the *Act*). With respect to the return of the deposits, 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 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."

In this case, the landlords confirmed that they received the tenants' forwarding address in writing on September 15, 2013. However, as was noted above, I find that this tenancy did not end until September 30, 2013. Thus, I find that the landlords submitted their application for dispute resolution to seek authorization to retain portions of the deposits within the 15-day time period for doing so.

In addition, I find that the female tenant did provide the landlords with her written authorization to retain \$100.00 from the deposits for cleaning at the time she signed the joint move-out condition inspection report on September 30, 2013. On this basis, I allow the landlords a monetary award of \$100.00 for cleaning to be deducted from the amount of the deposits currently held by the landlords. In coming to this determination, I note that I consider this \$100.00 allowance to be a comprehensive allowance provided by the female tenant to account for all cleaning expenses 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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

On the basis of the evidence before me, I find that the room-by-room and item-by-item list completed by the landlords in their two inspection reports show almost no difference in the condition of this rental unit between the beginning and the end of the tenancy. I attach little significance to the notation on the addendum to the move-out report in which the female landlord noted that the tenants needed to provide a receipt for carpet cleaning. As I noted at the hearing, the landlords agreed that there was no specific requirement in the signed written Residential Tenancy Agreement (the Agreement) that placed a responsibility on the tenants to obtain professional steam cleaning of the carpets. The landlords confirmed that there was no separate Addendum to their Agreement requiring the tenants to steam clean the carpets at the end of this tenancy. The condition of the carpets in the two inspection reports was essentially the same. Under these circumstances, I dismiss the landlords' claim for reimbursement of the rental of the carpet cleaning machine without leave to reapply.

I heard conflicting evidence from the parties as to whether the tenants were provided with one or two remote garage door openers at the beginning of this tenancy. The landlords submitted that they provided two garage door openers to the tenants when this tenancy began. The female landlord cited this on the attachment to the joint move-out condition inspection report and explained that she did not check this item off, as the tenant did not return both garage door openers at the end of the tenancy. The tenants testified that they were only provided a single garage door opener. On a balance of probabilities, I find that the landlords provided more convincing evidence with respect to this issue than the tenants. For this reason, I find that the landlords are entitled to a monetary award of \$63.00 to recover their expenditure related to the replacement of the missing garage door opener and the work required to bring both garage door openers into conformity with one another.

I dismiss the remainder of the landlords' claim for a monetary award without leave to reapply. I also dismiss the remainder of the tenant's application for a monetary award without leave to reapply.

I thus allow the landlords to retain a total of \$163.00 from the tenants' deposits plus applicable interest. No interest is payable over this period. As both parties have been partially successful in their applications, I issue no order with respect to the recovery of filing fees by either party.

Conclusion

I issue a monetary Order in the female tenant's favour under the following terms, which allows the landlords to retain \$163.00 from the tenants' deposits and to return the remainder of the deposits to the female tenant (as the applicant) forthwith:

Item	Amount
Cleaning as per Female Tenant's September 30, 2013 Agreement	\$100.00
Garage Door Opener	63.00
Less Pet Damage Deposit	-250.00
Less Security Deposit	-500.00
Total Monetary Order	(\$587.00)

The female tenant is provided with these Orders in the above terms and the female landlord (as Respondent in the female tenant's application) must be served with this Order as soon as possible. Should the female landlord 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.

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: January 10, 2014

Residential Tenancy Branch

