Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, RPP, FF, MND

Introduction

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

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant identified Landlord LF and MF as the Respondents in his application for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of his security deposit pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- return of the tenant's personal property pursuant to section 65; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

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. Landlord JMF (the landlord) testified that he received a copy of the tenant's dispute resolution hearing package and written evidence by registered mail. The tenant confirmed that he received a copy of the landlords' dispute resolution hearing package by registered mail and also received the landlord's written evidence. I am satisfied that the parties have served one another with the above documents in accordance with the *Act*.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for damage or losses arising out of this tenancy? Is the tenant entitled to a monetary award for damages or losses arising out of this tenancy? Which of the parties are entitled to the tenant's security deposit? Are either of the parties entitled to recover the filing fee for this application from one another? Should any other orders be issued with respect to this tenancy?

Background and Evidence

The tenant gave undisputed sworn testimony that his first tenancy for these premises began on December 1, 2004, although he did not physically move into the unit until later that December. By the end of this tenancy, monthly rent was set at or about $1,167.00, payable in advance on the first of each month. The landlords continue to hold the tenant's $500.00 security deposit, paid on or about December 1, 2004.

The tenant gave undisputed sworn testimony that no joint move-in condition inspection occurred for this tenancy. Although the landlord testified that he conducted his own move-out condition inspection on January 1, 2014, when he and his parents, the other landlords, realized that the tenant had vacated the rental unit, the only report of this inspection was a narrative description of the condition of the rental unit he entered into written evidence in June 2014. No formal move-in or move-out condition inspection reports were issued by the landlord. The landlord did not enter any evidence that the landlords sent the tenant a scheduled notice of a final inspection.

The landlord confirmed that on November 30, 2013 or December 1, 2013, the tenant handed his parents, the other landlords, his notice to end this tenancy by December 31, 2013. The landlords entered written evidence that the tenant moved out of the rental unit by December 21, 2013. They took possession of the rental unit on January 1, 2014, finding the tenant's keys to the rental unit inside the rental premises that day.

The tenant returned to the rental property on February 14 or 15, 2014, requesting that the landlords reimburse him for their share of the utility costs and return his security deposit. The tenant maintained that the landlords refused to return these funds. The tenant alleged that the female landlord told him that the landlords were intending to keep his security deposit as compensation for removing junk from the rental unit and his storage locker. The tenant provided written evidence as follows regarding the circumstances surrounding the landlords' removal of personal possessions which he maintained were valuable:

> *...When inquired as to what the junk was, it turned out to be personal property that was overlooked during a stressful move, which was stored in a storage locker on the premises.*

The property itself was removed unlawfully where, without any notice of removal, the landlord seized and disposed of the tenant's personal property. Before the tenant was able to claim and demand possession of property, it had already been removed and disposed of...

The tenant's claim for a monetary award of $8.309.12 included the following listed in an attachment to the tenant's application for dispute resolution:

Item	**Amount**
2 sets of Summer Distinctive Environmental Uniforms	$1,000.00
2 Sets of Winter Distinctive Environmental Uniforms	1,000.00
15 Pairs of Military Service Boots	2,000.00
Various Military Service Tools and Accessories	1,000.00
Christmas Ornament Collections and Family Heirlooms	1,000.00
Military Service Medals – (priceless cannot be reissued)	
Security Deposit plus Interest	517.69
Utility Bills (Landlord's 40% of Hydro and Gas Bills)	191.43
Filing Fee	100.00
Total of Above Items	**$6,809.12**

Elsewhere in his document, the tenant estimated the value of his loss in property due to the landlords' actions at $7,500.00, plus the security deposit, utility fees and filing fees as outlined above. In making this claim for a monetary award, the tenant maintained that the landlords had failed to comply with the provisions of sections 25(1)(a), (b), (c), (d) and section 30 of the *Residential Tenancy Regulation* (the *Regulation*) issued pursuant to the *Act*.

The tenant entered into written evidence a sworn notarized affidavit in which he provided a very detailed list of 54 items, some of which included multiple sets or pairs (e.g., 4 pairs of combat boots; 12 military undershirts; 5 six by eight carpets).

The landlords entered written evidence, including signed statements from the landlord who attended this hearing, his mother, his father (both co-landlords), and the man who took the tenant's possessions to the recycling centre. These individuals maintained that

the materials left behind by the tenant in the outside storage locker were mouldy and wet and were disposed of because they were unsanitary and unsafe to retain. The landlord testified that there were two duffel bags and two boxes. He said that the boxes fell apart when he tried to pick them up as rodents had chewed their way into the boxes. They maintained that section 25(2)(c) of the *Regulations* allowed them to discard these belongings as they were unsanitary and unsafe.

The landlords' claim for a monetary award of $609.00 included a request for reimbursement of the junk removal costs of $231.00 incurred on January 15, 2014. The remainder of the landlords' claim was an estimated cost of $378.00 to remove the tenant's satellite television connection and to repair, patch and paint over holes created when this satellite television was installed. The landlord explained that this estimated cost had not yet been incurred by the landlords because the renovation person who will be doing this work cannot get to this work until his other regular business lessens early in the fall.

Analysis

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 the case of the landlords' claim, the onus is on the landlords 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. The tenant has a similar responsibility in demonstrating that the losses claimed arose from the landlords' actions.

Analysis – Tenants' Application

Section 25(1)(a) of the *Regulation* establishes that landlords have a duty of care to "store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal." However, section 25(2) of the *Regulation* reads in part as follows:

> *(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that*
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> *(a) the property has a total market value of less than $500,*

(b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or

(c) the storage of the property would be unsanitary or unsafe.

There is undisputed evidence that the landlords discarded the tenant's personal possessions on January 15, 2014, far less than the required 60 day period identified in section 25(1)(a) of the *Act*. However, there is conflicting evidence from the parties regarding whether the belongings in question were in good repair at the time of the landlords' removal of these items from the property. The landlord gave sworn oral testimony that the material in the two duffel bags and boxes was in deplorable condition the Christmas tree stand was rusted and half of the Christmas lights were broken. The landlords also entered four written statements regarding the condition of the belongings in the storage locker at the end of this tenancy, including a letter from the man who hauled this material to the recycling depot. The tenant said that he had not checked the contents of the storage locker recently, but understood that the locker was full chest-high (approximately four feet) and contained many valuable belongings.

In weighing this evidence, I find that the most direct sworn testimony is that of the landlord who actually removed the goods from the storage locker after this tenancy ended. This evidence is consistent with the written statements signed by the other two landlords and the man who removed the goods from the property. I find that the tenant's sworn testimony is not as timely in that he did not know the condition of the contents of the locker as he had not checked it in some time. While section 25(1)(a) of the *Regulation* requires the landlord to store personal property in a safe place and manner for a period not less than 60 days, I find on a balance of probabilities that the tenant had not taken due care to store these same items in a safe place before they fell into the landlords' possession. I find it unlikely that the condition of these items deteriorated significantly during the 15 days when they were in the landlords' care. Rather, I find that the tenant was responsible for the condition of these items by leaving them in an outdoor, uninsulated storage locker for many years. While the tenant now attaches considerable value to these items, it would appear that when he left the rental unit he attached such little value to them that he left them behind for a period of almost two months before submitting a claim for compensation for these items. The tenant's written evidence maintains that he returned to the rental property on February 14, 2014 to enquire about the return of his security deposit and the recovery of utility payments. Until the female landlord explained why she was refusing to return his security deposit, the tenant attached such little importance to them that he was not asking to obtain a return of these possessions nor had he apparently even noticed them missing.

The tenant's detailed inventory of items allegedly left behind in this tenancy also causes me to doubt the credibility of the tenant's claim. The parties agreed that the outside storage locker, photographs of which were included in the landlords' evidence package, was approximately 4 feet wide, 3 feet deep and 5 or 6 feet high. The landlord testified that there were two duffel bags and two boxes of material in this locker, while the tenant claimed that the items were stored to a chest high height. While the tenant said that some of the items claimed were inside the rental unit, he said that most were left in the storage locker. Even if I were to accept the tenant's testimony that the items in the storage locker were stacked chest-high which I find unlikely, I seriously doubt whether the quantity of goods listed in the tenant's detailed inventory list could possibly have fit into a storage locker of this size. 15 pairs of military boots alone would have occupied a significant portion of the storage locker in question as would 5 six by eight carpets. A few of the items identified in the tenant's list (e.g., a wooden bed frame, a metal bed frame and a kitchen table with chairs) were left within the rental unit, but the tenant said that he left notes that these items were to be left for the landlords.

Based on a balance of probabilities, I find it more likely than not that the more accurate description of the volume of belongings left behind by the tenant at the end of this tenancy in the storage locker and the condition of these items was outlined in the landlords' written evidence and sworn testimony. I also find that the goods in question were in such poor condition when the landlords entered the tenant's storage locker that the value of the items was likely much less than the $500.00 figure identified in section 25(2)(a) of the *Regulation* and that it was also likely in such poor condition that storage of these materials would be unsafe and unsanitary. As such, and in accordance with section 25(2)(a) and (c) of the *Regulation*, I find that the landlords were justified in removing the tenants' personal possessions by way of a junk removal service in advance of the expiration of the 60 day time period for doing so. For these reasons, I dismiss the tenant's application for a monetary award for losses and damage arising out of this tenancy without leave to reapply.

As the tenant confirmed that he has received a cheque from the landlords to reimburse him for their portion of his utility costs, this portion of the tenant's application is withdrawn.

Although the tenant applied for a return of his security deposit, he did so before the landlord's 15-day time period to either return the deposit in full or apply for dispute resolution to retain a portion of that deposit had expired. The tenant is entitled to a return of his security deposit subject to the landlord's application to retain that deposit as outlined below.

As the tenant has been unsuccessful in this application for the most part, the tenant bears responsibility for his filing fee.

Analysis – Landlords' Application

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. In this case, the landlords have not conducted joint move-in or move-out condition inspections and have not issued reports of these inspections.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 23 of the *Act* reads in part as follows:

23 *(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion...

Section 24 of the *Act* extinguishes a landlord's right to claim against the deposit if the landlord contravenes the requirements set out in section 23 of the *Act*. Similar provisions are in place under sections 35 and 36 of the *Act* with respect to the joint move-out condition inspection process, unless the rental unit has been abandoned.

Although the landlords did not follow the provisions of the move-in and move-out sections of the Act, the tenant did not physically hand his keys to the landlords and the landlords only realized the tenant had truly vacated the rental unit on January 1, 2014, discovering the keys left for them. While this may have constituted an abandonment of the rental unit by the tenant, section 37(2) of the *Act* requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear."

The tenant maintained that the installation of the satellite television was done in accordance with standard procedures for installing such equipment. I find that the tenant has not taken measures to restore the rental unit to its previous condition after the tenancy ended with respect to the satellite television installation. While I accept that there has been some damage to the rental unit, the landlords have not repaired this damage almost six months after this tenancy ended. After considering the estimated cost of repairing this damage entered into written evidence by the landlords, I accept the landlord's undisputed explanation as to why action to undertake these repairs has been delayed. However, I find that the delay in undertaking these repairs and the 10 year length of this tenancy call into question the true need to repair this damage and the extent to which some of this damage could be attributable to reasonable wear and tear. Under these circumstances, I find that the landlords are entitled to a monetary award equivalent to one-half of the estimated cost of undertaking these repairs. This results in a monetary award of $189.00 (50% x $378.00 = $189.00).

After reviewing the evidence before me, including the invoice and statement from the individual who removed material from the rental unit and the tenant's storage locker to the recycling centre, I find that the landlords have established their entitlement to a monetary award of $231.00 for damages and losses arising out of their removal of the tenant's possessions from the rental unit.

As the landlords have been mostly successful in this application, I allow the landlords to recover their $50.00 filing fee from the tenant.

In order to implement the above monetary awards, I order the landlords to retain $470.00 from the tenant's security deposit plus interest. I order the landlords identified

as Respondents in the tenant's application to return the remaining $47.69 from the tenant's security deposit plus interest to the tenant forthwith.

Conclusion

I order Landlords LF and MF to return $47.69 of the tenant's security deposit to him, which enables the landlords to obtain a monetary award for damage arising out of this tenancy and to recover their filing fee:

Item	**Amount**
Monetary Award for Damage Caused by Installation of Satellite Television	$189.00
Removal of Tenant's Possessions at end of Tenancy	231.00
Less Security Deposit ($500.00 + $17.69 = $517.69)	-517.69
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	**($47.69)**

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.

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: June 16, 2014

Residential Tenancy Branch