Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF; MNDC, MNSD, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- a monetary order for the return of double the amount of their security deposit, pursuant to section 38; and
- authorization to recover the filing fee for their application from the landlord, pursuant to section 72.

This hearing also dealt with the landlord's cross-application pursuant to the *Act* 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 the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants, pursuant to section 72.

The two male and female tenants and the landlord attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Two witnesses, "witness VS" and "witness DP" testified on behalf of the landlord at this hearing. This hearing lasted approximately 88 minutes in order to allow both parties to fully present their submissions.

I adjudicated over a "previous hearing" on July 8, 2015 with these same parties at this rental unit. At that hearing, both parties consented to an adjournment of the hearing, in order to allow the landlord an opportunity to file an application for dispute resolution in order to claim for damages and losses against the tenants. I issued an interim decision following the previous hearing, where the landlord was given until July 17, 2015 to file his claim and he did so on July 16, 2015. Both parties were permitted to serve additional evidence after the previous hearing and prior to this current hearing, in accordance with the timelines and rules set out in the Residential Tenancy Branch ("RTB") *Rules of Procedure*.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application. The landlord confirmed that he received the tenants' USB digital evidence in addition to all written evidence and the tenants confirmed that they received and reviewed all of the landlord's written evidence and were prepared to proceed with this hearing.

The tenants confirmed that they received a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated October 28, 2014 ("2 Month Notice"), on the same date by way of posting to their rental unit door. The tenants provided a copy of the 2 Month Notice with their Application. The 2 Month Notice identifies an effective move-out date of December 31, 2014.

Issues to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Is either party entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings around each are set out below.

Both parties agreed that this tenancy began on August 1, 2011 and ended on November 16, 2014. Monthly rent in the amount of $1,450.00 was payable on the first day of each month. A written tenancy agreement governs this tenancy. Both parties agreed that a security deposit of $500.00 was paid by the tenants and the landlord continues to retain this deposit.

Both parties agreed that no move-in or move-out condition inspection reports were completed for this tenancy. The landlord testified that he entered the rental unit with his realtor, witness VS, around mid-December 2014, to perform a move-out condition inspection of the rental unit, without the tenants present. The tenants stated that they unsuccessfully attempted to contact the landlord to schedule a move-out condition inspection. The landlord confirmed that the tenants provided him with a written forwarding address on November 4, 2014, by way of a letter. The tenants provided a copy of this letter with their Application. The landlord confirmed that the tenants did not provide him with written permission to retain any amount from their security deposit. The landlord confirmed that he filed an application for dispute resolution to retain the tenants' security deposit on July 16, 2015.

The tenants also stated that their letter, dated November 4, 2014, in which the tenants also provided their written forwarding address, advised the landlord that they were entitled to one month's free rent compensation pursuant to section 51(1) of the *Act* and a refund of their rent paid for November 2014 in the amount of $676.67, pursuant to section 50(1) of the *Act*. The landlord acknowledged receipt of this letter. The above letter notes that pursuant to section 50(1) of the *Act*, the tenants wished to end their tenancy earlier than the effective date on the 2 Month Notice. The tenants indicated that they would vacate the rental unit by November 16, 2014, rather than December 31, 2015. The landlord confirmed that the tenants paid rent of $1,450.00 for the period from November 1 to 30, 2014, inclusive. Both parties confirmed that no rent was paid by the tenants for December 2014. Both parties confirmed that no refunds for rent were issued to the tenants and that the tenants did not receive one month's free rent before vacating the rental unit.

The tenants seek a return of double the amount of their security deposit, totalling $1,000.00, because the landlord failed to return their deposit in full or file an application within 15 days of the end of this tenancy. The tenants seek compensation under section 51(1) of the *Act*, stating that they are entitled to one month's rent compensation of $1,450.00, pursuant to the landlords' 2 Month Notice. The tenants also seek compensation of $676.67 for rent from November 17 to 30, 2014, already paid to the landlord, pursuant to section 50(1) of the *Act*. The tenants also seek to recover their $50.00 filing fee paid for their application.

The landlord seeks a monetary order totalling $8,140.16. The landlord seeks $640.16 for damages, repairs and cleaning costs incurred after the tenants vacated the rental unit. The landlord seeks $7,500.00 for a loss of market value on the sale of the rental unit. The landlord also seeks to recover the $100.00 filing fee paid for his application.

The landlord claims $115.50 for purchasing new remotes, reprogramming and fixing the garage door. The landlord provided an invoice for this amount. The landlord claimed that the garage door was not working after the tenants vacated the rental unit. The tenants dispute the landlord's claim. They indicated that the garage door was working fine when they vacated and they still have one garage door opener in their possession. The tenants stated that it is the landlord's responsibility to repair the garage door if it was not working, in any event.

The landlord claims $19.03 for a door lever that he had to purchase because the front door handle of the rental unit was broken. The landlord provided a receipt for the purchase of the door lever. The landlord stated that he performed the labour to install this door lever for free. The tenants dispute the landlord's claim, stating that there was nothing wrong with the front door handle when they vacated the rental unit.

The landlord claims $353.38 for cleaning the rental unit after the tenants vacated. The landlord provided an invoice for this amount. The tenants dispute that cleaning was required, stating that they cleaned the rental unit on November 15 and 16 after they removed their belongings on November 14, 2014. The tenants explained that the landlord's carpet had to be replaced in any event because it was 8 years old and worn when the tenants began occupying the unit. The tenants stated that the landlord had a dog and cat that likely caused damages to the carpet and that they received letters addressed to the landlord, asking the landlord's cat to attend at the veterinarian. The landlord denied having a cat, claiming that he only had a dog in the rental unit previously.

The tenants dispute the authenticity of the landlord's cleaning invoice, indicating that the invoice was fraudulent. The tenants stated that there was no breakdown on the invoice of what cleaning was performed or how many people cleaned the unit. The landlord called witness DP to testify as to the authenticity of the invoice.

Witness DP testified that she owns the company that provided the cleaning invoice and that she sent workers in to clean the rental unit. She stated that she offered a discounted rate of $78.75 per hour including G.S.T. tax for this cleaning. Witness DP indicated that she gave a discount rate because she performed a previous job for the landlord's brother, who referred the landlord. Witness DP stated that the amount of hours and amount charged were handwritten on the invoice, while the remainder of the invoice was typewritten, because the workers did not have a computer with them while on the job. Witness DP testified that she recalls how dirty the unit was and that there was not enough time to clean the unit, as it took three to four hours to clean. She indicated that there were cats in the rental unit, that the place smelled like cat urine, and that the baseboards were destroyed and could not be scrubbed so they had to be repainted. Witness DP confirmed that she was not present when the rental unit was cleaned. When questioned as to how she recalled specific details of this rental unit when she was not present and the work was completed in December 2014, witness DP stated that the landlord's name was familiar and she had a good memory of some of the jobs that she completed. When directly questioned as to what her relationship was with the landlord, witness DP then confirmed that the landlord was her accountant.

The landlord claims $152.25 for re-keying the front door and the door inside the garage because the tenants did not return the keys to the landlord. The landlord provided an invoice for this amount. The tenants claim that they returned a spare set of the front door keys to the landlord's realtor and still retained one set themselves. The tenants stated that they left the keys for the door inside the garage, on the shelf next to the door, but they did not inform the landlord about this after they vacated.

The landlord claims $157.50 for fixing a kitchen sink leak. The landlord provided an invoice for this amount. The landlord stated that when he performed an inspection with his realtor after the tenants vacated, his realtor noticed leaks in the kitchen sink. The tenants stated that they were not aware of any kitchen sink leaks when they vacated the rental unit and that it is the landlord's responsibility to fix these leaks in any event, as it is normal wear and tear.

The landlord claims $7,500.00 for a loss of market value on the sale of the rental unit. The landlord stated that the tenants' actions and behaviour caused this loss. The

landlord provided an undated letter from witness VS, stating that he was the realtor for rental unit, that he was hired by the landlord and that the rental unit sold for a lower price compared to other comparable units in the area. The letter further states that the rental unit was sold for $4,500.00 to $9,500.00 below market value. The landlord stated that he chose a number in the middle of this range to claim against the tenants. The letter indicates that the lower selling price was influenced by several factors including the fact that it was messy, smelled of cat urine, the tenants set strict times to show the unit, and the tenants insisted on being present during the showings. The letter explains that the landlord accepted the first and only offer on the unit because he was concerned about the ability to sell the unit due to the above factors.

Witness VS testified that he wrote the above letter and the contents were true. He further stated that he is a personal friend of the landlord's and that he has only been a realtor for 4 years. He indicated that he does not recall the date when the unit was listed for sale but that it sold approximately 30 days after listing. Witness VS stated that he did not list the property at the most ideal time, that it was not a seller's market, that early to late spring was the best time to list a property, and that 2014-15 was mainly a buyer's market. Witness VS noted that the other comparable properties in the area sold at or above asking price and they sold a lot quicker than the landlord's property usually within one to four weeks. Witness VS agreed that there were other factors that affected the sale price of the unit, that had nothing to do with the tenants. Witness VS noted that the tenants were amenable to open houses but unwilling to vacate the unit, that the tenants did not make negative comments about the property and that the buyers of the unit negotiated a lower price so that they could replace the carpets with laminate and hardwood flooring because of the strong cat urine smell.

Analysis

TENANTS' APPLICATION

Security Deposit

Section 38 of the *Act* requires the landlord to either return all of the tenants' security deposit or file an application for dispute resolution for authorization to retain the deposit, within 15 days of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the

Director has previously ordered the tenants to pay to the landlord and at the end of the tenancy remains unpaid (section 38(3)(b)).

The tenants seek the return of double the value of their security deposit of $500.00 from the landlord. The tenants provided their forwarding address to the landlord, who acknowledged receipt on November 4, 2014. The tenancy ended on November 16, 2014. The tenants did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return the full security deposit to the tenants or make an application for dispute resolution to claim against this deposit, within 15 days of the end of this tenancy. The landlord filed his application on July 16, 2015, 8 months after the tenancy ended.

The landlord continues to hold the tenants' security deposit of $500.00. Over the period of this tenancy, no interest is payable on the landlord's retention of the tenants' security deposit. In accordance with section 38(6)(b) of the *Act,* I find that the tenants are entitled to double the value of their security deposit of $500.00, totalling $1,000.00.

Section 51 Compensation

Section 51 of the *Act* entitles the tenants to compensation of one month's free rent pursuant to a 2 Month Notice. It states in part:

> *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.*

Both parties agreed that the tenants received a 2 Month Notice and ended their tenancy pursuant to this notice. The landlord acknowledged that he did not provide the tenants with one month's rent compensation pursuant to the 2 Month Notice. Accordingly, I find that the tenants are entitled to one month's rent compensation of $1,450.00, as per section 51 of the *Act*.

Section 50 Compensation

Section 50 of the *Act*, which is noted in part below, entitles tenants to a refund of their rent paid after the effective date of a 2 Month Notice:

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property]…the tenant may end the tenancy early by

(a) 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, and

….

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [tenant's compensation: section 49 notice].

The tenants provided notice to the landlord on November 4, 2014 to vacate the rental unit by November 16, 2014. The landlord acknowledged receipt of this notice on November 4, 2014. The tenants vacated the rental unit on November 16, 2014. The landlord acknowledged that the tenants paid rent for November 2014 in the amount of $1,450.00. I find that the tenants are entitled to a refund of their rent paid for the time that they did not reside in the rental unit, after the effective date of their notice. Accordingly, the tenants are entitled to a refund of $676.67 in rent for the period from November 17 to 30, 2014. This is a pro-rated amount for November 2014, calculated as $1,450.00 rent for the whole month of November 2014 divided by 30 days in November multiplied by 14 days from November 17 to 30.

As the tenants were successful in their entire application, they are entitled to recover the $50.00 filing fee from the landlord.

LANDLORD'S APPLICATION

Burden of Proof Test

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 or 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 and show efforts to minimize that damage or loss. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenants caused damages and that they were beyond reasonable wear and tear that could be expected for a rental unit of this age. The landlord must also prove, on a

balance of probabilities, that the tenants caused a loss of market value on the sale of the rental unit.

In summary, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Damages, Repairs and Cleaning Expenses

I dismiss the landlord's claims for $19.03 for the door lever, $353.38 for cleaning and $157.50 for the kitchen sink leak repairs, without leave to reapply. The tenants disputed these claims, stating that the front door handle was not broken and the kitchen sink was not leaking before they vacated the rental unit and they cleaned the rental unit before vacating. The landlord did not complete a move-out condition inspection or report with the tenants, as required by section 36 of the *Act*, whereby both parties could inspect the unit together and determine whether any repairs or cleaning are required. The landlord performed a move-out condition inspection without the tenants in mid-December 2014, approximately one month after they vacated on November 16, 2014. Any number of events could have occurred during this lengthy period of time, without the tenants occupying the rental unit. Further, although the landlord provided invoices and receipts for his claims, he did not provide photographs to show the condition of the rental unit. Therefore, I find that the landlord has failed to meet the above burden of proof test.

I award the landlord $152.25 for re-keying the front door and the door inside the garage. The tenants did not advise the landlord about the keys left on the shelf for the door inside the garage. The tenants only returned one set of front door keys to the realtor but retained one set. The landlord must ensure that the rental unit is safe and secure without further entry by the tenants, after they vacated the unit. The landlord is only required to re-key the unit at the request of new tenants, as per section 25 of the *Act*, which was not the case here. Therefore, the landlord is entitled to the above amount as he completed the work and provided an invoice.

I find that the landlord is entitled to $57.75, which is half the value of the invoice of $115.50 for new remotes and reprogramming of the garage door. The tenants stated that the garage door was working fine when they vacated the unit. I do not find that the

landlord provided sufficient evidence that the garage door was broken by the tenants. As noted above, the landlord completed the move-out condition inspection without the tenants approximately one month after they vacated. However, I find that the landlord is entitled to an award for the new remotes and reprogramming of the garage door, as the tenants acknowledged that they still have one remote that they did not return to the landlord after vacating. The landlord's invoice did not provide a breakdown of amounts for the remotes, the reprogramming and fixing the problem. Therefore, I award the landlord a nominal and reasonable amount of half of the invoice for the cost of the replacement remotes and reprogramming of the door.

Loss of Market Value on the Sale of Rental Unit

I dismiss the landlord's claim of $7,500.00 for a loss of market value on the sale of the rental unit. I find that many factors affect the sale price of a rental unit, which are not related to the tenants and this was also confirmed by witness VS' testimony. The time of listing, the market and economy, and the individual preferences of buyers, among other reasons, all affect price. While the tenants being present during showings may have affected some individuals, the tenants have a right to be present and arrange convenient times with the landlord. The tenants were still living in the rental unit during the time of the showings and their belongings and possessions would have still been in the unit. The landlord did not provide documentary proof of the messy condition of the unit, such as photographs. The landlord did not provide witness statements or testimony from potential buyers of the unit to substantiate claims about the condition of the unit and the reason why offers were not being made or were made at a low price. Witness VS provided second hand knowledge and hearsay testimony about what he was told by other potential buyers. Accordingly, I find that the landlord has failed to meet the burden of proof test above, to prove that the tenants caused $7,500.00 in losses to the landlord for the sale of the unit.

As the landlord was mainly unsuccessful in his application, I find that he is not entitled to recover the $100.00 filing fee from the tenants.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of $2,966.67 against the landlord under the following terms:

Item	**Amount**
Return of Double Security Deposit as per section 38 of the *Act* ($500.00 x 2 = $1,000.00)	$1,000.00

One Month's Rent Compensation under section 51 of the *Act*	1,450.00
Return of Rent from November 16-30, 2014 under section 50 of the Act	676.67
Landlord's Claim for Re-keying Front Door and Door inside Garage	-152.25
Landlord's Claim for New Garage Door Remote and Reprogramming	-57.75
Recovery of Filing Fee for Tenants' Application	50.00
Total Monetary Order to Tenants	**$2,966.67**

The tenants are provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application to retain the tenants' security deposit and to recover the $100.00 filing fee is 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: August 26, 2015

Residential Tenancy Branch