Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF, O

Introduction

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

- a monetary order for compensation for damages or losses under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of double her security deposit pursuant to section 38;
- authorization to recover her filing fee for this application from the landlords pursuant to section 72; and
- other remedies.

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 tenant's parents represented her interests at this hearing as her agents. The landlords confirmed that they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on May 20, 2015. The parties both confirmed that they had exchanged their written evidence packages with one another. I find that the parties were duly served with the above noted documents in accordance with sections 88 and 89(1) of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to losses arising out of this tenancy? Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to recover the filing fee for this application from the landlords? Should any other orders or awards be issued with respect to this tenancy?

Background and Evidence

On March 6, 2013, the tenant, a co-tenant, (JM) and the landlords signed a 17-month fixed term Residential Tenancy Agreement (the Agreement), entered into written

evidence, for a tenancy that was to cover the period from April 1, 2013 until August 31, 2014. Prior to that time, the tenant had rented a suite from the landlords at a nearby location. Monthly rent was set at $1,100.00, payable in advance on the first of each month, plus utilities. The landlords received an $1,100.00 security deposit on or about April 1, 2013. As was noted at the hearing, the *Act* prevents landlords from charging more than one-half month's rent for a security deposit. The parties agreed that the landlords returned $600.00 of this security deposit to the tenants within 15 days of receiving the tenant's forwarding address on or about July 9, 2014.

In March 2014, the tenant, a student, told the landlords that she had arranged a practicum assignment in another community. She advised the landlords that neither she nor the co-tenant would need the rental unit for the entire 17-month term of their Agreement. The tenant and her co-tenant advised that they would be moving out of the rental unit in early May 2014. There is undisputed sworn testimony supported by written evidence that the landlords committed to attempt to locate other tenants for the rental unit so as to minimize the tenants' exposure to rental losses through the entire course of the tenancy. Although the tenants stopped living in the rental unit by May 10, 2014, they did not surrender all of their keys to the rental unit until the tenant conducted a joint move-out condition inspection on July 9, 2014. At that time, the parties signed a Mutual End to Tenancy Agreement, a copy of which was entered into written evidence. Prior to that date, the landlords advised the tenant that she had not submitted a written notice to end her tenancy and that they would need her to sign one in order to end this tenancy. The tenants continued to pay rent for May and June 2014, and the co-tenant eventually paid $320.00 in rent for the pro-rated portion of July 2014 (i.e., July 1-9, 2014) prior to the official ending of this tenancy by way of the signed Mutual End to Tenancy Agreement.

The tenant's application for a monetary award of $3,139.00 included the following items attached to her application for dispute resolution:

Item	**Amount**
Recovery of Rent from May 2014	$780.00
Recovery of Rent from June 2014	1,100.00
Recovery of Balance of Security Deposit plus Penalty for Failure to Return all of Security Deposit	500.00 (+ penalty)
Compensation for Shut off of Essential Service	150.00
Additional Hydro Bill for period from May	59.00

10 to June 14, 2014	
Recovery of Filing Fee for this Application	50.00
Compensation for Time Organizing Application for Dispute Resolution	500.00
Total of Above Items	**$3,139.00 + Penalty**

Analysis

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters, receipts, texts and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

I first note that section 19(1) of the *Act* restricts a landlord from charging a tenant more than ½ month's rent for a security deposit. Although the landlords charged an illegal amount for the security deposit for this tenancy, any entitlement the tenant has to recover that deposit and penalties associated with the landlords' failure to return that deposit apply to the amount actually charged by the landlords for that deposit.

Analysis – Return of Security Deposit

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 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. Paragraph 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."

In this case, the female landlord maintained that the co-tenant gave the landlords his emailed permission to retain a portion of the security deposit for damage arising out of this tenancy and in order to resolve outstanding issues at the end of this tenancy. I find that it is not clear from the numerous emails and texts exchanged by the parties near the end of this tenancy that the landlords obtained written permission to retain any portion of the security deposit for this tenancy. Disputed interpretations of selective

emails is no substitute for the clear wording of paragraph 38(4)(a) of the *Act*, which only allows a landlord to retain a portion or all of the security deposit in the event that there is agreement **in writing** to keep that deposit.

The landlords admitted that they received the tenant's forwarding address in writing at the time of the joint move-out condition inspection. Although they did not provide the tenant with a copy of the joint move-out condition inspection report, the tenant did take a photograph of that report, also entered into written evidence by the tenant. The landlords returned $300.00 of the security deposit to each tenant, an amount which was clearly less than the $1,100.00 they illegally charged for the security deposit for this tenancy. Under these circumstances, I find that the landlords have not returned the security deposit for this tenancy **in full** within 15 days of receipt of the tenant's forwarding address in writing. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant's agents gave undisputed sworn testimony that the tenant has not waived her right to claim the recovery of double the security deposit. In fact, her application for dispute resolution clearly requested the imposition of the penalty outlined in section 38(6) of the *Act* for the landlords' failure to abide by the requirements of section 38 of the *Act*.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's (the RTB's) Policy Guidelines would seem to be of relevance to the consideration of this application:

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;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the original $1,100.00 security deposit with interest calculated on the original amount only. No interest is payable over this period. From this award is deducted the $600.00 already returned to the tenant and the co-tenant. As the tenant has been successful in her application, I find that the tenant is also entitled to recover her $50.00 filing fee from the landlords.

Analysis – Remainder of Tenant's Claim 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. In this case, the onus is on the tenant to prove on the balance of probabilities that she suffered losses for which the landlords are responsible.

Section 7(1) of the *Act* establishes that a party who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the other party for damage or loss that results from that failure to comply.

Although I have given the tenant's written submissions and the sworn testimony of her parents, her agents in this matter, careful consideration, I find that the tenant was in breach of her fixed term tenancy agreement because the tenants vacated the rental premises prior to the August 31, 2014 date specified in that Agreement. As explained at the hearing, the *Act* is very clear as to how a tenancy can end. Landlords are required to submit notices to end tenancy in writing and on the correct RTB forms. Although tenants do not have to use prescribed RTB forms, they cannot end a tenancy on the basis of oral requests or conversations. Sections 45(2), 45(4) and 52 of the *Act* allow a tenant to end a fixed term tenancy by providing written notice of the effective date that:

> *(a) is not earlier than one month after the date the landlord receives the notice,*
>
> *(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

> *(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement…*

Even if tenants provide written notice to end a tenancy early, they may be jointly and severally liable for any losses incurred by the landlords if their landlords cannot mitigate the tenants' exposure to the landlords' loss of income. Section 7(2) of the *Act* requires landlords to attempt to mitigate these losses.

In this case, I find that this tenancy ended on July 9, 2014, in accordance with the signed Mutual Agreement to End Tenancy by the parties. Prior to that time, any attempts that the landlords were making to locate other tenants to take over the rental of this rental suite were done outside of the context of a properly submitted written notice to end tenancy provided by the tenant(s). While the landlords may have allowed a previous tenancy by the tenant to end informally, they did request written notice that this tenancy was ending. The emails submitted by the parties reveal that after May 10, 2014, the landlords were uncertain as to whether the tenant(s) had actually vacated the rental unit as some of their belongings remained in the rental unit. The tenant advised the landlords that they could keep what remained of her belongings in the rental unit. While neither tenant was apparently residing in the rental unit on an ongoing basis past May 10, 2014, I heard undisputed sworn testimony that the tenant retained a set of keys for this rental unit until she signed the Mutual Agreement to End Tenancy Agreement on July 9, 2014. During this period, the tenant and co-tenant continued to pay rent for May and June 2014, and the co-tenant paid pro-rated rent of $320.00 for the first nine days of July 2014. The tenant returned to the rental unit in late June 2014, planning to stay in the rental unit for a weekend, but discovered that the water had been turned off as a result of an inspection done by the landlords' plumber.

Under these circumstances, I find no basis to make a finding whereby the tenant is entitled to recover the rent she or the co-tenant paid until this tenancy was legally ended on July 9, 2014, in accordance with the Mutual Agreement to End Tenancy signed by both parties. As of that date, the tenancy officially ended, and the landlords would not be able to claim losses for the non-completion of the original Agreement. The landlords have not made any such claim, and, in fact, acknowledge that they were able to find another tenant who commenced paying the same monthly rent of $1,100.00, as of August 1, 2014.

I have also considered the tenant's claim that the landlords interfered with her exclusive possession of the rental unit during June 2014, when the landlords frequently entered the rental unit to inspect the premises. This portion of the tenant's claim for the

recovery of a portion of the rent paid for the rental unit also involved the circumstances surrounding the lack of running water in the rental unit when she returned to stay there in late June 2014.

Section 28 of the *Act* outlines a tenant's right to quiet enjoyment of the rental unit which includes, but is not limited to:

> *(a) reasonable privacy;*
>
> *(b) freedom from unreasonable disturbance;*
>
> *(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*

During the course of the hearing and in the written evidence, the tenant and her agents maintained that the landlord accessed the rental unit every three days during the period after the tenant vacated the rental unit in early May 2014. The landlords provided written evidence and sworn testimony that this was necessary because the landlords' insurer insisted that someone check the premises every three days in order to remain insured. While this level of access to a rental unit without providing 24 hours written notice is certainly unusual, the landlords gave undisputed sworn testimony that the tenant told them this was alright and did not object to these ongoing visits to her rental unit. There is no evidence that the landlords did anything during these visits other than accessing the rental unit for inspection purposes, but for a period when repairs were undertaken to the plumbing in late June 2014.

The tenant's right to quiet enjoyment of the rental unit from May 10, 2014, until the tenancy ended on July 9, 2014, is limited by the admission that neither of the tenants were actually residing in the rental unit over that period. While the landlords were not abiding by the provisions of section 29 of the *Act*, which restrict a landlord's right to enter a rental unit, there is undisputed sworn testimony that the tenant gave her oral permission to enter the suite every three days so as to comply with the requirements of the landlords' insurer.

Of more concern is the tenant's undisputed assertion that she was unable to stay in the rental unit for the only weekend in June 2014, when she returned to this community from her practicum. While the timing of her return seems to have coincided with advice received from the landlords' plumber regarding a serious problem with the plumbing, the reality is that the tenant was expecting to stay in this rental unit for this weekend and was given no advance warning that she would be unable to do so. This loss in the

value of her tenancy prevented her from staying in the rental unit for the only weekend she planned to stay there during June 2014.

Paragraph 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement." Pursuant to these provisions of the Act, I find that there was a loss in value of the tenancy for a two day period in late June 2014 when the tenant had to revise her plans to stay in the rental unit when the water was turned off due to the potential that the pipes might burst. As the tenants were still paying rent for the premises at that point, and the tenancy continued until July 9, 2014, I find that the tenant is entitled to a monetary award equivalent to the pro-rated value of two days of rent for June 2014. This results in a monetary award of $73.33 ($1,100.00 x 2/30 = $73.33).

I have also considered the tenant's claim for the recovery of $59.00 in hydro bills for the period from April 16, 2014 until June 16, 2014. At the hearing, the female landlord gave undisputed sworn testimony that the tenant left lights on after she moved out of the rental unit, which could have partially explained why the hydro bill was higher for this portion of 2014 than was the case curing the same period in 2013, when the rental unit was occupied. While I have given the tenant's application for this item careful consideration and recognize that the hydro bill was higher during this two month period of 2014 than was the case a year earlier, I find that there are too many variables that may have factored into this increased hydro bill that would have little to do with the landlord's activities. Almost a month of the 2014 hydro bill was for a period when the tenant and co-tenant were still living there. Hydro rates, rates of usage and the landlords' claim that lights were left on, would all have an impact on the actual amounts of these hydro bills. I dismiss this portion of the tenant's application without leave to reapply, as I find that the tenant has not supplied sufficient evidence to demonstrate that she is entitled to any recovery of her utility bill.

I also dismiss without leave to reapply the tenant's application to recover the costs associated with preparing the application for dispute resolution and hearing packages. The only hearing related cost which a party can recover under the *Act* is the filing fee, which has been awarded to the tenant.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant to recover double the security deposit less the amount already returned by the landlords, to recover the filing fee and for a reduction in the value of this tenancy in June 2014.

Item	Amount
Return of Double Security Deposit as per section 38 of the Act ($1,100.00 x 2 = $2,200.00)	$2,200.00
Less Returned Portion of Security Deposit	-600.00
Reduction in Value of Tenancy for 2 Days in June 2014 ($1,100.00 x 2/30 = $73.33)	73.33
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	**$1,723.33**

The tenant is provided with these Orders in the above terms and the landlord(s) must be served with this Order. 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: October 27, 2015

Residential Tenancy Branch