Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords' Application: OPB, MND, MNSD, MNDC, FF
Tenants' Application: MNSD, FF

Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the "*Act*").

The Landlords are seeking:

- an order of possession because the tenant breached an agreement with the landlord;
- a monetary order for damage to the unit, site or property;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order to keep all or part of the pet damage deposit or security deposit; and
- to recover the filing fee for the cost of their application from the tenants.
  (the "Landlords' Application")

The Tenants are seeking:

- an order for the return of double the pet damage deposit or security deposit; and
- to recover the filing fee for the cost of their application from the landlords.
  (the "Tenants' Application")

The landlords and Tenant M.G. (the "Tenant") appeared at the teleconference hearing and gave affirmed testimony. Tenant C.M. did not attend the hearing which lasted 96 minutes. During the hearing the landlords and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As Tenant C.M. did not attend the hearing, service of the landlord's Application and Notice of Dispute Resolution Hearing (the "Notice of Hearing") on Tenant C.M. was considered.

The landlords testified that Tenant C.M. was served with the Application and Notice of Hearing by registered mail. The landlords testified that the registered mailing was sent to Tenant C.M. on March 1, 2017. The landlords testified that two packages were sent by registered mail to each tenant at the address for service indicated on the tenants' application.

The tenant testified that Tenant C.M. moved out of the rental unit on November 10, 2016. The tenant testified that the address for service on the tenants' application was her address and not the address where Tenant C.M. resides. The tenant testified that she did not have any permission to act as agent for Tenant C.M. The current address for Tenant C.M. was unknown.

Rule 3.1 of the *Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure")* establishes that the Applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each Respondent with various documents set out in that section which include the Application and Notice of Hearing.

Residential Tenancy Policy Guideline #12 ("Policy Guideline #12") explains that where a landlord is serving a tenant by registered mail, the address for service must be where the tenant resides at the time of mailing, or the forwarding address provided by the tenant.

I find that there is insufficient evidence that Tenant C.M. resides at the address where the landlords sent their registered mailing. Therefore, I find that there is insufficient evidence to satisfy me that Tenant C.M. was served with the landlords' Application and Notice of Hearing in accordance with section 89 of the *Act*. Therefore, I dismiss the landlords' application against Tenant C.M. due to insufficient service.

Preliminary and Procedural Matters

The tenant testified that she moved out of the rental unit on December 30, 2016. As a result, I find that the landlords' application for an order of possession is not necessary. Therefore, I dismiss this claim.

The tenant testified that she sent the tenants' Application and Notice of Hearing to the landlords' by registered mail. The tenant testified that she only sent one package with two copies of the documents, one copy for each landlord.

Rule 3.1 of the *Rules of Procedure and* Policy Guideline #12 requires that where more than one party is named on an application for dispute resolution, each party must be served separately.

Rules 3.11 of the *Rules of Procedure* states that evidence must be served and submitted as soon as reasonably possible. If the Arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and Residential Tenancy Branch not less than 14 days before the hearing, pursuant to Rule 3.14 of the *Rules of Procedure*.

In accordance with Rule 3.15 of the *Rules of Procedure*, the respondent must ensure documents and digital evidence that are intended to be relied on at the hearing are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

Section 71(2) of the *Act* gives an arbitrator the authority to order that a document has been sufficiently served for the purposes of the *Act* on a date the arbitrator specifies. Policy Guideline #12 establishes that the arbitrator must consider procedural fairness and prejudice to the affected party in determining whether a document has been sufficiently served.

In this case, the tenants did not serve each of the landlords separately with a copy of their Application and Notice of Hearing. However, pursuant to section 71(2) of the *Act*, I find that each of the landlords have been sufficiently served for the purposes of the *Act* on February 21, 2017, the date the landlords indicated they received the registered mailing. In making this finding, I have taken into consideration the fact that both landlords are married and live in the same household; that they each received a copy of the documents; both landlords received actual notice of the tenants' claims; both landlords are present at the hearing; and neither landlord raised any issues or concerns about the method of service at the start of the hearing. Therefore, I find that there is no

prejudice to the landlords by finding that the documents were sufficiently served on each of the landlords.

The landlords testified that they did not receive a copy of 2 pages of texts nor a copy of a letter written by a witness that the tenant had submitted to the Residential Tenancy Branch on or about April 3, 2017. I find that there is insufficient evidence to satisfy me that these documents were sent to the landlords in accordance with Rules 3.14 and Rule 3.15. Accordingly, I will not consider this documentary evidence at this hearing. To consider documents that the landlord did not receive would undermine the principles of natural justice by compromising procedural fairness. The tenant, however, was permitted to give testimony relating to these documents.

The tenant testified that she did not receive the landlords' evidence that the landlord testified was sent by registered mail on April 4, 2017. As the landlords' application was made on February 28, 2017 and the landlords' evidence was mailed April 4, 2017, I find that the landlords have not sufficiently served the tenants with their evidence in accordance with Rules 3.11, 3.14 and 3.15 of the *Rules of Procedure*. As a result, the tenants have not received the landlords' evidence. Accordingly, I will not consider the landlords documentary evidence that the tenants did not receive. To consider such documents would undermine the principles of natural justice by compromising procedural fairness. The landlords, however, were permitted to give testimony relating to these documents.

One of the documents that the tenant did not receive was the landlord's Monetary Worksheet wherein the landlords increased their monetary claim from $845.00 to $1,104.27. As the landlords did not serve the tenant with an amended application and the tenant did not receive the Monetary Worksheet either, I find that the tenant did not receive sufficient notice of the increased monetary claim. Therefore, I find that the landlords' monetary claim will be limited to the amount of $845.00.

Neither party requested an adjournment due to the service issues they raised which I have set out above and accordingly, the hearing proceeded.

Issues to be Decided

- Are the landlords entitled to a monetary order for damage to the unit, site or property?
- Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

- Are the landlords entitled to keep all or part of the pet damage deposit or security deposit?
- Are the landlords entitled to recover the filing fee for the cost of their Application from the tenants?
- Are the tenants entitled to the return of double the pet damage deposit or security deposit?
- Are the tenants entitled to recover the filing fee for the cost of their application from the landlords?

Background and Evidence

The landlords testified that the tenants entered into a one year fixed term tenancy starting September 4, 2016 and ending September 1, 2017. The tenant testified that the one year fixed term tenancy started September 3, 2016 and ends September 3, 2017. The parties agreed that the tenancy ended on January 1, 2017 and that the tenant moved out on December 30, 2016. Tenant C.M. moved out of the rental unit on November 10, 2016. Rent in the amount of $845.00 was due on the first day of each month. The tenants provided a security deposit in the amount of $422.50 on or before they moved into the rental unit.

The undisputed evidence established that Landlord S.S. and the tenants signed a Mutual Agreement to End a Tenancy that indicated that the tenants would vacate the rental unit on January 1, 2017. That agreement was signed on December 1, 2016. Landlord S.S. testified that he did not understand what he was signing. The landlords are seeking compensation in the amount of $845.00 for loss of one month's rent as a result of the tenants' ending their fixed term tenancy early.

The undisputed evidence established that the parties looked at the rental unit together at the beginning of the tenancy on September 3, 2016 and at the end of the tenancy on December 30, 2016. However, on each occasion there was no written condition inspection report completed as required under the *Act*.

The landlords testified that the tenants did not return the keys for the rental unit and that they incurred a cost of $130.99 to replace two entrance door locks. The landlords also testified that they also incurred the cost of $100.00 to shampoo the carpets after the tenants moved out. The landlords are seeking to be compensated for these costs that they incurred.

The tenant testified that she returned the keys to the landlords at the time she moved out on December 30, 2016 and that she had a witness present. The witnesses'

statement is one of the documents that the landlord was not served with and therefore is not being considered.

The landlords are also seeking to be compensated for the cost of delivery of their documents related to this hearing in the amount of $28.77.

The landlords are requesting to apply the tenants' security deposit in the amount of $422.50 against the amounts owed by the tenants.

The tenant testified that she provided the landlords with her forwarding address in a letter dated January 20, 2017 which she left on the landlords' porch. The tenant testified that the landlords invited the tenant to stop by and pick up mail which the landlords had left on their front porch. The tenant testified that she left the letter with her forwarding address in an envelope addressed to the landlords in the same place where her mail was left for her to pick up. The tenant testified that she waited and watched from a distance for "maybe an hour" and saw Landlord I.S. pick up the envelope. The tenant testified that she did not notify the landlords that she would be leaving an envelope for them. The tenant did not follow up with the landlords to confirm that the landlords had received the envelope.

The tenants are seeking the return of double their security deposit on the basis that the landlords did not return the tenants' security deposit within 15 days of receiving the tenant's forwarding address.

The landlords testified that they did not find the envelope until February 18th or 19th, 2017. The landlords testified that the envelope was not labelled and that it was mixed in amongst the flyers and local newspapers on the porch. The landlords testified that they were not aware that the tenant had left the envelope on their porch. The landlords testified that they have a proper mail box where the tenant could have deposited the envelope. The landlords argued that the tenant did not serve the letter with their forwarding address properly by leaving the envelope on the porch.

The landlords did not return any portion of the security deposit to the tenants. The landlords made their application to keep the security deposit on Feb 28, 2017, after being served with the tenants' application on February 21, 2017.

Both the landlords and tenants are seeking to recover their $100.00 filing fee for their application from the other party.

Analysis

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

Loss of Rent:

Section 44 (1)(c) of the *Act* permits a fixed term tenancy to end by written agreement between the landlord and tenant.

Residential Tenancy Policy Guideline #3 ("Policy Guideline #3") establishes that if the landlord elects to end the tenancy and sue the tenant for loss of rent over the balance of the term of the tenancy, the tenant must be put on notice that the landlord intends to make such a claim. Ideally this should be done at the time the notice to end the tenancy agreement is given to the tenant.

I find that there is insufficient evidence to satisfy me that the landlords are entitled to a monetary order for compensation for loss of rent. In making this finding I have taken into consideration the fact that Landlord S.S. entered into a written agreement to end the tenancy on January 1, 2017 by signing the Mutual Agreement to End a Tenancy.

I find that there is insufficient evidence to satisfy me that Landlord S.S. did not understand that he was agreeing to end the fixed term tenancy on January 1, 2017, particularly given the information indicated on the form. While the landlords did not initiate the end of the tenancy, I find that the landlords accepted the end of the fixed term tenancy by signing the mutual agreement.

Pursuant to Policy Guideline #3, I find that the landlords were required to put the tenants on notice that the landlord intended to sue the tenants for loss of rent on or before the date the parties signed the Mutual Agreement to End a Tenancy. By not doing so, I find that the landlords are not entitled to claim for loss of rent without having notified the tenants that they would be making such a claim. Therefore, I dismiss the landlords' claim for one month's loss of rent.

Replacement of Locks:

Section 37(2)(b) of the *Act* requires the tenant to give the landlord all the keys or other means of access that are in possession or control of the tenant and that allow access to and within the residential property.

Section 67 of the *Act* permits an arbitrator to award an amount to compensate a party for damage or loss arising from a party not complying with this *Act*, the regulations or a tenancy agreement.

I find that there is insufficient evidence to determine whether or not the tenant returned the keys for the rental unit to the landlords. The tenant insisted that she returned the keys and the landlords insisted that the tenant did not. Based on the contradictory testimony, I find that there is insufficient evidence to resolve the issue of credibility in favour of either party. As the landlords' bear the onus of proving their claim, I find that the landlords have therefore not met their onus. Accordingly, I dismiss the landlords' claim for compensation to replace the locks on the front entrance doors as there is insufficient evidence that the tenants did not comply with this *Act*, the regulations or the tenancy agreement.

Carpet Cleaning:

Section 37(2) (a) of the *Act* requires a tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear when a tenant vacates a rental unit.

Section 67 of the *Act* permits an arbitrator to award an amount to compensate a party for damage or loss arising from a party not complying with this *Act*, the regulations or a tenancy agreement.

Residential Tenancy Branch Policy Guideline #1 indicates that generally at the end of the tenancy of one year, the tenant will be held responsible for steam cleaning or shampooing the carpets. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of the tenancy.

As the evidence established that the tenancy started on or about September 3rd or 4th, 2016 and ended on January 1, 2017, I find that the length of the tenancy was approximately three months notwithstanding that it started as a one year fixed term tenancy. I find that there is insufficient evidence to satisfy me that the tenants

deliberately or carelessly stained the carpet requiring it to be shampooed. Similarly, I find that there is insufficient evidence that the carpets were not left reasonably clean except for reasonable wear and tear.

Based on the contradictory testimony, I find that there is insufficient evidence to resolve the issue of credibility in favour of either party regarding the condition of the carpets. As the landlords' bear the onus of proving their claim, I find that the landlords have not met their onus. Therefore, I find that the landlords are not entitled to compensation for carpet shampooing as there is insufficient evidence that the tenants did not comply with this *Act*, the regulations or the tenancy agreement. Accordingly, I dismiss the landlords' claim for carpet shampooing.

Delivery of Documents:

Section 67 of the *Act* permits an arbitrator to award an amount to compensate a party for damage or loss arising from a party not complying with this *Act*, the regulations or a tenancy agreement.

I find that the landlords are not entitled to the costs associated with the delivery of their documents related to this hearing. Such costs are not covered by section 67 of the *Act.* The only recoverable cost associated with making an application for dispute resolution is the filing fee pursuant to section 72 of the *Act*. Therefore, I dismiss the landlords' claim for these delivery costs.

Security Deposit:

Sections 24(2)(c) and 36(2) of the *Act* and Residential Tenancy Policy Guideline #17 ("Policy Guideline #17") state that the right of a landlord to file a claim against a security deposit for damage to the rental unit is extinguished if the landlord does not complete the condition inspection report after having made an inspection with the tenant.

Policy Guideline #17 also states that unless the tenant has specifically waived the doubling of the deposit, the arbitrator will order the return of double the deposit 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*.

I find that the landlords received the tenants' forwarding address on February 19, 2017, the later of the two dates provided by the landlords as the date upon which they discovered the tenants' letter dated January 20, 2017. I accept the evidence of the landlords that the envelope went unnoticed given that the tenant did not serve the

envelope in accordance with section 88 of the *Act*. Section 88 of the *Act*, permits delivery of a forwarding address as follows:

- by leaving a copy with the person;
- by sending a copy by ordinary or registered mail;
- by leaving a copy at the person's residence with an adult who apparently resides with the person;
- by leaving a copy in a mail box or mail slot at the address where a person resides;
- by attaching a copy to the door or other conspicuous place at the address where the person resides;
- by faxing a copy or as ordered by a director;
- as ordered by an arbitrator; and
- by any other means of service prescribed in the regulations.

I find that by leaving the envelope on the porch the tenants' forwarding address was served in a manner that was not in accordance with the above methods permitted by section 88 of the *Act*. However, pursuant to section 71 (2) of the *Act*, I find that there was sufficient service of the tenants' forwarding address on the basis that the landlords acknowledged receiving the envelope with the forwarding address on or about February 19, 2017.

I do not accept the tenant's testimony that she waited for what may have been as long as an hour to see the landlords pick up the envelope after she left it on the porch. I do not find the tenant's testimony in this regard believable. Therefore, I find that the landlords' obligation to return the tenants' security deposit or make a claim against the deposit arose 15 days after February 19, 2017. The landlords made their claim against the deposit for damage to the unit within15 days of receiving the tenants' forwarding address.

In accordance with sections 24(2)(c) of the *Act*, I find that the landlords' right to claim against the security deposit for damage to the rental unit has been extinguished by not completing a move in condition inspection report after having made the inspection with the tenants on September 3, 2016.

In accordance with Policy Guideline #17, I find that the tenants are entitled to return of double the security deposit given that the landlords' right to claim against the security deposit for damage to the rental unit has been extinguished. Therefore, I dismiss the landlords' claim to keep all or a portion of the security deposit.

As all the landlords' claims are dismissed, I find that the landlords are not entitled to recover the filing fee for their application from the tenants.

As the tenants' application is successful, I find that the tenants' are entitled to recover the filing fee for their application from the landlords.

Based upon the foregoing, I find that the tenants are entitled to a monetary order in the amount of $945.00 as follows:

Item	**Amount**
Return of Security Deposit	$ 422.50
Monetary Award for Landlords' Failure to Comply with s. 38 of the *Act*	$ 422.50
Filing Fee	$ 100.00
Total Monetary Order	**$ 945.00**

Conclusion

The landlords' application is dismissed.

The tenants' application is successful.

The tenants are granted a monetary Order in the amount of $945.00 for return of double the deposit and the filing fee, which must be served on the landlords as soon as possible. Should the landlords fail to comply with this monetary Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: May 09, 2017

Residential Tenancy Branch