



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC MNR MNSD OLC RPP

Introduction

This hearing dealt with applications from both parties pursuant to the *Residential Tenancy Act* ("Act"):

The landlords sought:

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order to retain the security deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant sought:

- a return of his security deposit pursuant to section 38 of the *Act*;
- an Order directing the landlords to comply with the *Act* pursuant to section 62;
- an Order for the landlords to return the tenant's personal property pursuant to section 65 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the landlords and the tenant attended the hearing. Both parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlords and the tenant testified that they received one another's applications for dispute resolution and evidentiary packages by way of Registered Mail. Pursuant to sections 88 & 89 of the *Act*, I find both parties to have been duly served with the each other's applications and evidentiary packages.

The landlords provided further testimony that a second evidentiary package and an amendment to their monetary application was placed in the tenant's mailbox on June

14, 2017 at the forwarding addresses provided to them on December 30, 2016. The tenant denied receiving these materials. In order to rebut the presumption of service the tenant should have provided sufficient evidence to prove there was no service. I find the tenant had insufficient evidence to rebut the presumption of service. Therefore, I find that pursuant to sections 88 and 90 of the *Act*, the tenant is deemed to have been served with these documents on June 17, 2017.

Following opening remarks by both parties, it was agreed by all present that this hearing would only deal with matters concerning the property at the street address starting with 3000 XYZ ave. The property at 2998 XYZ ave. is also subject to dispute, but no submissions were made, or considered regarding that property.

Issue(s) to be Decided

Should the landlords be directed to return the security deposit to the tenant? If so, should it be doubled?

Should the landlords be directed to comply with the *Act*?

Should the landlords be directed to return the tenant's personal property?

Is either party entitled to a return of the filing fee?

Are the landlords entitled to a Monetary Order for money owed?

Background and Evidence

Testimony was provided by both parties that this tenancy began on July 28, 2016 and ended in December 2016 by way of an Order of Possession granted to the landlords following the decision of an Arbitrator. Rent was \$835.00 per month and a security deposit of \$417.50 continues to be held by the landlords.

The tenant is seeking a monetary order of \$993.50 in reflection of a doubling of his security deposit (which the landlords continue to hold), along with interest on this security deposit and a return of the filing fee.

The landlords are looking to recover a monetary award of \$1,982.64 for unpaid rent and utilities, along with the replacement of a lock and cleaning that was required in the rental unit following the tenant's departure.

Over the course of two hearings, one dated November 24 and the other dated December 5, 2016 the parties appeared before an Arbitrator to have their applications for dispute under the *Act* considered. On December 12, 2016, following the conclusion of these hearings, the Arbitrator in the matter ruled that the landlords were to be granted a two-day Order of Possession based on a 2 Month Notice to End Tenancy for Landlord's Use dated September 26, 2016. The Arbitrator ruled that the tenant was entitled to a Monetary Order of \$485.53 for loss of value in the tenancy.

The landlord C.P., testified that this property was purchased in July 2016 with the tenant already in occupation of the rental unit. The landlords assumed the tenancy from the previous owner and no condition inspection was performed when the landlords took possession of the home.

During the hearing, landlord C.P., provided testimony which was disputed by the tenant. She said that numerous efforts were made to schedule a condition inspection of the rental unit following the conclusion of the tenancy. Ultimately, no condition inspection was performed by the parties at the end of the tenancy. An email dated December 23, 2016 and submitted to the hearing as part of the landlords' evidentiary package demonstrates the landlords' efforts to obtain the tenant's forwarding address. On December 30, 2016 the tenant gave his address in writing to the landlords. An email included as part of their evidentiary package and dated January 12, 2017 confirmed the landlords' receipt of this forwarding address in writing. Landlord C.P., explained that this address was only received after significant prompting on her part.

The tenant is seeking a Monetary Order of \$993.50 in respect of a doubling of his security deposit which remains in the landlord's possession. The tenant explained that he sought to have his security deposit returned, and doubled pursuant to section 38 of the *Act*.

The landlords are seeking a Monetary Order of \$1,982.64. Landlord C.P. stated that this amount represented unpaid rent and utilities, the replacement cost of a lock removed by the tenant, and cleaning that was required following the tenant moving out of the unit. The landlords explained that the tenant overheld in the rental suite until December 18, 2016, five days after having been served in person, with a 2 Day Order of Possession on December 13, 2016. The landlords are looking to recover the unpaid rent associated with this time.

Following the landlords' submissions, the tenant argued that the utilities they claimed were not his responsibility, and stated that they did not form a part of his tenancy agreement. He explained that he had not paid the utilities for the past 14 years to the previous landlord. Additionally, the tenant stated that when he took possession of the rental unit, no lock was present and he was forced to purchase one for the door. He said the lock was his property and therefore his to keep. The landlords submitted numerous photos to detail the extent of cleaning that was required in the rental unit. A quote from a professional cleaning company estimated that the total cleaning cost of the unit would be between \$530.00 and \$610.00. The landlords are seeking to recover \$550.00. Landlord C.P. explained that she felt the cost was reasonable considering the extent of cleaning that was required. This cleaning quote was submitted as part of the landlords' evidentiary package.

As part of their evidentiary package, the landlords submitted a copy of the Residential Tenancy Agreement signed between the tenant and the previous landlord. Clause 6 of the Agreement notes, "The Tenant will pay for all utilities." The tenant stated that this clause was never enforced by the previous landlord and he said that he and the previous landlord had reached an agreement whereby the tenant would not pay for utilities. The landlords produced an email from the previous landlord which stated, "He [the tenant] was responsible for the bill [hydro] but he ignored the invoices. So I paid all the overdue utility bills plus penalty prior to the sale transaction of the duplex."

Analysis

Testimony was provided by both parties that no condition inspection reports were performed at the start or at the conclusion of the tenancy. The landlords explained that they had assumed this tenancy when they purchased the property in July 2016, and there was no record of the previous owner having performed a condition inspection at the start of the tenancy. The landlords detailed their numerous attempts to have the tenant meet with them to perform a condition inspection at the conclusion of the tenancy.

Residential Tenancy Policy Guideline #17 provides guidance with respect to Security Deposits and instances when they are set off. Paragraph B, subsection 8 reads, "in cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss." In this case, I find both parties at fault. The landlords failed to perform a condition inspection of the rental unit when they took possession of it from the former owner, while the tenant ignored the landlords' numerous attempts to schedule a

condition inspection at the conclusion of the tenancy. The landlords must therefore return the security deposit to the tenant.

The tenant has applied for a doubling of his security deposit under section 38 of the *Act*. Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and, or upon receipt of the tenant's 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. As noted above, this relief is only granted to parties when the landlord has failed to act in a timely fashion. The landlords received the tenant's address in writing on December 30, 2016. The landlords applied for dispute resolution on January 14, 2017. The landlords have therefore applied within the 15 day time frame permitted by the *Act* and the tenant's security deposit will not be doubled.

The landlords have applied for a Monetary Order of \$1,982.64. During the course of the hearing the landlords testified that the tenant left the premises dirty, that rent and utilities remained outstanding and a lock needed replacing after it was removed by the tenant.

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 landlords to prove their entitlement to their claim for a monetary award.

As part of their evidentiary package the landlords submitted a copy of the tenancy agreement signed by the tenant and the previous owner. This agreement demonstrated that the tenant was responsible for utilities. The tenant provided testimony that at no point over his tenancy with the previous landlord did he pay utilities and he explained he had an arrangement with the past landlord, whereby utilities were included with his rent. An email presented to the hearing from the tenant's former landlord indicated that this was not the case, that utilities were not included in the rent and that the tenant had simply failed to pay these utilities, leading the former landlord to take matters in to his own hands. I find that the current landlords and tenant have no such arrangement

whereby utilities are waived. The tenancy agreement signed between the original landlord and the tenant indicates that the tenant is responsible for his own utilities. Based on the evidence before me at the hearing, I find that the tenant is responsible for all outstanding utilities related to this tenancy with the current landlords.

The landlords are also looking to recover \$134.70 for overholding in the rental unit after the tenant had been served with an Order of Possession. Section 57(3) of the *Act* notes that, "A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended." I find that the tenant was served with the Order of Possession on December 13, 2017; however, the tenant remained in the property until December 18, 2017. The landlords are entitled to compensation under sections 57 & 67 of the *Act* for this time that the tenant overheld in the rental unit. I award the landlords the entire sum sought for overholding in the unit.

While no condition inspection was performed at the conclusion of the tenancy, significant photographic evidence and oral testimony was presented to the hearing demonstrating the extent of cleaning that was required in the rental unit following the end of the tenancy. Section 32 of the *Act* notes that, "A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access." I find that the evidence presented at the hearing demonstrates that the tenant has failed to maintain reasonable cleanliness and sanitary standards throughout the rental unit, that significant cleaning was required and that the landlords had to spend considerable time cleaning the unit after the end of the tenancy. The landlords are therefore entitled to the entire amount of their Monetary Order related to cleaning.

The final issue to consider in the landlords' application relates to \$135.98 for a lock that the tenant removed. The tenant testified that when he took possession of the rental unit it did not contain a lock. He said that he had to purchase one, and that this lock was therefore his property. I find this to be a very simplistic view of the situation. The current landlords took possession of the rental unit in July 2016. If the tenant had an issue with the lack of a lock when he moved in to the rental unit, this should have been addressed and he should have obtained compensation from the previous landlord. Furthermore, section 31 of the *Act* prohibits both tenant and landlord from tampering with the locks of a rental unit, so the tenant was prohibited from removing it. I find that the lock was in place at the time the landlords took possession from the previous owner, that the tenant's actions have caused the landlords to suffer a loss and that the tenant has violated section 31 of the *Act*. The landlords may therefore recover the entire sum associated with the replacement of the lock.

As both parties were successful in their application, both parties must bear the cost of their own filing fee.

Using the offsetting provisions contained in section 72 of the *Act*, the tenant's monetary award will be put against money owed to the landlords.

Conclusion

I find that the landlords are entitled to a Monetary Order of \$779.65.

Items	Amount
Overholding for December 2016	\$134.70
Replacement Lock	135.98
Cleaning	550.00
Unpaid Utilities	376.47
Less Security Deposit	(-417.50)
TOTAL =	\$779.65

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: July 24, 2017

Residential Tenancy Branch