



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDC OLC MNSD FF

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* ("the Act"). The landlord applied for: a monetary order for loss pursuant to section 67; authorization to retain the tenant's security deposit in satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied to cancel the landlords' 1 Month Notice to End Tenancy for Cause pursuant to section 47; a monetary order for compensation pursuant to section 67; an order requiring the landlords to comply with the *Act* pursuant to section 62; and authorization to recover the filing fee for this application from the landlords pursuant to section 72. The tenant withdrew her application to cancel the landlord's 1 Month Notice to End Tenancy and the request that the landlord comply with the *Act*.

The tenant attended this hearing. The landlord and legal counsel also attended the hearing. Both parties acknowledged receipt of the other's applications and evidentiary materials submitted with their applications. The landlord submitted an additional evidence package but the tenant testified that she had not received the materials.

Preliminary Matter: Deemed Service of Evidence

The tenant testified that she did not receive the additional evidence package submitted by the landlord for this hearing. The landlord provided a Canada Post tracking number to verify his testimony that he sent the evidence package to the tenant on September 12, 2017. The tenant argued that the landlord served his evidence package after the deadline to do so, according to the *Act*. Furthermore, the tenant argued that she did not receive the evidence and therefore it should not be considered.

The landlord argued that the evidence package was sent to the tenant's forwarding address provided to the landlord at the end of the tenancy. The landlord argued that the tenant, as an applicant for dispute resolution is required to provide any change of address to the respondent in the matter. The tenant testified that she moved from the forwarding address provided at the

end of her tenancy. She testified that the forwarding address is her parent's home. She testified that she had arranged for some of her mail to be forwarded to her new address but not registered mail. The tenant testified that she did not want the landlord to know her new address.

The tenant also testified that, while she has keys to her parents' home, it is on a nearby island and not easily accessible. She testified that her parents are out of town having left on September 12, 2017, the day that the registered mail was sent to the tenant.

Residential Tenancy Policy Guideline No. 12 provides guidance on the service provisions of the Act. Under the heading "Address for Service" within that guideline, it states,

Any applicant for dispute resolution must provide an address for service. This could be a home, business or other address that is regularly monitored.

The respondent's address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an application for dispute resolution.

The *Residential Tenancy Act* and Residential Tenancy Policy Guideline No. 12 oblige the tenant (as both applicant and respondent to this dispute resolution hearing) to provide the other party with an address where she can be served with evidentiary materials to the dispute resolution hearing. I find that the tenant did not take steps to ensure that the landlord had a "working address" and did not meet her obligation.

It is necessary that each party is able to provide evidence. The tenant made a choice not to pick up her mail from her parent's home/forwarding address prior to this hearing date. In all of the circumstances and in accordance with section 88 and 90 of the Act as well as the deeming provisions explained in Residential Tenancy Policy Guideline No. 12, I find that the tenant was deemed served with the landlord's evidence as of September 17, 2017 (5 days after its mailing). I find that the tenant *could have* reviewed this evidence package and responded to the landlord's submissions prior to the hearing. Therefore, while the tenant did not avail herself of this opportunity, I find that she had opportunity to both review and respond to the materials of the landlord. Therefore, I accept and will consider the evidence submitted by the landlord.

Issue(s) to be Decided

Are the landlords entitled to a monetary order? Are the landlords entitled to retain the tenant's security deposit? Are the landlords entitled to recover the filing fee?

Is the tenant entitled to a monetary order? Is the tenant entitled to recover the filing fee?

Background and Evidence

This tenancy began on July 1, 2014 as a 12 month fixed term with a rental amount of \$1550.00 however the landlord provided undisputed testimony that, after the tenant's boyfriend moved out the rent was reduced to \$1300.00 payable on the 30th of each month. The tenant vacated the

rental unit on July 31, 2017. The landlord continues to hold the tenant's \$775.00 security deposit paid at the outset of the tenancy.

The landlord applied to retain the tenant's security deposit towards a monetary order for expenses the landlord incurred at the end of this tenancy. The tenant sought to recover her \$775.00 security deposit, \$50.00 towards a utility bill that she feels the landlord should compensate her for and an additional amount equaling 2 months' rent (\$3214.70) to reflect her loss of quiet enjoyment during the tenancy.

The landlord testified that, immediately after the tenant vacated the rental unit, he discovered that the water to the rental unit and the rest of the premises had been shut off. The landlord testified that the water valve and, when he attempted to turn it back on, water sprayed out everywhere. He submitted an invoice for repair to the \$247.11 for the cost of repair. The invoice dated August 1, 2017 read, "what was shooting out of both hose bibs at time of technicians arrival...laundry shut offs... hose bibs damaged". The tenant testified that she did not believe she had damaged anything, that she unscrewed the water valve prior to removing her washer and dryer however when she removed her machines, there was a leak. She testified that she spent 30 minutes trying to repair the issue and then left the residence. She switched off the water valve. She did not advise anyone at the residence that there was an ongoing leak.

The landlord testified that, after the tenant vacated the rental unit she contacted the landlord by email on August 1, 2017 to say that she had inadvertently packed the garage door opener and some keys to the rental unit. She told the landlord that her belongings were in storage and that she would return the garage door opener and keys as soon as she unpacked. The tenant provided undisputed testimony that she returned the garage door opener to the landlord on September 7, 2017. The tenant testified that she moved into her new rental unit on September 2, 2017 and that she had no opportunity prior to that date to access the garage door opener packed away in storage. After the landlord made a 2nd request of the tenant to return the garage door opener, the tenant wrote a 2nd email response stating,

your new tenants will have to wait to get the 1 garage remote....As soon as I have access to the bins [in storage], I can retrieve the 1 garage door opener ... and return it to you... As mentioned twice before ... the opener was packed by mistake ...I didn't ever use the opener so hopefully it's not a big deal for your new tenants.

The landlord testified that, after waiting 1 month, he could not risk the security of his rental unit and so, prior to the return of the garage remote opener by the tenant, he had a new garage door opener installed as well as new keys for the residence. He provided a copy of his receipt for \$177.45 for the garage door opener and a receipt for \$129.43 for rekeying the locks to the house. The landlord provided undisputed testimony that he was uncertain as to whether the tenant intended to return additional keys created for the rental unit and not returned. The tenant argued that the landlord had no reason to worry about any keys she had – she testified that she didn't intend to return to the premises.

The landlord testified that the tenant was required to professionally clean the carpets at the end of the tenancy. The tenant testified that she used her own carpet cleaner. She testified that she arranged to have a professional cleaner come in at the end of her tenancy. She testified that the earliest she could arrange for the cleaner to come was the day after the end of her tenancy (August 1, 2017) and the landlord told her not to bother – that he didn't want her returning to the property. The tenant's offer to have the carpets cleaned on August 1, 2017 as well as the landlord's request that the tenant not return is documented in the communication by email and text submitted for this hearing. In responding to the landlord's claim for a \$219.45 in carpet cleaning costs, the tenant submitted her own quote for professional carpet cleaning. The estimate indicated that it was for 3 rooms and a stairway. The documentary evidence and the testimony of the tenant is that this home was over 3000 square feet with 6 bedrooms.

The tenant testified that she sought the equivalent of 2 months' rent as a result of her loss of quiet enjoyment over the course of the tenancy. She testified that the landlord effectively forced her out of the rental unit and that he really just wanted a new tenant so that he could raise the rent. The tenant submitted that her living circumstances were unbearable in that the landlord harassed her and her family in a variety of ways. She testified that the landlord served her with three different notices to end tenancy. She testified that he changed his mind about the allowance of pets in the residence. She testified that the landlord swore at her dogs. The tenant testified that when her daughter walked down the street, the tenant would walk towards her and look at her. The tenant testified that the landlord would often glare at her and her family. The tenant testified that the landlord threatened her on one occasion and used foul, angry language in text message correspondence in April 2017.

With respect to the angry text messages, the landlord and the landlord's lawyer explained that the landlord's father had passed away and he was uncharacteristically uncivil to the tenant. The landlord apologized at the hearing and indicated, supported by the documentary evidence that he had previously apologized to the tenant.

Analysis

With respect to the landlord's claim for a monetary order totalling \$773.44, 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 (in this case, the landlord) bears the burden of proof.

The landlord must prove the existence of the damage/loss. I find that the landlord has proven his loss. I accept the landlord's testimony and evidentiary materials that show; the tenant did not professionally clean the carpets at the end of the tenancy; that the tenant did not return all of the keys and the garage door opener for the rental unit premises; and that the water valve in the rental premises was not functional after the tenant removed her washer and dryer on July 31, 2017.

The landlord sought a monetary amount as follows,

Item	Amount
Carpet Cleaning	\$219.45
Key & garage door opener Replacement	206.88
Washer/dryer hook-up/water valve repair	247.11
Less Tenant's Security Deposit	-775.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order Sought by Landlord	(\$1.56)

With respect to the landlord's request to retain the tenant's security deposit, the tenant relies on the provisions of the Act that require the landlord to complete a condition inspection and report. The tenant argued that the landlord's right to retain the tenant's security deposit is extinguished. She refers to section 21 of the Residential Tenancy Regulation that describes the condition inspection report as the best evidence of the condition of the rental unit,

- 21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The tenant also referred to section 38 of the Act - that a landlord's right to retain a tenant's security deposit does not apply if the landlord has not provided opportunities for the tenant to attend a condition inspection report and the other requirements (including provision of the condition inspection report to the tenant) are not met. The landlord conceded he did not prepare a report but argued that the tenant is still responsible for his loss at the end of this tenancy.

I refer to section 72 of the Act that states that an arbitrator has may order payment from a tenant to a landlord by deducting the amount that the landlord is entitled to from the tenant's security deposit. He argued that he is still entitled to apply for damages and I agree. I find that the landlord was obliged to create a condition inspection report and provide a copy to the tenant however I note that the landlord has made his application in a timely manner and that he is not precluded from seeking to recover his loss. Section 72 of the Act allows an arbitrator the discretion to deduct the amount the landlord is owed from the tenant's security deposit if he continues to hold the deposit as of the date of the hearing.

The landlord must also provide evidence that can verify the actual monetary amount of the loss/damage. I find that the landlord has provided evidence (mainly undisputed) with respect to monetary amount of the garage door opener installation and rekeying of the locks to the rental unit, the repair of the water shut off valve and the carpet cleaning with invoices submitted as evidence for this hearing and dated immediately after the end of this tenancy. I will describe the details of that evidence below.

I find that the landlord proved, with the provision of the residential tenancy agreement (specifically the clause regarding carpet cleaning) that the tenant was required to have the

carpets professionally cleaned at the end of the tenancy. Residential Tenancy Policy Guideline No. 1 provides that, "The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises". Beyond the provision for cleaning carpets in the tenancy agreement, the admission of the tenant that she has had pets throughout her tenancy creates an obligation that she clean the carpets. The landlord submitted an invoice dated August 1, 2017 to prove that he paid to have the carpets cleaned at the end of this tenancy in the amount. Therefore, the landlord is entitled to \$219.45 – the cost of the invoice submitted for cleaning the carpets.

I find that the landlord proved, with an invoice and sufficient evidence that he paid to have a new garage door opener installed. The tenant did not dispute that she took these items with her and she testified that she returned them as soon as she was able. It is reasonable that the landlord would consider the security of his rental premises and his new tenants with respect to access to the rental unit and outstanding keys as well as the garage door opener. The landlord also provided a rekeying invoice as well as the invoice for the garage door opener installation. I accept that the landlord was required to rekey the rental unit and replace the garage door opener. Therefore, I find that the landlord is entitled to be compensated in the amount of \$206.88 (the combined total of garage door opener and rekeying), the amount of his cost to secure the rental premises at the end of the tenancy.

I also note that Policy Guideline No. 1 with respect to the obligation of both parties to the access (keys) to the rental unit indicates "The landlord must give each tenant at least one set of keys for the rental unit.... The tenant must return all keys at the end of the tenancy, including those he or she had cut at his or her own expense." The landlord's undisputed evidence is that the tenant did not return all of the keys to the rental unit and that the tenant did not, in a timely fashion return the garage door opener with access to the rental unit. I find that the landlord acted reasonably in rekeying the locks and installing a new garage door opener given that the tenant did not return the keys within one month of the end of the tenancy (and when new tenants, to whom the landlord owes an obligation for safety and security, were already residing in the rental unit).

I accept the landlord's testimony as well as his documentary evidence that the (water valve shut off) required repair immediately after the tenant vacated the rental unit. I also note that the tenant acknowledged that there was a leak from the (water valve) after she removed her washer and dryer and that she did not advise the landlord of the leak. At a minimum, the tenant was obliged to inform the landlord of the leak to avoid any further damage. Therefore, I find that the landlord is entitled to recover \$ 247.11 - the amount of the invoice to repair the water valve.

Sections 35-38 of the Act provides that a landlords and tenants must inspect the condition of a rental unit before the start and end of each new tenancy. If a landlord does not comply with the Act by failing to provide at least 2 opportunities for the tenant to attend for a condition inspection or does not provide the tenants with a copy of the report, the landlord's right to claim against a

security deposit is extinguished. In this case, there is no condition inspection report available for my consideration as none was created.

In all of the circumstances, I find that the landlord's right to make a claim against the tenants' security deposit is conceptually extinguished under sections 35-38. However, I find that the landlord has provided sufficient evidence to show the merit of his application. Given my findings that the tenant is responsible for this damage, I find that the landlord is entitled to recover the cost for the repair of the water valve; the rekeying and installation of a garage door opener; and the cost of carpet cleaning. As the landlord has been successful in his application, I find that the landlord is entitled to recover his filing fee for this application. The landlord is entitled to \$773.44 from the tenant and is entitled to retain the tenant's security deposit to satisfy that amount pursuant to section 72.

With respect to the tenant's allegations that the landlord created uncomfortable conditions for her by photographing the outside of the property, glaring at the tenant and walking towards her children, I find that the tenant has not provided sufficient evidence to support her claim. I note that the landlord apologized for foul language in text messages but I find that, regardless of the evidence of this angry correspondence, the tenant has not provided evidence that shows a substantial impact on herself or her family during the course of her tenancy. Furthermore, when assessing the credibility of the parties in this matter, I found that the landlord's testimony was both candid and straightforward. I accepted his testimony as he made admissions regarding his impolite text messages as well as other unfortunate conversations. I find he had a reasonable explanation for his behavior and that, even by the accounts of the tenant, that behavior was uncharacteristic.

I find that the landlord's steps at the end of the tenancy, regarding security of the unit and his new tenants as well as a measured claim for costs directly related to damage or loss caused by the tenant. On the other hand, I found that the tenant's testimony was at times inconsistent – for example, with respect to the size of the rental unit and other small, seemingly minor pieces of evidence. When weighing the testimony of both parties, I preferred the landlord's evidence for the reasons noted above. Therefore, for this reason and as a result of the lack of sufficient evidence to support her claim, I dismiss the tenant's application for compensation for lack of quiet enjoyment.

The tenant also testified that she sought to recover \$50.00 from the landlord for overpayment of a utility bill and to recover her \$775.00 security deposit. The tenant did not provide clear understandable evidence in support of this claim although she was given an opportunity to do so. I find that the tenant has failed to prove that the landlord should reimburse her for the partial cost of a utility bill. I dismiss her claim to recovery \$50.00 of a utility bill. I have determined that the landlord is entitled to retain her security deposit towards his monetary order therefore she is not entitled to its return. As the tenant was not successful in her application, I find that the tenant is not entitled to recover the \$100.00 cost of her filing fee.

I find that the landlord is entitled to a monetary award as follows,

Item	Amount
Carpet Cleaning	\$219.45
Key & garage door opener Replacement	206.88
Washer/dryer hook-up/water valve repair	247.11
Recovery of Filing Fee for this Application	100.00
Total Monetary Amount to Landlord	\$773.44
Less Tenant's Security Deposit	-775.00
<i>Total Monetary Amount remaining from Tenant's Security Deposit</i>	<i>-\$1.56</i>

I allow the landlord to retain the tenant's security deposit in satisfaction of the monetary amounts awarded to him.

Conclusion

I dismiss the entirety of the tenant's application without leave to reapply.

I allow the landlord to retain the tenant's security deposit to satisfy his monetary award.

As the security deposit remainder is negligible (\$1.56), I decline to issue a monetary order.

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 4, 2017

Residential Tenancy Branch