



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF LAT LRE MNDC MNSD O

Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order for a return of the security or pet deposit pursuant to section 38 of the *Act*;
- a cancellation of the landlord's notice to end tenancy for cause pursuant to section 47;
- an order suspending or setting conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to change the locks to the rental unit pursuant to section 70; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the landlord and the tenants appeared at the hearing and were both given a full opportunity to be heard, to present their sworn testimony and to make submissions.

The landlord acknowledged that he received a copy of the tenants' Application for Dispute Resolution and evidentiary package by Registered Mail on approximately August 12, 2017. Pursuant to sections 88 and 89 the *Act*, the landlord is found to have been duly served with these documents.

The tenants acknowledged receiving the landlord's evidentiary package in person. Pursuant to section 88 of the *Act*, the tenants are found to have been served with the landlord's evidentiary package.

Following opening remarks, the tenants explained that they had vacated the rental unit and were only pursuing the monetary aspects of their claim. As the landlord would not

be prejudiced by this amendment, I amend the tenants' application pursuant to section 64(3)(c) to reflect only a monetary order of \$3,506.66 and a return of the security deposit.

Issue(s) to be Decided

Are the tenants entitled to a monetary award?

Should the landlord be directed to return the security deposit to the tenants?

Are the tenants entitled to a return of the filing fee?

Background and Evidence

The tenants provided undisputed testimony that this tenancy began in February 2017 and ended on approximately September 4, 2017. Rent was \$1,400.00 per month and a security deposit of \$700.00 paid at the outset of the tenancy continues to be held by the landlord.

The tenants explained that they were seeking a monetary award of \$3,506.66. They said that they were claiming an award for the following items along with a return of the filing fee:

ITEM	AMOUNT
1 Month's Rent for the Landlord's Use of Property	\$1,400.00
Damages for mental harassment	1,400.00
Return of Security Deposit	606.66
Return of Filing Fee	100.00
TOTAL =	\$3,506.66

During the course of the hearing, the tenants provided testimony which was disputed by the landlord, detailing why they felt they were entitled to a monetary award for landlord's use of the property, for mental harassment and for a return of their security deposit.

The tenants explained that they moved out of the rental unit at the start of September 2017 after having received two separate Notices to End Tenancy for Cause. The first Notice was issued in July 2017, while the second was issued in August 2017. On

September 12, 2017 the tenants attended a hearing to dispute the Notice to End Tenancy served to them. At this September 12, 2017 the tenants informed the Arbitrator that they had already vacated the suite and were no longer disputing the landlord's Notice to End Tenancy. During the hearing before me of October 24, 2017 the tenants informed that they had vacated the suite on their own volition, because they could not be bothered to fight with the landlord any further and did not feel comfortable in the rental suite.

Tenant T.B. explained that he felt the tenants were entitled to \$1,400.00 compensation because the landlord had relied on false pretences under which he issued the Notices to End Tenancy. Tenant T.B. stated that the landlord informed him that he had been advised that tenants were no longer permitted under his insurance scheme and he would therefore be taking over the rental unit. The tenants explained that this information had contributed to their decision to vacate the suite.

The tenants pointed out that the landlord had failed to provide them with a formal 2 Month Notice to End Tenancy for Landlord's Use of Property, and that they were therefore entitled to compensation under the *Act*, as they had vacated the suite under the assumption that the suite would be used by the landlord.

The tenants have applied for a monetary award in reflection of the mental harassment they say they had suffered during the tenancy. Specifically, the tenants cited an incident on July 3, 2017 when tenant T.B. and the landlord got into a verbal altercation. Tenant T.B. said this altercation left his children scared, that this became stressful to him as a parent and that he felt the landlord had acted physically aggressive towards him. Additionally, the tenants said that they dealt with numerous notices from the landlord asking to enter their suite so that he may show it to potential renters. The tenants said that they received 8 notices per day starting on June 29, 2017. They said these notices were for viewings that were to take place between, July 1st – 5th, 2017. The tenants alleged that only one showing took place during this time, and that the landlord had used these opportunities to enter the suite to perform various inspections of the rental unit.

The final aspect of the tenants' monetary application concerns a return of their security deposit. They explained that the landlord was given a written copy of their forwarding address on approximately August 29, 2017. The tenants stated that they had overheld in the rental unit for 2 days in September 2017 and had therefore given the landlord permission to retain \$93.34 of their security deposit. The landlord acknowledged receipt

of their address but explained that the tenants had damaged the apartment and he was therefore entitled to retain their security deposit.

The landlord strongly denied all aspect and details of the tenants' application for a monetary order. The landlord asked that the Arbitrator consider the evidence he submitted as part of his evidentiary package.

Analysis

Residential Tenancy Branch Rules of Procedure state at 3.7:

Evidence must be organized, clear and legible. All documents to be relied on as evidence must be clear and legible...To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

I do not find that the landlord has supplied evidence that is organized, clear or legible. The evidentiary package he submitted to the *Residential Tenancy Branch* is comprised of approximately 80 loose papers, nearly all of which are hand written documents. Some of the documents entered into evidence are half pages of paper that have been stapled half way down the page, while others are written on the back of recycled paper that has previously been used for some other purpose. Additionally, I find that the evidence is stained, contains numerous scribbles that make it difficult to read and in some cases is folded over. I decline to consider the landlord's evidentiary package and will only consider the landlord's oral testimony.

The tenants have applied for a return of \$606.66 of their security deposit. They testified that they provided the landlord with their forwarding address on approximately August 29, 2017 along with written authorization to retain \$93.34 of their security deposit. The landlord acknowledged receiving their forwarding address but explained that he retained their deposit because of damage to the rental unit.

Section 38 of the *Act* requires the landlord to either return a tenant's security or pet deposit in full or file for dispute resolution for authorization to retain these deposits 15 days after the *later* of the end of a tenancy, or upon receipt of a 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. In this case, the value of the security deposit is \$606.66. The provision listed above does not apply if the landlord has obtained a tenant's written authorization

to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). Under section 38(3)(b) a landlord may retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of receiving a copy of the tenant's forwarding address on August 29, 2017, or following the conclusion of the tenancy on September 4, 2017. If the landlord had concerns arising from the damages that arose as a result of this tenancy, the landlord should have applied for dispute resolution to retain the security deposit.

Pursuant to section 38(6)(b) of the *Act*, a landlord is required to pay a monetary award equivalent to double the value of the security deposit if a landlord does not comply with the provisions of section 38 of the *Act*. The tenant is therefore entitled to a monetary award in the amount of \$1,213.32, representing a doubling of the portion of the tenant's security deposit that has not been returned.

In addition to their application for a return of the security deposit, the tenants have applied for a monetary order of \$2,800.00.

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 tenants to prove their entitlement to a monetary award.

The first aspect of the tenants' application for a monetary award includes an award of \$1,400.00 in reflection of not being compensated for the landlord's use of the property. Section 51 of the *Act* states, "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."

I find that the tenants were not served with a 2 Month Notice to End Tenancy for Landlord's Use of Property and are therefore not entitled to compensation under section 51 of the *Act*. While the tenants may have been informed by the landlord that he

required the use of their suite for insurance purposes, no Notice to End Tenancy under section 49 of the *Act* was ever served on them and the tenants therefore have no recourse to compensation under this section of the *Act*.

The final aspect of the tenants' application for dispute concerns an application for a monetary award of \$1,400.00 for mental harassment. The tenants detailed numerous notices to enter their suite, along with a verbal altercation that tenant T.B. and the landlord had in July 2017.

Section 16 of the *Residential Tenancy Policy Guideline* examines the issues of compensation in detail. It notes:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 28 provides that, "the tenant is entitled to quiet enjoyment including, but not limited to, rights to the following reasonable privacy and freedom from unreasonable disturbance."

I find that the tenants are entitled to some form of monetary compensation, as it is evident based on their oral testimony that they were subject to harassment and consequently a loss of quiet enjoyment, by the landlord during a 1 week period in July 2017. I find that the amount requested by the tenants of \$1,400.00 to be excessive for the harm suffered. An award equal to the number of notices that they received would be more appropriate and quantifiable. I find that the tenants are entitled to \$10.00 per notice they received. As the tenants received 40 notices in a five day period, I find that the tenants are entitled to \$400.00 for loss of quiet enjoyment of the rental unit pursuant to section 28 of the *Act*.

As the tenants were partially successful in their application, they may recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a Monetary Order of \$1,713.32 in favour of the tenants as follows:

Item	Amount
Return of Security Deposit less amount authorized to be withheld (2 x \$606.66)	\$1,213.32
Loss of Quiet Enjoyment (40 x \$10.00)	400.00
Return of Filing Fee	100.00
Total =	\$1,713.32

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.

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 25, 2017

Residential Tenancy Branch