Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MND MNDC MNSD

Introduction

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

The tenants seek:

- a return of their security deposit pursuant to section 38 of the *Act*; and
- a monetary award for loss pursuant to section 67 of the *Act*.

The landlord seeks:

- a monetary order for loss under the *Act* pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

Landlord B.G.H. (the "landlord") and female tenant, T.N. (the "tenant") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Following opening remarks the landlord, B.G.H. (the "landlord") wished to clarify that he was the owner of the property, and the other named landlord, P.C. was the property manager tasked with overseeing the property. The tenant explained that she served both the landlord B.G.H. and the property manager P.C. by Canada Post Registered Mail on July 26, 2017. The tenant provided a copy of the Canada Post tracking number to the hearing. B.G.H., confirmed receipt of the tenant's application for dispute and evidentiary package, while property manager P.C. failed to attend the hearing. I find pursuant to sections 89 & 90 of the *Act*, that both landlords were duly served under the *Act*. Landlord, P.C. is deemed under section 90 of the *Act,* served with the tenant`s application on July 31, 2017, five days after its mailing.

The landlord stated that he wished to amend his application for a monetary award from $25,000.00 to $20,780.00. As the tenants would not be prejudiced by this request, I will amend the landlord's application pursuant to section 64(3)(c) to reflect this new figure.

Further to section 64(3)(c), I amend the tenants' application to remove the property manager, P.C., as a respondent. I find that the landlord has appeared at the hearing, has identified, P.C., as his agent, and has served the tenants with an application for a monetary award which did not include P.C. I find that it would be inequitable to place any burden on P.C. that may result from any decision reached, as P.C. acted solely as agent for the landlord.

Issue(s) to be Decided

Is either party entitled to a monetary award?

Are the tenants entitled to a return of the security deposit?

Can the landlord recover the filing fee associated with the application?

Background and Evidence

Undisputed testimony was provided by the landlord that this tenancy began in December 2013 and ended in June 2017. Rent was $4,400.00 per month, and a single security and pet deposit of $5,000.00 collected at the outset of the tenancy continues to be held by the landlord.

The tenants are seeking a return of their entire security deposit, along with a monetary award of $1,621.16. Specifically, the tenants are seeking the following relief:

Item	**Amount**
Return of Security Deposit	$5,000.00
Pro-rated rent for June 2017	1,466.60
Compensation for lost cable box	154.56
Total =	$6,621.16

The tenants argued that they were entitled to a monetary award in satisfaction for a return of their entire security deposit, along with compensation for a cable box of theirs which was not returned and for a prorated rental rate which the landlord had promised them for the final month of their occupancy.

The tenants said that they had paid for a cable box that was used by the downstairs tenants; however, following the conclusion of their tenancy, the downstairs tenants did not return the cable box to the applicant tenants. On August 1, 2017 the tenants received a cheque from the landlord for $1,814.00 for a partial return of their security deposit.

The landlord acknowledged that an offer to prorate the tenants' rent had been made, but he had rescinded this offer after learning that the rental unit was not returned to him in a condition which he found to be adequate. The landlord said that the cable box had in fact been returned, and given to property manager, P.C. An email dated, June 30, 2017 from the property manager to the tenants informed the tenants of the box's return.

The landlord has applied for a monetary award of $20,780.00, as well as a return of the filing fee. The landlord is seeking relief as follows:

Item	**Amount**
Replacement of Desk	$18,000.00
Power Washing	650.00
Screens for Doors	230.00
Cracked Access ports for windows	1,400.00
Replacement of garage door remotes	250.00
Cleaning Services for home (estimate)	250.00
Total =	$20,780.00

The tenant explained that a condition inspection of the rental unit was performed on June 28, 2017 by both tenants and the property manager, P.C. A copy of this condition inspection report, which was provided to the hearing as part of the tenants' evidentiary package, shows that both parties signed the report, noting the tenants were responsible for, "broken glass panel on office light, 1 remote lost, 3 cm chip F/P hearth."

A series of emails exchanged between the tenants, and property manager P.C., following the completion of the condition inspection report, were produced for the hearing as part of the tenants' evidentiary package. These emails show that the property manager did not have any serious concerns with the condition of the home. In a June 29, 2017 email, property manager P.C. wrote;

> Agreed damage includes:
>
> -broken glass pane on light fixture in the first floor office
> -3 cm chip in marble on the living room fireplace hearth corner
> -one garage remote missing

> In addition – two cracked glass panes in French doors – one in master bedroom and one in basement library.
>
> The rest of the house is reasonable.

The email then goes on to detail a few other minor repairs and concerns which were noted.

An email dated June 30, 2017 from the property manager P.C. to the tenants states, "The cable box has been found and is on site for pick up, if your [sic] available today…please note we have reviewed acceptable wear and tear and the items that are damaged." The email continues by noting, "Deductions from deposit thus far will include: invoice to replace lost garage remote and have it reprogrammed (approx $160), replace missing light bulbs through via handyman (tbc – approx $250), reimbursement to owner for broken office chair ($150), basic cost materials to repair chip fireplace (approx. $50), missing gas diffuser on one gas burner (tbd)."

The landlord argued that the condition inspection report completed by property manager P.C. and the tenants was inadequate. He explained that the parties had failed to inspect the garage/storage area. He continued by arguing that if the parties had taken adequate action to properly inspect the property, numerous defects would have been found. Most notably, the landlord explained that an $18,000.00 desk, he had purchased in Winnipeg in 1997 or 1998 had been put into storage by the tenants. He said that the tenants did not have permission to move this piece of furniture into storage. The landlord said that in failing to take proper precautions while moving and storing the desk, the tenants had damaged the desk beyond repair.

In addition to his claim for compensation related to the damaged desk, the landlord argued that he was due a monetary award because of other items which he had personally identified as being broken/missing following the condition inspection report performed by the property manager. In particular, the landlord said that the tenants had failed to power-wash the outside of the rental home, the tenants had broken a screen door, that a number of access ports for rolling windows were cracked, and that a garage door remote had not be returned. Further, the landlord said that the cleaning which had been done in the rental unit was unacceptable and that he required the services of professional cleaners to bring the home to an adequate standard.

The tenants did not deny moving the desk into storage; however, they said they were granted permission to move the desk by the property manager P.C. and that addendum #28 of their tenancy agreement granted them, "ability to move furniture/breakables to

safe storage on the property." The tenants said that a condition inspection report had been signed between themselves and the property manager, and that they took this report to be true and accurate. The tenants contended that the landlord was seeking compensation which went beyond the scope of the condition inspection report completed between the tenants and the property manager.

As part of the landlord's written submissions, the landlord provided 21 photos of damage that he noted in the rental unit following the end of tenancy. He wrote that the property manager, "failed in their duty to examine contents of the storage garage, and make no reference to the desk system's condition on their mandatory inspection report."

Analysis

I will first examine the tenants' application for a monetary award, and then turn my attention to the landlord's application.

The tenants' have applied for a monetary award of $6,621.16. The tenants are seeking compensation related to a return of their security deposit, for a cable box that was purportedly lost, and for loss they suffered related to an offer of prorated rent that they did not receive for June 2017.

I find that the tenants are entitled to an immediate return of $600.00 which was an overpayment of the pet and security deposits. Section 19(1) & (2) of the *Act* state, "A landlord must not require or accept either a security deposit or a pet deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. If a landlord accepts a security deposit or a pet damage deposit that is great than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment."

Rent for the home in question was $4,400.00 per month. The landlord collected a security and security deposit of $5,000.00. The tenants therefore only had an obligation to pay security and pet deposits of $2,200.00 each. I find that the tenants overpaid the security and pet deposit by $600.00 and are entitled to an immediate return of this amount.

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. However, this provision does not apply if the landlord has obtained the 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). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

After reviewing the condition inspection report completed by the tenants and the property manager, it is evident that the tenants agreed to some damages in the rental unit, specifically – broken glass panel on office light, 1 remote and a 3cm chip on the fireplace hearth. The tenants, however, did not agree to any deductions from their security or pet deposit.

I find that the landlord failed to apply for dispute resolution within 15 days of receiving a copy of the tenants' forwarding address on June 28, 2017, or following the conclusion of the tenancy on this date. A cheque for $1,814.00 was purportedly sent to the tenants on July 14, 2017. This cheque was lost and a second cheque was sent on July 28, 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 within 15 days of receiving the tenants' forwarding address or within 15 days following the conclusion of the tenancy. It is inconsequential if damages exist, if the landlord does not take action to address these matters through the dispute resolution process. A landlord cannot decide to simply keep a portion of security deposit as recourse for loss and then return any remaining amount.

No evidence was produced at the hearing that the landlord received the tenants' 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) of the *Act*; nor did the landlord receive an order from an Arbitrator enabling her to do so.

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*, less the amount already returned to the tenants.

The tenants are therefore entitled to a monetary award in the amount of $2,856.00, representing a doubling of the tenants' security deposit (2 x $2,220 = $4,400), less the $1,814.00 already returned.

In addition to a return of their security deposit, the tenants have applied for a monetary award for the landlord's failure to return their cable box and for prorated rent they argued they were due.

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.

I do not find that sufficient evidence was presented that the cable box was in fact lost, or that its loss can be attributed to any action by the landlord. I find the email from the property manager to the tenants sent on June 30, 2017 clearly stated on two occasions that the cable box had been found and was available for the tenants to collect. This email read as follows, “The Shaw box has been found and is on site for pick up if your [sic] available today.” It continued by saying, “Shaw box available at house today.” The tenants provided no reasons for their failure to pick up the box as requested. For these reasons, I dismiss this portion of the tenants’ application.

The second portion of the tenants’ application is based on the landlord’s offer of prorated rent for the month of June 2017. The landlord acknowledged that such an offer had been made, and he had told the tenants that they only had to pay rent for the time they occupied the rental unit in June 2017; however, he said that he rescinded this offer following his own inspection of the rental home.

Section 26(1) of the *Act* states, “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.”

I find that the tenants had no right under the *Act*, their tenancy agreement or the regulations not to pay rent in its entirety. I find that the landlord attempted to accommodate their needs and made them a generous offer; however, I do not find that this offer amounted to a contractual obligation. In the law of contracts, promissory Estoppel provides that if a party changes their position substantially either by acting or refraining from acting upon reliance of a gratuitous promise, then that party can enforce the promise as a contractual obligation. There was no evidence showing that the tenants altered their position based on this offer. I find that rent was due under the terms of the tenancy agreement for June and that the tenants were merely relying on

the good faith of the landlord to provide them with some relief for the month of June 2017. Rent was due for the month under the terms of their tenancy agreement and the tenants were not substantially changing their behaviour in reliance on this promise. I therefore, dismiss this portion of the tenants' application.

The tenants are entitled to monetary award as follows:

Item	**Amount**
Return of overpayment of security and pet deposit	$600.00
Return of Security Deposit with penalty	2,856.00
Total =	$3,456.00

I now turn my attention to the landlord's application for a monetary award of $20,780.00. The landlord has applied for compensation related to the following items; replacement of a desk, power washing, screens for doors, replacement of garage door remotes, cleaning services and a cracked access port on various windows. I will examine these issues individually starting with the power washing and cleaning for which the landlord is seeking compensation.

Residential Tenancy #1 provides a detailed explanation of the rights and responsibilities of both landlords and tenants for residential premises. It states, "This guideline is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning and repairs of residential property, and obligations with respect to services and facilities. Section 32(2) &(4) of the *Act* states, "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…a tenant is not required to make repairs for reasonable wear and tear." While Section 33(3) of the *Act* notes, "A tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant."

I do not find that the tenant was under any obligation per the terms of their tenancy agreement to power wash the outside of the home following the conclusion of the tenancy. While I note that a mark regarding power washing of the exterior of the property was made on the condition inspection report performed by the parties at the end of the tenancy, a close reading of the addendum and tenancy agreement, reveals no duty on the part of the tenants for exterior cleaning of the home. *Policy Guideline #1* notes, that the tenant is responsible for washing and cleaning of interior walls, but the *Guideline* is silent on the issue of responsibilities to the exterior of the home. I do not find that the landlord is entitled to the costs associated with power washing the exterior of the rental home.

Following the conclusion of the tenancy, the tenants and property manager P.C. performed an inspection of the rental home. The home was found to largely be left in a clean state and no major cleaning was noted in the report. Property Manager P.C. wrote in a June 29, 2017 email that “the house is reasonable” and he listed some steam cleaning which was to be performed by the tenants. Section 1-2 of *Policy Guideline* #1 reads as follows, “the tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.” While the home was left “reasonably” clean, and that the tenants fulfilled their responsibilities under section 32 of the *Act,* I find that the tenants did not perform a thorough cleaning of the carpets. I therefore allow the landlord to an award of $250.00 for cleaning required in the rental unit.

The remaining items for which the landlord is seeking compensation relate to a broken desk, a broken door screen and cracked access ports on windows and replacement of a garage door remote. The tenants acknowledged that only 1 garage remote was returned and agreed on the condition inspection report that 1 remote was lost. The landlord may therefore recover the amount associated with the lost remote.

The landlord argued that door screens and various window ports were broken during the tenancy. The tenants argued that the door screens were already broken when they moved into the rental unit. I find insufficient evidence was presented at the hearing by the landlord showing that the tenants broke the door screens. The condition inspection report along with subsequent emails sent to the tenants from the property manager makes no mention of any issues regarding the door screens. All parts of the condition inspection report which highlight windows/covering/screens are marked as “good.” For these reasons I dismiss the landlord’s application for a monetary award related to the door screen.

The landlord presented photos of various access ports to windows which he explained were broken during the tenancy. The landlord was seeking $1,400.00 for their repair and replacement. The tenants did not deny that these frames may have become cracked during the tenancy. *Residential Tenancy Policy Guideline #40* provides a general guideline for determining the useful life of building elements for determining damages. The useful life of window frames is listed by the Guideline as being 20 years or 240 months. The landlord said that these windows were installed in 2013. The window frames therefore had 16 years or 192 months of useful life remaining for which the landlord is entitled to compensation. I find that the landlord is entitled a monetary

award equivalent to $5.83 (1400 divided by 240 = 5.83/month) for each month of useful life remaining on the window frames, or in this case $1,119.36 (192 x 5.83).

The final aspect of the landlord's application concerns a request for a monetary award of $18,000.00 for a desk that was moved by the tenants into storage, and subsequently damaged. The landlord argued that the tenants were told not to move the desk and that the desk had been ignored by the parties during the condition inspection. As mentioned previously, a person claiming compensation under 67 of the *Act*, is only entitled to an award for damages when it can be shown that the existence of the damage/loss, stemmed directly from a violation of the tenancy agreement or a contravention of the *Act*. Section 28 of the tenancy agreement addendum states, "The ability to move furniture/breakables to safe storage on the property." I find that the tenants did not break any term of the tenancy agreement when they moved the desk to the garage/storage area. While it is very unfortunate that the desk was damaged while in storage, I find that no violation of the tenancy agreement or a contravention of the *Act* occurred.

The landlord testified that this desk was purchase in 1997 or 1998, making the desk at least 15 years old when the tenancy began in 2013. Section 40-6 of the *Guideline* notes, that furniture has a useful life of 10 years and that the landlord may therefore no seek compensation for any period beyond this. I dismiss this portion of the landlord's application.

As the landlord was partially successful in his application, he may recover the $100.00 filing fee from the tenants.

The landlord is entitled to a monetary award as follows:

Item	**Amount**
Estimate for Cleaning of Carpets and Home	$250.00
Broken window frames	1,119.36
Return of Filing Fee	100.00
Total =	$1,469.36

Conclusion

I issue a Monetary Order of $1,986.64 in favour of the tenants as follows:

Item	Amount
Return of overpayment of security and pet deposit	$600.00
Return of Security Deposit with penalty	2,856.00
Less amount awarded to Landlord	(-1,469.36)
Total =	$1,986.64

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: January 26, 2018

Residential Tenancy Branch