



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RP, MNDC, FF

Introduction

In an Interim Decision dated February 27, 2018 the Tenants' application, and amendment made December 29, 2017, was reviewed and the original claims for compliance and repairs were dismissed as the tenancy had ended. The hearing was reconvened to hear the Tenants' remaining claims for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security and pet deposits - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the reconvened hearing. It is noted that the Landlord was provided with the Interim Decision containing the Notice of Reconvened Hearing by the Residential Tenancy Branch. The Tenants state that the Landlord indicated as recently as May 8, 2018 that the Landlord was aware of this reconvened hearing date and time and the Landlord indicated that it would not attend the hearing. The Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions on their claims.

Issue(s) to be Decided

Are the Tenants entitled to return of double the combined security and pet deposit?

Are the Tenants entitled to the additional compensation claimed?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy of a basement unit started on September 1, 2017. Rent of \$1,550.00 was payable on the first day of each month. Utilities, including cable and internet, of

\$175.00 were also payable on the first day of each month. At the outset of the tenancy the Landlord collected \$775.00 as a security deposit and \$775.00 as a pet deposit. No move-in condition inspection was offered by the Landlord or conducted with the Tenants. The Landlord lives above the unit.

On October 25, 2017 the dishwasher started to leak and the sink became clogged. The Landlord was informed of the problems on October 26, 2017 but never made any repairs. The Tenants claim the loss of use of the dishwasher and sink for the period October 25 to November 10, 2017 in the amount of \$250.00. This amount is based on 15% of the total rent paid for this period.

On October 30, 2017 the Tenants gave written notice to end the tenancy for November 30, 2017 by placing this at the Landlord's door. On October 31, 2018 the Tenants sent the notice to the Landlord by email to which the Landlord replied. On the same date the Tenants sent the notice by registered mail to the Landlord.

The Tenants started to move out of the unit on November 1, 2018 and while they were mostly moved out by November 4, 2018 they continued to go back and forth to the unit. On November 10, 2017 and upon return to the unit the Tenants discovered that the Landlord had changed the locks to the unit. The Tenants could not occupy the unit and had to seek other accommodation. The Tenants claim accommodation costs of \$740.19 for the period November 10 to November 30, 2017 inclusive. The Tenants provide a receipt for this cost. The Tenants claim return of the rent paid for this period of \$1,033.33. This is based on a per diem rate of \$51.66 of the monthly rent. The Tenants claim return of the utilities paid for this period in the amount of \$116.66. This is based on a per diem rate of \$5.83 of the monthly utility payment.

On November 1, 2017 the Landlord stopped providing internet to the Tenants and told them that in order to have access to the internet the Tenants would have to pay the Landlord \$256.60. The Tenants felt that they had no choice to pay this amount and did

so with the internet continued a day later. As the internet was already included with their monthly utility payment, the Tenants claim return of \$256.60.

Between November 2 and November 10, 2017 the Landlord entered the unit at least once without the Tenants' knowledge or consent. The Landlord also informed the Tenants that multiple attempts were made by the Landlord to enter the unit without the Tenants' consent. The Tenants provide emails as supporting evidence of these attempts. The Tenants claim compensation of \$276.67 for their loss of quiet enjoyment of the unit for this period. This amount is based on 20% of the rent paid for this period.

The Landlord kept two bikes of the Tenants and refused to return them until yesterday when the Landlord agreed to have the bikes returned by the date of the hearing. The bikes have yet to be returned. While the Tenants accept the Landlord's agreement to return the bikes as promised the Tenants claim \$250.00 for the loss of the bikes if the Landlord does not return the bikes as promised.

The Tenants provided their forwarding address to the Landlord on November 15, 2017. The Landlord has not returned the security deposits and has not made an application claiming against the security deposit. The Tenants do not waive a right to return of double the security deposit.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to reasonable privacy, freedom from unreasonable disturbance and exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the Act. Based on the undisputed evidence that the Landlord entered the unit at least on one occasion and continued to enter the unit on several occasions I find that the Landlord breached the Tenants' right

to exclusive possession of the rental unit. The Tenants are therefore entitled to the reasonable compensation sought of **\$276.67**.

Based on the undisputed evidence of the terms of the tenancy agreement, the amount of rent and utilities paid for November 2018 and on the undisputed evidence that the Landlord locked the Tenants out of their unit on November 10, 2017 I find that the Landlord breached the tenancy agreement causing a loss of the Tenants' right to exclusive occupation of the unit. As a result I find that the Tenants are entitled to return of the rent and utility payments made for the period November 10 to 30, 2017 in the amounts of **\$1,033.33** and **\$116.66**. I further accept that as a consequence of the Landlord's actions the Tenants suffered a loss and incurred costs for alternate accommodation. Given the invoice I find that the Tenants have substantiated the costs claimed of **\$740.19**.

Based on the undisputed evidence that under the oral terms of the tenancy internet was provided with the monthly utility payments and considering the Landlord demanded an additional amount I find that the Tenants have substantiated that the Landlord breached the terms of the tenancy agreement in demanding and collecting more than the agreed monthly amount. The Tenants are therefore entitled to return of the **\$256.60** extra amount paid to the Landlord for internet access.

Given the undisputed evidence that the Landlord kept the Tenants' two bikes but considering that the Landlord has agreed to return these bikes I dismiss the claim for compensation for these bikes with leave to reapply should the Landlord fail to act as promised.

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. Based on the undisputed

evidence that the Landlord failed to make repairs to a leaking, unusable dishwasher and a clogged sink I find that the Tenants lost value in the tenancy. I find therefore that the Tenants are entitled to compensation for that loss of **\$250.00**.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the undisputed evidence of the provision of the Tenants' forwarding address to the Landlord, the undisputed evidence that the security and pet deposits were not returned and the undisputed evidence that no claim has been made to retain the security or pet deposit, I find that the Landlord must now pay the Tenants double the combined security and pet deposit plus zero interest of **\$3,100.00**.

As the Tenants have been successful with its application I find that the Tenants are entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$5,873.45**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$5,873.45**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: May 11, 2018

Residential Tenancy Branch