Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, MNRL-S, FFL

Introduction

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

- a Monetary Order for unpaid rent pursuant to sections 26, 67 and 72;
- a Monetary Order for damages, pursuant to section 67;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- authorization to retain the tenants' security deposit in part satisfaction of their monetary claim, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

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

The landlord's agent (the "landlord") testified that he served tenant D.C. with the notice of dispute resolution package by registered mail. The landlord did not have the tracking number to confirm this mailing and did not know on what date the package was put in the mail. Tenant D.C. testified that he received the package on December 28, 2017. I find that the tenant D.C. was served with this package on December 28, 2017, in accordance with section 89 of the *Act.*

The landlord testified that he did not send a separate notice of dispute resolution package to tenant J.C. Tenant J.C. testified that she did not receive a notice of dispute resolution package. I find that tenant J.C. was not served in accordance with section 89 of the *Act*; therefore, I dismiss the landlord's application against tenant J.C. without leave to reapply. Pursuant to section 64 of the *Act*, I amend this application to only list tenant D.C. (the "tenant") as the Respondent.

Preliminary Issue- Service of Evidence

Both parties agreed that the landlord hired a property management company to handle all tenancy related issues and the tenant was informed of same sometime in June 2017. The landlord testified that he did not serve the tenant with his evidence package as he thought the property management company was going to serve the tenant. The landlord further testified that the day before the hearing he found out that the property management company was no longer acting for the landlord and had not served anything on the tenant other than the notice of dispute resolution package.

The tenant testified that he did not receive any evidence other than what was included in the notice of dispute resolution package. The tenant testified that the following evidence was included in the notice of dispute resolution package:

1. water bills;
2. a blank condition inspection report; and
3. photographs of the property after the tenants moved out.

Section 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the "Rules") states that evidence not submitted at the time of Application for Dispute Resolution that are intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that since the tenants did not receive the landlord's evidence package, all evidence submitted by the landlord, except the items contained in the notice of dispute resolution package, are not admitted into evidence.

The tenant testified that he sent his evidence package to the landlord's property management company via registered mail on July 2, 2018. The tenant provided the Canada Post Tracking Number to confirm this registered mailing. The tenant testified that he received his evidence package back to him from the property management company on July 9, 2018, the day before the hearing.

The tenant testified that it was at this time that the property management company informed him that they were no longer acting for the landlord. The tenant testified that prior to July 9, 2018 he had no notice from the landlord that the landlord's address for service had changed. The tenant testified that he did not have time to mail the evidence package to the landlord prior to this hearing.

Section 90 of the *Act* states that a document served by registered mail is deemed to be received on the 5th day after it is mailed. In this case, the property management company would have been deemed to have received the evidence package on July 7, 2018.

Section 3.15 of the *Rules* states that the Respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. In this case, the property management company would have been deemed served with the evidence package three days before the hearing, thereby breaching rule 3.15. I find that due to

the late service of evidence on the property management company, the tenant's evidence is excluded from this proceeding.

Had the evidence been served on the property management company within the timelines set out in the *Rules*, the evidence would have been accepted into evidence even thought he landlord did not receive it as it was the landlord's responsibility to inform the tenant of the change in his address for service.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
4. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
5. Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed that this tenancy began on September 1, 2016 and ended on December 9, 2017. Both parties agree that the landlord did not provide two opportunities to complete a move in or move out condition inspection and that neither a move in inspection report or a move out inspection report were completed. A written tenancy agreement was signed by both parties but a copy was accepted into evidence.

Both parties agreed that the tenant emailed the landlord his forwarding address in writing on December 11, 2017. The landlord testified that he received and reviewed the e-mail containing the tenant's forwarding address in writing on December 11, 2017.

The tenant testified that in November 2017 he received a notice of direct request proceeding in which the landlord was seeking a two-day Order of Possession for unpaid rent. The tenant

testified that he did not think that he and his wife could move a family of five in two days, so before the direct request decision was rendered, they moved out.

Both parties agreed that the original monthly rent of this property was $1,900.00; however, in September of 2017 an Arbitrator of the Residential Tenancy Branch granted the tenants a rent reduction in the amount of $285.00 for a total rent of $1,615.00 which was payable on the first day of every month until certain repairs were made. The landlord testified that the required repairs were made prior to December 1, 2017. The tenants testified that the required repairs were not made. Neither party submitted evidence regarding the state of the required repairs.

Both parties agree that a security deposit of $950.00 and a pet damage deposit of $950.00 was paid by the tenant to the landlord. The tenant requested he receive double both deposits back, pursuant to sections 24 and 38 of the *Act.*

The landlord is seeking the following damages from the tenant:

Item	**Amount**
December Rent	$1,900.00
Carpet Cleaning	$601.65
Cleaning	$63.00
Garbage Removal	$531.94
Water Bill	$325.01
Total	**$3,421.60**

December 2017's Rent

The landlord testified that the tenant did not pay December's rent and that since he completed the repairs ordered by the Arbitrator in September 2017, the tenant owes him $1,900.00 for the month of December.

The tenant testified that on November 23, he made two payments totalling $2,370.00: $1,615.00 for November's rent and $755.00 towards December's rent. When the landlord was asked about what payments the tenant made in November 2017 he testified that the property manager made his ledger and that he was not sure what all the numbers meant and how much the tenant paid or when the payments were made. No documents regarding rent payments were accepted into evidence.

Cleaning, Carpet Cleaning, and Garbage Removal

The landlord testified that the property was very dirty when the tenants moved out and required substantial cleaning. In support of this statement the landlord submitted into evidence photographs showing dirty walls, carpets, windows, cabinets and other dirty areas. The landlord

testified that he and his wife spent 30 hours cleaning the property; in addition, they hired a company to do some cleaning and to clean the carpets. The landlord testified that the cleaning bill was $63.00 and the carpet cleaning bill was $601.65. No receipts were accepted into evidence.

The tenant testified that he did not have time to clean the unit thoroughly because they were forced to move out in a very short period of time. The tenant testified that he did not believe that the state of the rental property when he moved out was dirty enough to warrant the landlord to retain his security and pet damage deposit.

The landlord testified that the tenant left a large amount of property and garbage in the unit and that he had to hire a contractor to come and haul it to the garbage. In support of this the landlord submitted into evidence photographs showing many of the tenant's belongings in the rental unit after he moved out. The landlord testified that the garbage removal bill was $531.94. No receipts were accepted into evidence.

The tenant testified that he did not want to leave so much of his property at the rental unit but could only afford to hire movers for two hours and so could not take everything with him. The tenant confirmed that the belongings in the photographs submitted by the landlord were his.

Water Bills

Both parties agree that the tenancy agreement stated that water was not included in the rent. The tenant testified that the landlord never drew his attention to this fact and that the first time he was made aware of any amount owing was when he was served with the dispute resolution materials.

The tenant testified that while the address on the water bill is that of the rental property, the name on the water bill is that of the landlord. The tenant testified that whenever he received mail with the landlord's name on it, he gave it to the landlord as they lived side by side.

The landlord testified that the property management company said they would inform the tenants of the outstanding water bills and so he assumed they had. No evidence was submitted regarding the actions of the property management company.

Analysis

Condition Inspection Reports

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start

and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

As was noted by the tenant, section 24(2) of the *Act* states that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not offer the tenant two opportunities to complete the condition inspection. Pursuant to section 17 of the *Residential Tenancy Act Regulations* (the "Regulations"), the second opportunity must be in writing.

The landlord admitted that no joint move-in condition inspection was conducted and that no move in condition inspection report was completed. The landlord also testified that he did not provide the tenants with two opportunities to complete the move in inspection with the last opportunity provided in writing. Responsibility for completing the move in inspection report rests with the landlord. I find that the landlord did not complete the condition inspection and inspection report in accordance with the Regulations, contrary to section 24 of the *Act.*

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-in inspection and inspection report, I find that the landlord's eligibility to claim against the security deposit and pet damage deposit for damage arising out of the tenancy is extinguished.

As I have determined that the landlord is ineligible to claim against the security deposit, pursuant to section 24 of the *Act,* I find that I do not need to consider the effect of the landlord failing to provide two opportunities, the last in writing, to complete the move out inspection and failing to complete the move out inspection report.

Security Deposit Doubling Provision

Section 38 of the Act requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a 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 tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

Section C(3) of Policy Guideline 17 states that unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the

deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

In this case, while the landlord made an application to retain the tenants' security deposit within 15 days of receiving the tenants' forwarding address in writing, he is not entitled to claim against it due to the extinguishment provisions in section 24 of the *Act.* Therefore, the tenants are entitled to receive double their security deposit and pet deposit as per the below calculation:

$950.00 (security deposit) * 2 (doubling provision) = $1,900.00
$950.00 (pet damage deposit) * 2 (doubling provision) = $1,900.00
Total = $3,800.00

December 2017's Rent

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement. Both parties agree that rent was payable on the first day of every month, therefore I find that rent was due on December 1, 2017.

The landlord testified that he completed all of the repairs set out in the September decision from the Residential Tenancy Branch; however, he supplied no evidence other than his testimony to support his assertion. The tenant testified that as of December 1, 2017 the required repairs were not complete and that rent was $1,615.00.

There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for the loss. I find that the landlord has not proven that he completed the required repairs and so I find that rent for December 2017 was $1,615.00.

The landlord testified that the tenants did not pay any money towards rent for the month of December; however, when asked about a payment the tenant testified he made towards December 2017's rent, the landlord testified that he didn't know about it specifically because the property manager had previously handled rent collection. I find that the landlord has not met his burden to prove his loss of December 2017's rent.

Where the landlord and the tenant's quantification of rent paid for December 2017 differs, I accept the evidence of the tenant who provided specific dates and specified the amount of payments made. In contrast, the landlord did now know the details of what amounts were paid by the tenant and when. The tenant testified that he paid $755.00 towards December 2017's rent. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord $860.00 for December 2017's rent.

Cleaning, Carpet Cleaning, and Garbage Removal

The landlord testified that the rental property was very dirty and full of garbage and that significant cleaning and garbage removal was required. The tenant testified that he left many possessions behind. Based on the testimony of the tenant, the testimony of the landlord, and the photographs accepted into evidence, I find that the rental property required extensive

cleaning and garbage removal. The landlord testified that he spent the following amounts to clean the property:

Item	Amount
Carpet Cleaning	$601.65
Cleaning	$63.00
Garbage Removal	$531.94
TOTAL	**$3,421.60**

Receipts for the above charges were not accepted into evidence. I find that without the receipts for the above charges, the landlord has failed to meet his burden of proof as to the quantification of his damages. Pursuant to Policy Guideline 16, I find that the landlord is only entitled to nominal damages in the amount of $300.00 for the above charges.

Water Bill

The principle of estoppel precludes a person from asserting something contrary to what is implied by a previous action or statement of that person or by a previous pertinent judicial determination.

In this case it's my finding that the tenants correctly assumed, through the landlord's silence, that they were not required to pay for their water consumption. The tenant testified that for the entire duration of his tenancy of over one year, he had no notice that water bills were payable. The landlord testified that he thought his property management company was forwarding the water bills to the tenant; however, the landlord did not produce any evidence that this occurred. I find that the landlord is estopped from claiming for payment of the water bills since he has not proved that the tenants were informed of the water bills prior to the landlord's application for dispute resolution.

Conclusion

As the landlord was successful in his application, I find that he is entitled to recover the $100.00 filing fee from the tenant.

I find that the landlord is entitled to the following:

Item	**Amount**
December Rent	$860.00
Nominal Damages	$300.00
Filing Fee	$100.00
TOTAL	**$1,260.00**

I find the tenant is entitled to double his security deposit and pet damage deposit for a total of $3,800.00.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be offset from any security deposit or pet damage deposit due to the tenant.

I issue a Monetary Order to the tenant as per the following calculation:

$3,800.00 (doubled security and pet damage deposit) - $1,260.00 (funds due to the landlord) = **$2,540.00**

The tenant is provided with this 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: July 17, 2018

Residential Tenancy Branch