



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WEST 12TH HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The landlord, tenant J.C., tenant B.B., and tenant K.G. 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 testified that all four tenants were individually served the notice of dispute resolution package by registered mail on July 25, 2018. The tenants testified that all four packages were received by the tenants approximately one week later. I find that the tenants were deemed served with these packages on July 30, 2018, five days after their mailing, in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenants, 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 tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 1, 2017 and ended on June 30, 2018. Monthly rent in the amount of \$3,200.00 was payable on the first day of each month. A security deposit of \$1,600.00 was paid by the tenants to the landlord and the landlord has retained the entire deposit. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The subject rental property is a single-family house with a lower and upper suite, the tenants resided in the upper suite but had access to the lower suite for storage purposes. No persons lived in the lower suite.

Both parties agreed to the following facts. The landlord walked through the subject rental property with tenant C.S. prior to the tenants moving in; however, a move in condition inspection report was not completed. The landlord walked through the subject rental property with tenant C.S. on June 28, 2018, after the tenants had vacated the subject property. A move out condition inspection report was not completed.

The landlord testified that prior to the tenants moving in he took photographs of the condition of the subject rental property. These photographs were entered into evidence. The tenants testified that the photographs in question were not taken just before they moved into the subject rental property and did not reflect the condition of the property at move in.

The tenants testified that they mailed the landlord their forwarding address on July 10, 2018. The landlord testified that he received the tenants' forwarding address in writing around that time.

The landlord testified that many of the light bulbs in the subject rental property were burnt out when the tenants left the subject rental property. The landlord is seeking to recover the cost of replacing the light bulbs. The landlord entered into evidence a receipt for the light bulbs in the amount of \$15.12 plus tax.

The tenants acknowledged that there were several burnt out light bulbs in the subject rental property and that they did not know who was responsible for replacing the light bulbs.

The landlord testified that the tenants broke the knob in the shower. The landlord testified that the knob was between 10-20 years old. The landlord is seeking to recover the cost of replacing the shower knob. The landlord entered into evidence a receipt for the shower knob in the amount of \$16.92 plus tax. Tenant J.C. testified that he was using the shower and the knob just came off in his hand.

The landlord testified that the tenants left large holes in the drywall in the entranceway of the subject rental property. None of the pre-tenancy photographs entered into evidence show the condition of the entranceway walls. Photographs of the drywall holes taken after the tenants moved out were entered into evidence. The tenants testified that the holes were in the drywall when they moved in.

The landlord testified that prior to the tenants moving into the subject rental property he did not notice the seal between the kitchen sink and the counter being broken. The landlord testified that when the tenants moved out of the subject rental property the seal in question was broken and the sink could be pulled away from the counter. The tenants testified that the seal between the sink and the counter was broken when they moved in.

The landlord testified that the tenants were supposed to maintain the yard and that they did not maintain it for the duration of their tenancy. The tenants testified that the yard was overgrown and in disrepair when they moved in and that they did not maintain it for the duration of their tenancy. The landlord entered into evidence photographs showing an overgrown yard. The landlord's pre-tenancy photographs show the yard in a good state of repair. The landlord entered into evidence an invoice from a contracting company listing the following charges:

- Kitchen sink and wall repair patch work- 3 large holes by the main entry way, materials and labour: \$250.00
- Garden cut and weeding- labour: \$75.00
- Subtotal: \$325.00
- GST 5%: \$16.25
- Total: \$341.25

The landlord testified that the tenants left the property very dirty and that it required substantial cleaning after the tenants moved out. The landlord testified that he paid two cleaning ladies a total of \$150.00 for their services. The landlord did not enter a receipt for the cleaning charge into evidence. The landlord entered into evidence photographs of the subject rental property showing that the property required cleaning.

The tenants testified that the property was dirty when they moved in and that the landlord provided them with a rent rebate in the amount of \$200.00 for their first month at the subject rental property due to the cleanliness of the property on move in. The tenants testified that they cleaned the subject rental property for six hours after moving their belongings out.

The landlord testified that the tenants left a large amount of garbage and materials in the lower level of the subject rental property including several mattresses, an old couch, broken chairs and a variety of other items. Photographs of same were entered into evidence. The landlord testified that over the course of two days he had to hire workers and a truck to haul the garbage to the transfer depot. The landlord testified that on the first day, the cost of hiring workers and renting the truck was \$350.00. The landlord testified that on the second day, the cost of hiring workers and a truck was \$150.00. Receipts for the above charges were not entered into evidence.

The landlord testified that the first trip to the transfer station, to dump the garbage, cost \$135.00. The landlord testified that the second trip to the transfer station cost \$23.00. Receipts for the above charges were entered into evidence.

The tenants testified that the majority of the garbage that was left in the lower portion of the subject rental property, including all of the mattresses and the couch, were in the subject rental property when the tenants moved in. The tenants testified that only 25% of the materials hauled to the transfer station were the property of the tenants.

Analysis

Landlord's Monetary Claim

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.

In this case, a move in condition inspection report was not completed. Policy Guideline 16 states that 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.

The testimony of the parties in regard to the condition of the subject rental property when the tenants moved in is conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that the landlord has not proven, on a balance of probabilities, that the tenants damaged the following items in the subject rental property:

- drywall; and
- sink seal.

I therefore dismiss the landlord's application to recover damages for those items.

Residential Tenancy Policy Guideline #1 states that the tenant is responsible for replacing light bulbs in his or her premises during the tenancy. As both parties agree that the tenants did not

replace burnt out light bulbs, I find that the tenants are responsible for the cost of new light bulbs in the amount of \$15.12 plus tax of 12%, totalling \$16.93.

Residential Tenancy Policy Guideline #40 states that the useful life of a faucet is 15 years. I find that the useful life of the shower knob in question is 15 years. As the landlord testified that the broken shower knob was up to 20 years old, I find that the shower knob was past its useful life and the landlord is not entitled to recover damages for it.

Residential Tenancy Policy Guideline #1 states that tenants who lives in a single-family dwelling are responsible for routine yard maintenance, which includes cutting grass. Based on the testimony of both parties I find that the tenants did not maintain the yard and the landlord is therefore entitled to recover the cost of yard work in the amount of \$75.00 plus 5% GST, totalling \$78.75.

Pursuant to Policy Guideline 16, the party who suffered the damage or loss must prove the amount of or value of the damage or loss. I find that since the landlord did not submit receipts for cleaning, labour for removing waste from the subject property or renting the truck for that purpose, the value of the damage or loss as not been proven. I therefore dismiss the landlord's monetary claim for the above listed items.

The testimony of the parties on what items were in the lower level of the subject rental property when the tenants moved in is conflicting. I find that the landlord has not proven, on a balance of probabilities, that the tenants left the majority of the items that required disposal, in the subject rental property. Since the landlord has not met this burden, he is not entitled to recover all of the transfer station costs.

Policy Guideline 16 states that nominal damages are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that the landlord has not proven what percentage of the items sent to the transfer station were in the subject rental property when the tenants moved in. However, as the tenants testified that some of the material in the lower suite was put there by the tenants, I find that it has been proven that there has been an infraction of a legal right, specifically, section 37 of the *Act*.

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the landlord is entitled to nominal damages for the cost of garbage disposal in the amount of \$200.00.

Condition Inspection Reports

As was noted by the tenants, section 24(2)(c) 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 complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The landlord testified that no move in condition inspection report was completed. 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 complete the move out inspection report.

Security Deposit Doubling Provision

Section 38 of the *Act* requires the landlord to either return the tenants' 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 tenants' 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, I find that the landlord received the tenants' forwarding address in writing on July 15, 2018, 5 days after it is mailing, in accordance with sections 88 and 90 of the *Act*. 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 as per the below calculation:

$$\text{\$1,600.00 (security deposit) * 2 (doubling provision) = } \textbf{\$3,200.00}$$

As the landlord was partially successful of his application, I find that he is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Section 72(2) states that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant. This provision applies even though the landlord's right to claim from the security deposit has been extinguished under sections 24 and 36 of the *Act*.

Conclusion

I issue a Monetary Order to the tenants under the following terms:

Item	Amount
Doubled security deposit	\$3,200.00
Less light bulbs	-\$16.93
Less yard work	-\$78.75
Less nominal damages	-\$200.00
Less filing fee	-\$100.00
TOTAL	\$2,804.32

The tenants are 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: November 28, 2018

Residential Tenancy Branch