Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, MNDCT, MNSD, FFT

Introduction

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

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- authorization to obtain a return of their pet damage and security deposits (the deposits) pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. At the commencement of this hearing, the landlord provided an altered spelling of their first name, which has been amended to the version appearing above, with the agreement of the parties.

As the tenant who attend this hearing (the tenant) confirmed that they received the 2 Month Notice sent by the landlord by registered mail on March 23, 2018, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that they received the tenants' May 1, 2018 written notice to end tenancy sent by the tenants by registered mail, I find that the landlord was duly served with this notice advising that the tenants would vacate the rental premises by May 14, 2018, in accordance with section 88 of the *Act.* As the landlord confirmed that they received a copy of the tenants' dispute resolution hearing package and written and photographic evidence packages sent by the tenants by registered mail on July 16,

2018, I find that the landlord was duly served with these documents in accordance with sections 88 and 89 of the *Act.*

The landlord gave sworn testimony that they sent their written evidence to the tenants by regular mail on November 9, 2018, and by email the day of the hearing. The tenant testified that they did not receive any written evidence from the landlord. Since the landlord had no documentation to prove their service of their written evidence to the tenants by regular mail, I advised the parties that I could not consider the landlord's written evidence as I was not satisfied that the landlord had served these documents to both tenants in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for losses arising out of this tenancy as a result of their receipt of the 2 Month Notice from the landlord? Are the tenants entitled to losses or damages pursuant to section 51(2) of the Act. Are the tenants entitled to a monetary award to compensate them for their removal of junk from the rental unit or for their loss of perishable food during this tenancy? Are the tenants entitled to a monetary award for the return of their pet damage and security deposits? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy began on December 15, 2017. Monthly rent was set at $2,000.00, payable in advance on the first of each month, plus utilities. The landlord continues to hold the tenants' $1,000.00 security deposit and $500.00 pet damage deposit, both paid on or about December 1, 2017.

Although the landlord said that a joint move-in condition inspection was conducted at the beginning of this tenancy, the landlord subsequently described this "inspection" as a "walk-through," which occurred when the tenants first viewed the rental unit and not when they actually moved into the rental unit. The tenant testified that no inspection occurred at the time that the landlord gave the tenants the keys when the tenants moved into the rental unit. At any rate, the parties agreed that the landlord did not produce any joint move-in condition inspection report at the beginning of this tenancy.

The tenant maintained that she moved out of the rental unit on April 9, 2018, with her father remaining in the rental unit until the night of May 13, 2018, at which time he too vacated the rental unit. The tenant testified that their father left the keys inside the

rental had been vacated. After some questioning, the tenant agreed that their father left some furniture and belongings in the rental unit at the end of this tenancy, which their father did not wish to retain.

The landlord gave sworn testimony that the landlord went to the rental unit on May 14, 2018, the anticipated date of the tenants' handover of keys and surrender of vacant possession of the rental unit to the landlord. When they peered into the rental suite through the window they could tell that there were still some of the tenants' possessions in the rental unit as they had neither surrendered their keys nor abandoned the rental unit. The landlord said that they returned to the rental unit about a week later, and viewed the same furniture and belongings in the rental suite from the window outside that unit. The landlord returned to the rental unit yet again on June 4, 2018, and as it was apparent by then that the premises had been abandoned, but for some of the tenants' furniture, the landlord entered the rental unit, recovering the keys at that time from inside the rental unit. The landlord testified that vacant possession of the rental unit was not actually surrendered until June 4, 2018.

The landlord's 2 Month Notice identified the following reason for requiring the tenants to vacate the rental unit by May 31, 2018:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

The tenants' application for a monetary award of $7,437.66, plus recovery of their $100.00 filing fee included the following items listed on their Monetary Order Worksheet they entered into written evidence:

Item	**Amount**
Entitlement to Recovery of Rent from May 13 to May 31, 2018 ($2,000.00 x 18/31 = $1,161.29)	$1,1161.29
Monetary Award for Alleged Bad Faith and Failure of Landlord to use Property for the Purposes Stated in the 2 Month Notice ($2,000.00 x 2= $4,000.00)	4,000.00
Junk Removal	276.15
1 Month of Perishable Foods	500.00
Return of Security Deposit	1,000.00
Return of Pet Damage Deposit	500.00

Total of Above Items	**$7,437.66**

The landlord gave sworn testimony that they acted in good faith in requiring the tenants to vacate the rental unit to provide accommodations for their father so that he could take care of the tenant's eight-year old son and the tenant's seven-year old nephew over the summer months. The landlord said that their father moved into the rental unit on June 25, 2018. The landlord said that they needed their father to move into this rental unit for as long as they needed care for the two boys while the landlord sought after school daycare. While this problem was most pressing in the summer when the two boys were out of school, the landlord said that their father was prepared to remain in the rental unit for the school year, if necessary, if daycare alternatives could not be located for the two school-aged children. The landlord testified that they were able to locate suitable after school daycare for the two boys, and the landlord's father was able to vacate the rental unit as of October 5, 2018.

The tenant maintained that the landlord only issued the 2 Month after the tenants pressed their demands that the landlord look after various deficiencies in the rental unit, which included a refrigerator that was intermittently malfunctioning. The tenant questioned the landlord's claim that the landlord's father actually moved into the rental unit. The tenants said that they regularly returned to the rental property to pick up their mail. On these visits, they noticed no one living there and unclaimed mail was left in the mailbox without anyone retrieving it or returning it. The tenant gave undisputed sworn testimony that there were no window coverings on the rental suite, whenever they visited after they vacated the rental unit.

The tenants' claim included a request for the cost of removing junk and debris from the property, which had been left behind by the landlord prior to this tenancy commencing. After repeated attempts to have the landlord remove these materials, the tenants had these items removed themselves, and entered into written evidence proof of the costs they incurred in this regard. At the hearing, the landlord did not dispute the tenants' claim that most of this material was the landlord's responsibility to remove. The landlord said they were prepare to pay the tenants for the $276.15, they were claiming for this item.

The tenants' claim for $500.00 for their loss of perishable food related to problems with the refrigerator provided by the landlord as part of this tenancy. The tenant gave sworn testimony that shortly after they moved into the rental unit, the tenants noticed that the refrigerator was intermittently hot and cold. The tenant said that sometimes the refrigerator heated up and "cooked" the food inside and at other times it functioned

properly. The tenant entered into written evidence and provided undisputed sworn testimony that the tenant first raised this matter with the landlord by way of a text message on February 14, 2018. Although the landlord agreed to have a family member look into this situation, the appointment was cancelled and was supposed to be rescheduled. The tenant raised this issue with the landlord again in an email on March 4, 2018. The tenant maintained that instead of coming out to inspect this appliance, the landlord posed questions about the problem. Rather than pursuing this course of action, the tenant said that they purchased their own refrigerator as they were losing perishable food in the rental unit due to this delay in the landlord's attendance to this matter. The tenant had no receipts for the $500.00 claim for the loss of perishable food, but said that they based their estimate on their losses over a three month period. The landlord testified that their reason for asking questions about this matter was that it seemed to be an odd intermittent problem, which would require a proper understanding to address.

The tenant gave undisputed sworn testimony that the tenants' first provision of their forwarding address in writing to the landlord for the purpose of returning their deposits was by way of the tenants' July 16, 2018 application for dispute resolution. The landlord said that they could not have returned the deposits to the tenants before that time, as the tenants had never provided the landlord with their forwarding address, until this address was included in the tenants' dispute resolution application.

Analysis

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 demonstrate entitlement to losses arising out of this tenancy.

Section 49(3) of the *Act* provides the statutory authority whereby a landlord may end a tenancy for landlord's use of the property under the following circumstances:

(3)*A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.*

Analysis - Application for a Monetary Award Pursuant to Sections 50 and 51(1) of the *Act*

The following portions of section 50 and 51 of the *Act* have a bearing on the tenant's eligibility for compensation after receipt of the 2 Month Notice from the landlord:

50 *(1)If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property]..., the tenant may end the tenancy early by*

(a)giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b)paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2)If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3)A notice under this section does not affect the tenant's right to compensation under section 51 [tenant's compensation: section 49 notice]...

51 (1)*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 after the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement...*

In this case, the parties agreed that the tenant's non-payment of rent for May 2018 was intended to address the landlord's responsibility pursuant to section 51(1) of the *Act* to compensate the tenant with the equivalent of one month's rent for the issuance of the 2 Month Notice. When the tenants issued their own 10 Day Notice pursuant to paragraph 50(1)(a) of the *Act*, this was to have had the effect of ending this tenancy on the date that the tenant cited on her 10 Day Notice, May 14, 2018.

Although the tenant may very well have vacated the rental unit on April 9, 2018, the tenant's father remained in the rental unit until at least May 13, 2018, as claimed by the tenant, and until June 4, 2018, as claimed by the landlord.

The tenant confirmed that the keys were not actually physically given to the landlord at the end of this tenancy, but were instead left in the rental unit. The tenant testified that the landlord was not alerted that the rental unit had actually been abandoned and that anything remaining in the rental unit could be removed. At the end of a tenancy, tenants are required to surrender vacant possession of the rental unit to the landlord. I find that the tenant's sworn testimony that their father left furniture which the landlord could dispose of only reinforces the landlord's assertion that each time they returned to the rental unit expecting the premises to be vacated, the landlord could still observe through the windows that there were items of the tenants present. Without notifying the landlord that they had abandoned the rental unit, this failure to remove everything from the rental suite reasonably led the landlord to believe that the tenants were still in the process of removing items for the premises. For these reasons, I find that this tenancy did not end on May 13 or 14, as the tenant maintained. They paid no rent for the month of May, and did not properly end their tenancy and remove all of their belongings from the premises, surrender their keys to the landlord or, at least notify the landlord that they had abandoned the rental unit so that the landlord could take possession of the rental unit during May 2018. I find that the tenants are not entitled to any additional monetary award pursuant to section 50 or section 51(1) of the *Act*. I dismiss this element of the tenants' application without leave to reapply.

Analysis - Tenants' Application for Compensation Pursuant to 51 (2) of the *Act*

Section 51(2) of the *Act* reads as follows:

> *(2) In addition to the amount payable under subsection (1), if*
>
> > *(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or*
> >
> > *(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,*
>
> *the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement...*

There was conflicting testimony and evidence presented by the parties as to whether the landlord's father actually moved into this rental unit. The tenant provided sworn testimony and some limited written evidence to call into question whether the landlord's father ever moved into the rental unit as declared by the landlord. The landlord testified that their father did move into the rental unit on June 25, 2018, vacating the rental unit on October 5, 2018. The landlord did not provide any written evidence in the form of any bills directed to their father at this address, any written statement from their father, and produced no witnesses at the hearing to corroborate her claim that her father actually moved into the rental unit.

While the landlord`s father may have been willing to reside in the rental unit longer if necessary, the landlord said that the intention was to use the tenants` rental unit as a location where the landlord`s father could look after the landlord`s son and the landlord`s nephew over the summer months when they would not be in school. Whether or not the landlord`s father moved into the rental unit as claimed by the landlord, the landlord`s own sworn testimony revealed that their father was only living in the rental unit for less than four months. As noted above, section 51(2) of the *Act* establishes that the rental unit has to be used for the purpose stated for at least six months.

As I find that the landlord did not use the rental premises for the purpose stated in the 2 Month Notice for the required six month period following the end of this tenancy, I allow the tenants` application for a monetary award of $4,000.00, double their monthly rent. This award is issued pursuant to paragraph 51(2)(b) of the *Act*.

Analysis - Tenant`s Claim for Additional Losses Arising out of this Tenancy

Based on the landlord`s agreement that they were responsible for the tenants` expenses incurred in removing junk and debris from the rental property, I issue a monetary award in the tenants` favour in the amount of $276.15 for this item.

In considering the tenants` application for a monetary award for the loss of perishable food, I find that the tenant`s sworn testimony varied during the course of this hearing. At one point, the tenant described the $500.00 figure claimed as being an estimate of the tenants` losses of perishable food for a three-month period. However, the landlord correctly pointed out that the tenants` first notification to the landlord about this problem happened in mid-February and the tenants purchased their own refrigerator shortly after March 20, 2018. In the interim, the tenant testified that the refrigerator was working as

expected some of the time, and the tenants did not continue pursuing this with the landlord between February 14, 2018, and March 4, 2018, because they thought that the measures they had taken themselves to remedy this situation had proven successful. While the tenant said that this was a recurring problem that extended over much of their tenancy, the tenants produced no receipts and only a vague and imprecise estimate of their losses over this period. Under these circumstances, I find that the tenants have not provided sufficient evidence to demonstrate their entitlement to a monetary award for this portion of their application. I dismiss their application for a monetary award for the tenants` losses of perishable food without leave to reapply.

Analysis - Security Deposit

Sections 23 and 24 of the *Act* establish the rules whereby joint move-in condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.
Section 23 of the *Act* reads in part as follows:

> ***23*** *(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*
>
> *(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*
>
> *(4) The landlord must complete a condition inspection report in accordance with the regulations.*
>
> *(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
>
> *(6) The landlord must make the inspection and complete and sign the report without the tenant if*
>
> *(a) the landlord has complied with subsection (3), and*
>
> *(b) the tenant does not participate on either occasion...*

Section 24(2) of the *Act* reads in part as follows:

Consequences for tenant and landlord if report requirements not met

24 *(2) 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*

(a) does not comply with section 23 (3) [2 opportunities for inspection]*,*

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...

Sections 36 and 37 of the *Act* establish similar provisions regarding a joint move-out condition inspection and the report to be produced by the landlord(s) regarding that inspection.

In this case, the landlord testified that they did not prepare a report of their joint move-in condition inspection with the tenants when this tenancy began. The tenant also denies that any such joint move-in condition inspection occurred when the tenant took possession of the rental unit. On the basis of the landlord's admission that they did not create a joint move-in condition inspection report and provide it to the tenants and in accordance with paragraph 24(2)(c) of the *Act* as outlined above, I find that the landlords' right to apply to retain the tenants deposits was extinguished at the beginning of this tenancy.

Section 38 of the *Act* requires the landlord to either return all of a tenant's deposits or file for dispute resolution for authorization to retain a deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing as long as the landlord's right to apply to retain the deposit had not been extinguished. If that does not occur or if the landlord applies to retain the deposits within the 15 day time period but the landlord's right to apply to retain the tenant's deposits had already been extinguished, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* that is double the value of the deposit`s. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would also seem to be of relevance to the consideration of this application:

Unless the tenant has 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 not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *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;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

In this case, the tenants' provision of their forwarding address only occurred in the context of their application for dispute resolution. As this does not constitute adequate provision of the tenants' forwarding address to the landlord, the 15-day time period outlined in section 38 of the *Act* for the return of the tenants' deposits has not yet commenced.

For this reason, I dismiss the tenants' current application for the return of their deposits with leave to reapply. I order the tenants to serve the landlord with their forwarding address in writing by registered mail. As I find that the landlord's right to claim to keep any part of those deposits was extinguished when the landlord failed to conduct a joint move-in condition inspection, issue a joint move-in condition inspection report and provide a copy of that report to the tenants at the beginning of this tenancy, the landlord is required to return the tenants' deposits in full within 15 days of being deemed to have received the tenants' forwarding address by registered mail. I emphasize that these deposits are to be returned in their entirety **"whether or not the landlord may have a valid monetary claim."** Service of the tenants' forwarding address by registered mail is deemed received on the fifth day after the tenants' registered mailing.

In the event that the landlord fails to return these deposits in full to the tenants within fifteen days of being deemed to have received their forwarding address, the tenants

have leave to reapply for a doubling of those deposits, pursuant to section 38(6) of the *Act*. Should this be required, I would suggest that the tenants include proof of their registered mailing of their forwarding address to the landlord as part of the written evidence the tenants submit with respect to their claim for a return of these deposits.

Since the tenants have been partially successful in their application, I allow them to recover their $100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms, which allows the tenants an award pursuant to section 51(2) of the *Act* for the landlord's failure to use the rental unit for the purpose stated in the 2 Month Notice for the period required, for recovery of costs associated with removing junk and debris from the rental unit, and to recover the tenant's filing fee:

Item	**Amount**
Monetary Award for Failure of Landlord to Use the Premises for the Reason Stated in the 2 Month Notice as per section 51(2) of the Act ($2,000.00 x 2= $4,000.00)	$4,000.00
Junk Removal	276.15
Filing Fee	100.00
Total Monetary Order	**$4,376.15**

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The tenants application to obtain a return of theìr pet damage and security deposits is dismissed with leave to reapply. I order the tenants to provide the landlord with their forwarding address in writing by registered mail.
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 30, 2018

Residential Tenancy Branch