Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

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

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, 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 confirmed receipt of the notice of dispute resolution package by registered mail in the beginning of October 2018. I find that the landlord was served with this package in accordance with section 89 of the *Act.*

Preliminary Issue- Tenants' Evidence

The landlord testified that she did not receive any evidence from the tenants. The tenants testified that their evidence was included in the dispute resolution package.

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 tenants have not proved, on a balance of probabilities, that they sent the landlord their evidence package. I accept the landlord's testimony that she did not receive the tenants evidence package.

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 landlord did not receive the tenants' evidence package, all evidence submitted by the tenant, except the previous decision dated August 29, 2018, are not admitted into evidence. I allow the previous decision into evidence as the landlord confirmed she received a copy of the decision from the Residential Tenancy Branch on or around August 29, 2018 and has had an opportunity to review it.

Preliminary Issue- Landlord's Evidence

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.

The landlord testified that she sent her evidence to the landlord via FedEx on December 24, 2018 and that Fed Ex attempted to deliver the package on December 27, 2018 but was unsuccessful. The tenants testified that they received the landlord's evidence package on December 29, 2018. The tenants testified that since they received the landlord's evidence six days before the hearing, rather than the required seven days, the landlord's evidence should be excluded. The tenants testified that they have had an opportunity to review the landlords evidence.

Section 3.11 the *Rules* state that if the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

In determining whether the delay of a party serving her evidence package on the other party qualifies as unreasonable delay I must determine if the acceptance of the evidence would unreasonably prejudice a party or result in a breach of the principles of natural justice and the right to a fair hearing. The principals of natural justice regarding the submission of evidence are based on two factors:

1. a party has the right to be informed of the case against them; and
2. a party has the right to reply to the claims being made against them.

In this case, the tenants testified that they had time to review the evidence contained in the landlord's evidence package. In today's hearing I provided the tenants with an opportunity to reply to the landlord's evidence. I find that the tenants were informed of the landlord's case against them and were able to review and respond to the evidence provided by the landlord. I accept the landlord's evidence package into evidence and find that the tenants were served with the landlord's evidence package in accordance with section 88 of the *Act.*

Issue(s) to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act?*
2. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act?*
3. Are the tenants entitled to recover the filing fee for this application from the landlord, 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 November 1, 2016 and ended on May 01, 2018. The tenants moved out of the subject rental property on May 01, 2018 but paid rent to the landlord for May 2018. Monthly rent in the amount of $1,374.00 was payable on the first day of each month. A security deposit of $660.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Loss of Quiet Enjoyment

Both parties agree to the following facts. The tenants sent the landlord their April 2018 rent via interac, as per their usual practice; however, the landlord did not receive the

payment. The landlord filed for dispute resolution with the Residential Tenancy Branch regarding April 2018's rent. The original hearing occurred on June 5, 2018 (the "original hearing") and was adjourned to August 27, 2018 (the "adjourned hearing"), a decision dated August 29, 2018 (the "Decision") was issued. The landlord was not successful.

The tenants have brought today's application primarily based on the landlord's conduct leading up to the original hearing.

Both parties agree to the following facts. On April 18, 2018 the landlord emailed the tenants stating that she did not receive March or April 2018's rent. On April 20, 2018 the landlord e-mailed the tenants and again stated that she had not received March or April 2018's rent and that if it was not provided promptly, her solicitor would begin proceedings against the tenants. On April 19, 2018 the tenants emailed the landlord stating that they paid March and April 2018's rent. On April 21, 2018 the landlord attempted to email the tenants to inform them that the March rent funds had been located and that it was a bank error; however, April rent was still owed. The tenants did not receive the April 21, 2018 e-mail. On April 22, 2018 the landlord e-mailed the tenants listing the tenants outstanding debts as April's rent and a gas bill, the March rent was not listed. The above listed e-mails were entered into evidence.

Both parties agree that they each had their financial institutions investigate the missing April 2018 funds. The landlord testified that she also notified the police about the missing funds and provided the police with the tenants' contact information to further the investigation.

The tenants testified that the landlord failed to meet her responsibilities as a landlord by:

- demanding that the tenants pay her for March 2018's rent a second time; and
- threatening legal action instead of going through dispute resolution with the residential tenancy branch.

The tenants testified that the landlord breached their right to privacy by giving their personal information to the police and that they felt intimidated by this action. The tenants testified that the time period between April 18, 2018 and receipt of the landlord's application for dispute resolution was extremely stressful on the tenants as they did not have the financial resources to pay rent twice or hire a lawyer for the legal proceedings threatened by the landlord.

The landlord testified that she did not provide the tenants information to the police to intimidate them, but to further the fraud investigation for the missing funds. The landlord testified that she has a right to legal counsel and held an honest belief that the tenants owed her April 2018's rent. The landlord testified that she did not act inappropriately by mentioning her solicitor.

The tenants testified that they are seeking recover 50% of April and May 2018's rent for loss of quiet enjoyment and infringement of privacy rights stemming from the landlord's conduct during the above dispute process.

Security Deposit

The tenants testified that they provided their forwarding address to the landlord via e-mail on June 4, 2018. The landlord testified that she received the tenants' forwarding address via email on June 5, 2018.

The landlord testified that on June 19, 2018, she filed an amendment to her original application seeking a Monetary Order for damage and authority to retain the tenants' security deposit (the "amendment"). The tenants confirmed receipt of landlord's amendment package. In the adjourned hearing the arbitrator dismissed the landlord's amendment with leave to reapply, because that claim was not directly related to the primary issue of the original hearing. The landlord did not file another claim to retain the tenants' security deposit.

Both parties agree that on August 30, 2018 the landlord returned the tenants' security deposit in full. The tenants testified that they authorized the landlord to retain $20.00 from their security deposit but that she did not do so.

The tenants testified that the landlord did not return their security deposit within 15 days of the receipt of their forwarding address in writing and are seeking double their deposit, less the amount the landlord has returned to them.

Monetary Claim for Hearing Preparation

The tenants testified that they spent 23.25 hours preparing for the original hearing. They are seeking reimbursement for their time from the landlord at a rate of $20.91 per hour, for a total of $486.00

Analysis

Loss of Quiet Enjoyment

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a)reasonable privacy;

(b)freedom from unreasonable disturbance;

(c)exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;

(d)use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Policy Guideline 6 states that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

I find that the e-mails from the landlord to the tenants disturbed the tenants; however, I find that this disturbance was not significant enough to qualify as an unreasonable disturbance under section 28 of the *Act.* While the landlord was not successful in her application for dispute resolution, her application was not frivolous, and she had a right

to bring it to arbitration. The hearing process can be stressful for all parties of a dispute, but this does not entitle the winning party to receive compensation for that stress. The landlord acknowledged that her initial claim for March rent was made in error, I find that the landlord's e-mails were not malicious in nature and were not aimed at causing injury to the tenants. I dismiss the tenant's claim for damages for loss of quiet enjoyment.

I note that the exclusion of the tenants' evidence did not affect the outcome of this decision as the e-mails reference by both parties were entered into evidence by the landlord.

The tenants made a claim for damages for breach of privacy; however, they did not provide me with any evidence to substantiate their claim that the landlord's release of their information was a breach of privacy under applicable legislation such as the *Personal Information Protection Act* or the *Freedom of Information and Protection of Privacy Act*. I therefore dismiss the tenants' application for breach of privacy, without leave to reapply.

Security Deposit

Section 38(1) 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)).

I make the following findings. The tenancy ended at the end of May 2018 because the tenants paid rent for this month. The landlord received the tenants forwarding address via e-mail on June 5, 2018. While this does not conform with the service requirements set out in section 88 of the *Act*, I find the forwarding address is sufficiently served

pursuant to section 71(2) of the *Act* because the landlord confirmed receipt of the tenants forwarding address on June 5, 2018.

I make the following findings. The landlord filed an application to retain the tenants' security deposit within 15 days of receiving the tenants' forwarding address in writing; however, this claim was dismissed with leave to reapply in the adjourned hearing. When a claim is dismissed, the limitation period is not extended. The landlord did not make a new application to retain the tenants' deposit. The landlord returned the tenants' deposit approximately three months after the tenancy ended. Based on the above, I find that the landlord did not meet the requirements of section 38(1) of the *Act.*

I find that while neither party submitted evidence that the tenants provided the landlord with written authorization to retain $20.00 from their security deposit, based on the testimony of the tenants, I find that they did authorize the landlord to retain that amount.

Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17*,* I find that the tenants are entitled to receive double their deposit, pursuant to the below calculation:

> $660.00 (security deposit) - $20.00 (amount tenants authorized landlord to retain) = $640 * 2 (doubling provision) = $1,280.00 – $660.00 (amount landlord returned to tenants) = **$620.00.**

Monetary Claim for Hearing Preparation

The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of the Act. With the exception of compensation for filing the application, the Act does not allow an applicant to claim compensation for costs associated with participating in or preparing for the dispute resolution process. I dismiss the tenants' monetary claim for preparing for the original hearing.

As the tenants were successful in this application, I find that they are entitled to recover the $100.00 filing fee from the landlord pursuant to section 72 of the *Act*.

Conclusion

I dismiss the tenants' claim for loss of quiet enjoyment, without leave to reapply.

I dismiss the tenants' monetary claim for costs associated with preparing for the original hearing, without leave to reapply.

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

Item	**Amount**
Security deposit	$620.00
Filing Fee	$100.00
TOTAL	**$720.00**

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: January 04, 2019

Residential Tenancy Branch