



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 5, 2018 (the “Application”). The Tenant applied for compensation for monetary loss or other money owed, return of double the security deposit and reimbursement for the filing fee.

The Tenant filed an amendment to the Application changing the amount requested to \$2,246.00 (the “Amendment”).

This matter came before me for a hearing February 01, 2019 and an Interim Decision was issued on that date. This decision should be read with the Interim Decision.

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord had received the hearing package. The Landlord had not been able to access the digital evidence provided. She had received the file named “RTB_43_2_Signed_with_Details.PDF”. She had also received the amendment package.

The Tenant acknowledged that he received a letter from the Landlord stating she could not access the digital evidence but took no further steps to serve this on the Landlord.

The Tenant thought he had served more than just the two files noted in hardcopy to the Landlord; however, he was unable to point to evidence showing this.

I heard the parties on whether the Tenant's evidence should be admitted or excluded.

Rule 3.5 of the Rules of Procedure (the "Rules") states:

3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Rule 3.10.5 of the Rules states:

3.10.5 Confirmation of access to digital evidence

The format of digital evidence must be accessible to all parties...

Before the hearing, a party providing digital evidence to other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

...

If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

The parties gave conflicting testimony about what was served in hardcopy on the Landlord. The Tenant was not able to point to evidence showing the Landlord was served with more than the two files noted. The Tenant has failed to prove service as required.

In relation to the digital evidence, the Landlord told the Tenant she could not access what was provided. The Tenant was required to take further steps to provide the

Landlord with the digital evidence in a format that she could access. The Tenant failed to do so.

In the circumstances, I am not satisfied the Tenant complied with the Rules in relation to service of the evidence. I find admitting the evidence would be unfair to the Landlord when she says she did not receive anything other than the two files noted and the Tenant has not satisfied me that he complied with the Rules in relation to the remaining evidence. I exclude the remaining evidence. Only the two files noted above are admissible and will be considered in this decision.

The Tenant confirmed he received the Landlord's evidence.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all admissible documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to return of double the security deposit?
2. Is the Tenant entitled to compensation for monetary loss or other money owed?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant sought the following compensation:

1. \$725.00 as double the security deposit less the original amount already returned;
2. \$21.00 for registered mail;
3. \$900.00 for loss of use of deck for nine useable months;
4. \$500.00 for incomplete repair of ceiling in main entryway; and
5. \$100.00 for filing fee.

I told the Tenant at the outset that he is not entitled to compensation for registered mail costs and therefore I would not consider item #2. This request is dismissed without leave to re-apply.

Two written tenancy agreements were submitted as evidence and the parties agreed they are accurate.

The first agreement started March 01, 2017 and was for a fixed term of one year ending February 28, 2018. Rent was \$1,450.00 per month due on the first day of each month. The Tenant paid a \$725.00 security deposit.

The second agreement started March 01, 2018 and was for a fixed term ending May 31, 2018. Rent was \$1,450.00 per month due on the first day of each month.

Both parties agreed the tenancy ended June 30, 2018.

The Tenant testified as follows in relation to providing his forwarding address to the Landlord. He first sent this by registered mail to the Landlord's address on July 16, 2018. He provided a tracking number for this. The package was returned to him. He sent a second package by registered mail on August 14, 2018 to the rental unit. He provided Tracking Number 1 for this. The Canada Post website shows a notice card was left for this August 16, 2018 and August 21, 2018. The package was unclaimed and returned to the sender.

The Landlord testified as follows in relation to the forwarding address. She must have received the forwarding address at some point because she mailed something to the Tenant. She does not know when she received it. She did not receive the first package and did not live at the address it was sent to at that time. She did not receive the second package although she did live at the rental unit at that time.

The parties agreed on the following. The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. The Landlord did not apply to keep the security deposit.

The Tenant testified that he received a cheque for the original security deposit amount within two days of October 18, 2018. The Landlord agreed with this.

The parties agreed there was no Condition Inspection Report done on move-in. The Tenant testified that he took photos of the rental unit. The Landlord testified that the Tenant had been in the rental unit many times and did a visual inspection. Both parties agreed the Tenant was not provided two opportunities to do a move-in inspection.

Both parties agreed the Tenant and Landlord's husband did a visual inspection on move-out. Both parties agreed the Tenant was not provided two opportunities to do a formal move-out inspection.

Loss of use of deck

The Tenant testified as follows. The deck was part of the tenancy. Water leaked through the deck. The deck was rotting. There were soft spots in the deck. The railing on the deck was not secure. The stairs were wobbly. The Tenant could not use the deck because of these issues. At the start of the tenancy, the Landlord said the deck would be replaced when the weather got nicer. The Landlord never fixed the deck until the end of March of 2018 when the second tenancy agreement was entered into.

The Landlord testified that the deck was safe to use. She said the deck needed repairs but was still usable.

None of the admissible evidence submitted by the Tenant relates to the deck.

Ceiling

The Tenant testified as follows. There was a large crack in the ceiling from the start of the tenancy. The crack was above the garage door and storage room. He does not know what it was from. It looked like the drywall was buckling. It appeared to get worse during the tenancy. He mentioned this to the Landlord a few times. Contractors came to look at it and said it could be structural. This was a safety issue. This made the Tenant uncomfortable and caused stress. There is no value that can be put on this particularly if something serious had happened.

The Landlord testified as follows. The crack is still there. There has been no issue with it. Structurally nothing has happened. The crack was not a big issue or they would have fixed it. It looks like it was caused by water damage. The crack did not affect health or safety in any way.

None of the admissible evidence submitted by the Tenant relates to the crack in the ceiling.

Analysis

Security Deposit

Section 38 of the *Residential Tenancy Act* (the “*Act*”) sets out the obligations of landlords in relation to security deposits held at the end of a tenancy.

Section 38(1) requires landlords to return the security deposit or claim against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant’s forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

The parties agreed the Tenant was not provided two opportunities to do a formal move-in or move-out inspection. I find the Tenant did not extinguish his rights in relation to the security deposit under sections 24 or 36 of the *Act*.

There is no issue the tenancy ended June 30, 2018.

I accept the testimony of the Tenant about service of his forwarding address given the Tracking Number for this was provided. The Landlord acknowledged that she lived at the address at that time. I find the Tenant served the forwarding address in accordance with section 88(c) of the *Act*. Parties are not permitted to avoid service by failing to pick up their mail. Pursuant to section 90(a) of the *Act*, the Landlord is deemed to have received the forwarding address August 19, 2018. The Landlord had 15 days from this date to repay the security deposit or claim against the security deposit.

The Landlord repaid the security deposit October 18, 2018, outside of the time limit for doing so. There is no issue that the Landlord did not apply to keep the security deposit. Therefore, the Landlord failed to comply with section 38(1) of the *Act*.

Based on the testimony of the parties, and my findings above, I find that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply in this case.

Given the Landlord failed to comply with section 38(1) of the *Act*, and that none of the exceptions apply, the Landlord is not permitted to claim against the security deposit and must return double the security deposit to the Tenant pursuant to section 38(6) of the *Act*. The Landlord has already returned the original amount of the security deposit. Therefore, the Landlord must only return a further \$725.00 to the Tenant. There is no

interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

Loss of use of deck

Section 7(1) of the *Act* states that a party that does not comply with the *Act, Regulations* or a tenancy agreement must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

Pursuant to rule 6.6. of the Rules, it is the Tenant as applicant who has the onus to prove the claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The parties gave conflicting evidence about whether the deck was usable or not during the tenancy. There is no admissible evidence before me showing the deck was not usable. I am not satisfied the deck was unusable and therefore decline to award the Tenant the compensation sought.

Ceiling

There was no issue that there was a crack in the ceiling of the rental unit. I do not accept that this crack was structural based on the evidence submitted. The Tenant testified that the contractors said the crack could be structural. This is not sufficient evidence that it was structural. There is no admissible evidence before me about the crack, the cause of it or whether it was a safety issue. The Landlord denied that the crack was a safety issue. I am not satisfied it was in the absence of evidence showing this.

I do not accept that the crack caused any loss or damage to the Tenant. I do not find it reasonable that it caused stress or discomfort in the absence of evidence that it was a safety issue. Nothing happened in relation to the crack during the tenancy and the Tenant is not entitled to compensation on the basis that something could have happened. I decline to award the Tenant compensation for this issue.

Given the Tenant was partially successful, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In summary, the Landlord must pay the Tenant \$825.00. I issue the Tenant a Monetary Order in this amount.

Conclusion

The Landlord must pay the Tenant \$825.00 for double the security deposit and reimbursement for the filing fee. I issue the Tenant a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with this Order, the 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 *Act*.

Dated: April 12, 2019

Residential Tenancy Branch