Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing dealt with the adjourned Application for Dispute Resolution filed by the Tenant under the *Residential Tenancy Act*, (the "*Act*"), for a monetary order for damage or compensation under the *Act,* to request the return of her security deposit and to recover the filing fee for this application. The matter was set for a conference call.

The Tenant attended the second hearing and was affirmed to be truthful in her testimony. The Landlord attended the original hearing, on March 4, 2019, but did not attend the adjourned hearing, on today's date. As the Landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. As this was an adjourned hearing, the Residential Tenancy Branch served both the Tenant and the Landlord with the Notice of Hearing documents, on March 7, 2019. I find that the Landlord had been duly served in accordance with the *Act*.

The Tenant was provided with the opportunity to finish her present of evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Is the Tenant entitled to monetary compensation for damages under the *Act*?
- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Is the Tenant entitled to return of the security deposit?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The agreed upon testimony of these parties is that this tenancy began on February 1, 2018, as a one-year fixed term tenancy. Rent in the amount of $1,400.00 was due by the first day of each month, and that the Tenant had paid a $700.00 security deposit and a $700.00 pet damage deposit at the outset of the tenancy. The Tenant provided a copy of the tenancy agreement into documentary evidence.

Both parties agreed that the tenancy ended on October 21, 2018, the day the Tenant moved out, and that the Landlord was in receipt of the Tenant's forwarding address as of October 31, 2018. The Tenant testified that at no time had she given the Landlord permission to keep her security or pet damage deposits. The Landlord testified that as of the date of this hearing he had not returned the security or pet damage deposits to the Tenants nor had he filed an application to make a claim against the deposits with the Residential Tenancy Branch. The Tenant is requesting the return of her security and pet damage deposits for this tenancy.

The Tenant is also requesting that pro-rated return of her October rent from October 21 to Oct 31, 2018, in the amount of $451.61 as well as the equivalent of one-months' rent as compensation, as she claims that the tenancy ended due to the Landlord not providing a safe rental unit for the Tenant.

Additionally, the Tenant is requesting the recovery of her moving expenses, in the amount of $400.00. The Tenant claims that because the Landlord did not provide a safe rental unit, she had paid additional moving costs.

The Landlord testified that the Tenant had ended her tenancy early without providing a written notice, so he felt that he was within his rights to retain the deposits for this tenancy without making a claim. The Landlord also testified that the Tenant was not entitled to the pro-rated return of her rent for October 2018, as it was the Tenant's

choice to move into a rental unit that as under renovation and hat he is not responsible for her moving costs, as she is the one who decided to leave.

The Tenant testified that she had given Notice to end her tenancy, though her email conversations with the Landlord, and that the Landlord had breached several material terms of the tenancy agreement and the *Act*, so he felt she was within her rights to end her fixed term tenancy early.

The Landlord testified that before the tenancy began, he had informed the Tenant that there were repairs required to the rental unit and that there would be renovations and upgrade work ongoing to the property during her tenancy. The Landlord testified that the Tenant had advised him that she was ok with the renovation work and wanted to rent the place anyway.

The Tenant testified that the Landlord had advised her of the needed repairs and ongoing renovations and that she had wanted to rent the palace anyway. However, the Tenant testified that she never waived her rights as a Tenant during the renovation period and that she was unaware of the by-law infraction for the rental property until after she had moved in. The Tenant testified that she was ok with the noise and the mess of the ongoing work but that she still expected that her right to privacy and essential service would not be affected.

The Tenant testified that during her short tenancy, the Landlord had repeatedly entered her rental without notice, without knocking, and that a key to her rental unit had been left for the tradespeople working on the property, so they could access her unit whenever they needed. The Tenant also testified that the heat to her rental unit had been turned off without notice for over two weeks in the fall of 2018.

The Landlord agreed that there had been three times when the rental unit was accessed without written notice; once by a worker, the second to let a city inspector in for an ordered inspection, and the third by another renovation’s worker. The Landlord also agreed that he had left a key to the Tenant’s rental unit in a central location for his trades workers to use, while they were working on the renovations.

The Tenant testified that on March 27, 2018, the Landlord with one of his contractors, entered her rental unit, while she was asleep, without providing written notice. The Tenant testified that she was very upset and disturbed to be woken from her sleep by the Landlord entry into the rental unit. The Tenant testified that after they left she sent an email to the Landlord requesting that he comply with the *Act* and provide written

notice for any entry to the rental unit. The Tenant Testified that the Landlord responded to the Tenant with a request for her to vacate the rental unit. The Tenant submitted a copy of this email exchange into documentary evidence.

The Landlord agreed that he had entered the rental unit on March 27, 2018, without providing written notice to the Tenant but that his contractor had told the Tenant they would be going in to access the electrical panel, so he thought it was ok to enter.

The Tenant testified that she did not have a conversation with the Landlord's contractor regarding access and that she had ever given the Landlord or his contractor verbal permission to enter her rental unit.

The Tenant testified that a few days later, she had been notified by the local by-law enforcement office that they had conducted an inspection of her rental unit on March 21, 2018, with the Landlord. The Tenant testified that she had not been home at the time of the inspection and was very disturbed to find out that the Landlord had again entered her rental unit without providing the required notice. The Tenant submitted a copy of an email exchange regarding this entry into documentary evidence.

The Landlord agreed that he had entered the rental unit on March 21, 2018, without providing written notice to the Tenant but that the Tenant wasn't home, so he thought it was ok to enter.

The Tenant testified that again on October 3, 2018, the Landlord granted access to her rental unit to one of his contractors, without providing her with written notice. The Tenant testified that she came home to find all of the heating vents had been sealed shut, and the heat to her rental unit had been turned off. The Tenant submitted 12 pictures of the sealed heating vents and eight texted between the Tenant and the Landlord into documentary evidence. The Tenant is requesting $100.00 in compensation for each time the Landlord entered her rental unit without providing the required written notice. The Tenant is also requesting $750.00 in compensation for the 15 days that the heat was turned off to the rental unit, at $50.00 per day,

The Landlord testified that the heat was turned off between October 3 to October 17, 2018, due to the repair work and for safety reasons. The Landlord also agreed that one of his contractors had entered the rental unit on October 3, 2018, to seal the heating vents in the rental unit. The Landlord agreed that no written notice had been provided to the Tenant, regarding the October 3, 2018 contractors entry to the rental unit entry or that the heat would be turned off. The Landlord also agreed that no alternative hear

source was provided to the Tenant during the time. The Landlord argued that it does not get that cold here and that the Tenant should have been fine in the rental unit without heat for a few weeks.

The Tenant testified that several times over the nine-month term of her tenancy the Landlord had sent her emails, telling her that she needed to vacate the rental due to the required renovations. The Tenant submitted copies of four email exchanges between her and the Landlord into documentary evidence.

The Landlord testified that he agreed that he did tell the Tenant to leave, due to renovations, but that he had never issued an official “One-Month Notice” to end the tenancy and the Tenant could have stayed. The Landlord submitted copies of three email exchanges between himself and the Tenant into documentary evidence.

Both parties agreed that the renovations the Landlord was having completed on the rental unit were required by city by-laws, as the rental property needed to be upgraded in order to meet the required health and safety standards for that area.

Additionally, the Tenant is requesting to recover the cost to replace a burnt patio chair, in the amount of $110.71. The Tenant testified that the Landlord’s contractor had thrown a lit cigarette off the upper balcony, that landed on her patio chair causing a burn. The Tenant submitted two pictures of the burnt chair into documentary evidence.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

I accept the testimony of both parties to this dispute that the rental unit needed extensive renovations and that the renovations were required in order to bring the rental unit up to health, safety and housing standards.

I also accept the Landlord’s documentary evidence of an email, dated March 29, 2019, and I find that the Landlord knew or ought to have known that the rental unit did not meet with housing standards and that the unit was not safe to live in when he entered into this tenancy agreement with the Tenant.” Section 32(1) of the *Act* states the following:

Landlord and tenant obligations to repair and maintain

> ***32*** *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*
>
> *(a) complies with the health, safety and housing standards required by law, and*
>
> *(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

I acknowledge that the Landlord had a conversation with the Tenant advising her that there would be ongoing renovation work to the rental property during her tenancy. However, I find that the mere conversation of health, safety and housing standards issue, for a rental property, with a prospective tenant, does not void a landlord's responsibilities pursuant to section 32 of the *Act.* Therefore, I find that the Landlord was in breach of section 32(1) of the *Act* when he failed to provide a rental that complied with the health, safety and housing standards required by law.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act.* A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states 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. To determine whether compensation is due, the arbitrator may determine whether:
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> - 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."

Consequently, I find that the tenancy ended early due to the Landlord's breach of section 32 of the *Act* and that the Tenant did suffer losses due to that breach.

I accept the Tenant's testimony and documentary evidence of her moving expenses, and I find that the Tenant is entitled to the recovery of her costs for moving due to the Landlord's breach. Therefore, I grant the Tenant the recovery of her moving cost in the amount of **$400.00**.

Regarding the Tenant's request of the pro-rated return of her rent for the period between October 22 to October 31, 2019. As I have already found that the tenancy ended due to the Landlord not providing a rental unit that met with health, safety and housing standards as required, I find that the Tenant is entitled to the pro-rated return of her rent paid for October 2018, for the period between October 24 to October 31, 2019. I award the Tenant the pro-rated return of her October rent in the amount of **$451.61**, at a rate of $45.16 per day for ten days.

Additionally, accept the verbal testimony of these parties that the heat to the rental unit had been turned off, without notice to the Tenant, for 15 days, between October 3 to October 17, 2019. I have reviewed the tenancy agreement signed between these parties, and I find that heat was a service that the Landlord had agreed to provide to the Tenant for this tenancy. I find the removal of that service, even for a short period, without notice and without an alternative source of heat being provided to be a breach of the tenancy agreement by the Landlord. However, I find the Tenant's requested compensation of $750.00; $50.00 per day for 15 days, to be excessive, as I have already found that the daily rate of $45.16 for this tenancy and heat is not the only service the Tenant was receiving in exchange for her rent payments.

Nevertheless, I find that the lack of heat to the rental unit would have greatly affected the Tenant's enjoyment of the space. In determining the amount of compensation to be awarded to the Tenant, due to the Landlord's breach, I must consider the Residential Tenancy Policy Guideline #6 Entitlement to Quiet Enjoyment, which states the following:

> **Compensation for Damage or Loss**
>
> In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.
>
> A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has

made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations”

I find that the loss of heat in the rental to be a serious deprivation of the Tenants’ right to the quiet enjoyment. Due to the importance of providing heat, I find it appropriate to award the Tenant the return of half of the rent paid for the period that heat was not provided. I award the Tenant the pro-rated return of half her rent from October 3, to October 17, 2018, in the amount of **$338.70**, at a rate of $22.58 per day for 15 days.

However, as for the Tenant’s request for the equivalent of one-months rent as compensation due to the Landlord not providing a safe rental unit for the Tenant. I find that the Tenant has not established that this requested compensation is due, or that she suffered a loss in the amount requested. Therefore, I dismiss this part of the Tenant’s claim.

Regarding the Tenant’s claim for compensation for illegal entry to the rental unit. I accept the agreed upon testimony of the parties to this dispute that the Landlord and the agents for the Landlord had entered the rental unit without the legally required written notice to the Tenant on three separate occasions; March 21, 2018, March 27, 2018, and again on October 3, 2018. Section 29(1) of the *Act* states the following:

Landlord's right to enter rental unit restricted

29 *(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

I acknowledge the Landlord testimony that on one of the occasions he entered the rental unit, he had sent emails and attempted to call the Tenant to notify her that the Landlord or his contractors would be entering the rental unit and that the Tenant had not responded. Section 88 of the *Act* states the following:

How to give or serve documents generally

88 *All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:*

(a) by leaving a copy with the person;

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

(f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];

(j) by any other means of service prescribed in the regulations.

Section 88 of the *Act* does not recognize email or telephone call as an excepted method of service for a notice. Therefore, I find that the Landlord was in breach of section 29 of the *Act*, three times when he and his agents entered the rental unit without written notice.

I also acknowledged the Landlord’s argument that the entry on March 27, 2018, had been an emergency and therefore, no written notice was required. However, I note that in the Landlord’s documentary evidence and his own verbal testimony, that he claimed that his contractor had spoken to the Tenant to advise her of the need to enter the rental unit. I find the Landlord’s evidence shows that there had been a plan to enter the rental unit on March 27, 2018, and that a planned entry does not constitute an emergency

entry and proper written notice should have been issued for the Landlord's March 27, 2018 entry to the rental unit.

Consequently, I find that the tenancy has proven that the Landlord did enter the rental unit without providing the legally required notice and that she suffered a loss of privacy due to the Landlord's breaches of section 29 of the *Act*; on March 21, 2018, March 27, 2018, and again on October 3, 2018. Therefore, I award the Tenant **$300.00** in compensation; comprised of $100.00 for each time the Landlord breached the *Act* and entered the rental unit without providing the required written notice.

I also accept the undisputed testimony of the Tenant that one of the Landlord's agents (a renovation contractor) had burnt one of her patio chairs by throwing a cigarette butt on the chair. I award the Tenant **$110.71** for the cost of the replacement of the burnt patio chair.

Concerning the required inspections of the rental unit, I accept the testimony of both parties that the Landlord did not conduct a written move-in inspection for this tenancy. Section 23 of the *Act* states the following:

> ***Condition inspection: end of tenancy***
>
> ***35*** *(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*
>
> *(a) on or after the day the tenant ceases to occupy the rental unit, or*
>
> *(b) on another mutually agreed day.*
>
> *(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*
>
> *(3) The landlord must complete a condition inspection report in accordance with the regulations.*
>
> *(4) 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.*

I also accept the testimony of both parties that the Landlord did not conduct the written move-out inspection at the end of this tenancy. Section 35 of the Act states the following:

> ***Condition inspection: end of tenancy***

35 *(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) 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.

I find that the Landlord was in breach of sections 23 and 35 of the *Act* when he failed to complete the written move-in and move-out inspection as required for this tenancy.

Regarding the security deposit and pet damage deposit (the “deposits”) for this tenancy, I accept the verbal testimony of the Landlord that he has retained the deposits, and that he has not received permission from the Tenant to keep the deposits nor had he applied for permission to retain the deposits.

Return of security deposit and pet damage deposit

38 *(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I accept the agreed upon testimony of these parties, and find that this tenancy ended on October 23, 2018, the date the Tenant moved out of the rental unit and that the Landlord had received the Tenant forward address as of October 31, 2018. Accordingly, the Landlord had until November 15, 2018, to comply with section 38(1) of the *Act* by either repaying the deposits in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposits. The Landlord, in this case, did neither.

At no time does a landlord have the right to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree, in writing, to the repayment of the security deposit or that deductions be made, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the landlord thinks they are entitled to keep even a small portion of the deposit, based on unproven claims.

I find that the Landlord breached section 38 (1) of the *Act* by not returning the Tenant's deposits or filing a claim against the deposits within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

> ***Return of security deposit and pet damage deposit***
>
> ***38*** *(6) If a landlord does not comply with subsection (1), the landlord*
>
> *(a)may not make a claim against the security deposit or any pet damage deposit, and*
>
> *(b)must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenant has successfully proven that she is entitled to the return of double her deposits. I find for the Tenant, in the amount of **$2,800.00**, granting the return of double the security deposit and pet damage deposit paid for this tenancy.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has have been successful in her application, I find that the Tenant is entitled to recover the **$100.00** filing fee paid for this application.

Item	Requested	Awarded
Moving expenses	$400.00	$400.00
Pro-Rated return of rent	$451.61	$451.61
Entry without Notice	$300.00	$300.00
Destroyed Patio Chair	$110.71	$110.71

Compensation for no heat	$750.00	$338.70
Months rent compensation	$1,400.00	$0.00
Return of Security Deposit x2	$1,400.00	$1,400.00
Return of Pet Damage Deposit x2	$1,400.00	$1,400.00
Filing Fee	$100.00	$100.00
		$4,501.02

Conclusion

I find that the Landlord breached section 23 and 35 of the *Act* when he failed to complete the written move-in and move-out inspection reports as required by the *Act*.

I find that the Landlord breached section 38 of the *Act* when he failed to repay or make a claim against the security deposit and pet damage deposit as required by the *Act*.

I find that the Landlord breached section 29 and 88 of the *Act* when he failed to serve written notice of entry in compliance with the *Act*.

I find that the Landlord breached section 32 when he failed to provide a rental unit that met with health, safety and housing standards as required by law.

I find for the Tenant pursuant to sections 38, 67 and 72 of the *Act*. I grant the Tenant a **Monetary Order** in the amount of **$4,501.02**. 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: May 9, 2019

Residential Tenancy Branch