Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDL-S, MNDCL, FFL

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for their application from the tenant pursuant to section 72.

The tenant applied for authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

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. As both parties confirmed that they had received copies of the other parties' dispute resolution hearing package and written evidence well in advance of this hearing, I find that these documents were duly served to one another in accordance with sections 88 and 89 of the *Act.*

Issues(s) to be Decided

Are the landlords entitled to a monetary award for losses or other money owed arising out of this tenancy? Are the landlords entitled to a monetary award for damage arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a

result of the landlords' failure to comply with the provisions of section 38 of the *Act*? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

Although this tenancy was scheduled to begin on March 1, 2017, the tenant moved into the rental unit with the landlords' permission on February 25, 2017. Monthly rent was set at $1,800.00. payable in advance on the first of each month. The tenant paid a $900.00 pet damage deposit on March 1, 2017, which the parties agreed the landlords have returned to the tenant. The tenant paid a $900.00 security deposit on March 1, 2017. Although Landlord RJ (the landlord) attempted to etransfer $376.78 of that security deposit to the tenant on April 11, 2019, the tenant refused to accept this payment as it was not the amount the tenant expected to receive.

The tenant sent the landlord a text message on February 24, 2019, advising the landlords of their intention to end this tenancy by March 31, 2019. While the landlord correctly asked for written notice to confirm this text message, the landlord understood at that time that the tenant would be moving out of the rental unit by March 31, 2019. The parties agreed that the tenant paid rent for March 2019, the last month of their tenancy. The tenant surrendered vacant possession of the rental unit on March 31, 2019.

The parties provided written evidence of the report of their February 25, 2017 joint move-in condition inspection of the rental unit. With a few exceptions, this fully completed report showed the rental unit as being in good condition when this tenancy began.

The parties agreed that they conducted the joint move-out condition inspection on April 11, 2019. At that time, the landlord did not fill out the report of that inspection in any level of detail, instead simply noting that there was damage at the end of the tenancy in the following areas, which the tenant agreed needed to be repaired and which could be deducted from their security deposit, This damage included carpet cleaning, repair of a broken bedroom window screen, and repair of a patio door blind. As the landlord did not know how much it would cost to undertake these repairs, the landlord did not fill out an amount that the tenant agreed could be deducted from the security deposit held by the landlords. The tenant signed that document indicating that the report accurately reflected the condition of the rental unit at the end of this tenancy and also provided her forwarding address in writing to the landlord in that report for the purpose of obtaining a

return of their pet damage and security deposits. This document included no provision where the tenant agreed to a specific deduction from the amount of their deposits.

The parties agreed that the only portion of the landlord's report of the joint move-out condition inspection that the landlord provided to the tenant prior to the landlords' initiation of their application for dispute resolution on June 21, 2019, was the final substantive page of that report. On the page of the report provided to the tenant, the landlord confirmed that the landlord altered the original final page of the report to read that the tenant had given their permission to return $376.78 from their security deposit. At the hearing, the landlord said that they did this because this was the amount of the damage repairs that resulted from the items the tenant had agreed could be deducted from their security deposit.

The tenant's April 15, 2019 application for a monetary award of $622.64 requested the return of double their security deposit as the landlord had not returned their deposit less an amount of $26.88 for repair of the screen window and $251.48 for professional carpet cleaning at the end of this tenancy. In a Monetary Order Worksheet that the tenant entered into written evidence, the tenant also requested an award of a monetary claim for interest on their security deposit and for their loss of $116.25 in wages for time spent dealing with their application for dispute resolution.

The landlord's June 21, 2019 application for a monetary award of $968.64, plus the recovery of their $100.00 filing fee included the following items listed on their Monetary Order Worksheet:

Item	**Amount**
Carpet Cleaning	$251.48
Repair of a Screen Window	26.88
Replacement of a Dishwasher Spray Arm	40.00
Replacement of the Damaged Microwave	380.78
Repair of Damage to Vertical Blinds	269.50
Total of Above Items	**$968.64**

At the hearing, the landlord testified that both the microwave and the vertical blinds were four years old when this tenancy ended. The landlord said that they did not notice the damage to the microwave during the joint move-out condition inspection, and did not identify damage to it at that time. The landlord provided a photograph of the inside of

the microwave, which the tenant said had rusted or was otherwise marked by the end of this tenancy.

Although the landlord had no photographs of the condition of the vertical blinds before the repairs were undertaken, the landlord said that the damage extended far beyond a broken cord for these blinds, as was claimed by the tenant. The landlord reviewed their attempts to source out a company that would be willing to undertake repairs or install different blinds along the damaged vertical blind track. The tenant maintained that the only problem with the blinds was the cord that activated the vertical blinds, which the tenant claimed could not have required $269.50, the amount claimed by the landlords.

In their written evidence and their sworn testimony, the tenant said that they were not objecting to the landlords' claim for carpet cleaning, the repair of the screen window or the replacement of the sprayer arm for the dishwasher.

Analysis - Landlords' Claim for Damage

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 landlords to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Since the tenant did not object to the first three of the landlords' claims listed above, I allow the landlords' monetary claim for each of these items (i.e., carpet cleaning, repair of the screen window, replacement of the sprayer arm for the dishwasher).

Even though the joint move-out condition inspection report made no mention of the damaged microwave, I accept the sworn testimony of the parties, supported by the landlord's photograph of damage to the microwave, as evidence that there was some damage to the microwave by the end of this tenancy. According to the RTB's Policy Guideline 40, the useful life of a microwave for a residential tenancy is set at ten years. As the landlords had to replace this item after four years, instead of ten years, I am

satisfied that the landlords have experienced losses resulting from the tenant's use of that microwave during this tenancy which exceeded that which could be expected through reasonable wear and tear. For this reason, I allow the landlords a monetary award of $228.47 ($380.78 x 6/10 = $228.47).

While there was a record of some damage to the vertical blinds in the joint move-out condition inspection report, the circumstances and extent of this damage are in dispute. Without a photograph of this damage before repairs were undertaken by the landlords and without adequate description of the damage within the joint move-out condition inspection report, the extent of this damage is difficult to determine. Policy Guideline 40 also establishes that the useful life of blinds is set at ten years. This damage occurred four years after the blinds were purchased. In this case, rather than allowing the landlords a monetary award of 60% of their $269.50 cost of restoring the vertical blinds to their previous level of functionality, which would have led to a monetary award of $161.70, I find that the landlords are entitled to a lower more nominal monetary award to refurbish this damaged item. Under these circumstances, I allow a monetary award of half of that amount, $80.85, which I believe is more reflective of damage, which the landlords have only partially established in their claim.

Since the landlords were successful in their application, I allow their application to recover their $100.00 filing fee from the tenant.

Analysis - Tenant's Application and Claims Relating to the Security Deposit

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 tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 36(1) of the *Act* reads in part as follows:

Consequences for tenant and landlord if report requirements not met

> ***36*** *(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord...*

> *(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...*

In this case, while joint move-in and joint move-out condition inspections were undertaken by the landlord and copies of reports provided to the tenant, the landlord did not fully complete the joint move-out condition inspection report, provided the tenant with only one page of the joint move-out report until the landlords applied for dispute resolution, and altered that page by adding in a dollar amount of $376.78 beside the tenant's signature after the tenant signed that legal document. While the landlord said that they did so with the intent of quantifying the amount the landlords had to spend on repairs that the tenant had admitted had been damaged and required repair, this is not evidence that the tenant agreed to allow the landlords to retain all but $376.78 from the tenant's security deposit at the end of this tenancy. Under these circumstances, I find that the tenant acted reasonably by refusing to accept the landlords' etransfer of $376.78 as a proper return of their security deposit.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1) or does so after their rights to retain the deposit have been extinguished, then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

In this case, the landlords right to retain the security deposit were extinguished as per section 36(2)(c) of the *Act* when the landlord did not complete the move-out condition inspection report fully and only provided the tenant with one, altered page of that report prior to filing their application for dispute resolution. In addition, the landlords did not file their application for dispute resolution until June 21, 2019, more than two months after the landlords received the tenant's forwarding address. Although the landlords did send an etransfer of part of the tenant's security deposit to them shortly after their joint move-out condition inspection, they were obligated at that time to return the entire security and pet damage deposits.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." There is no evidence that the tenant has given the landlords written authorization at the end of this tenancy to retain a specific amount from the security deposit. The amount identified in the joint move-out report was added unilaterally by the landlord after the tenant signed that document, For these reasons, section 38(4)(a) of the *Act* does not apply to the tenant's security deposit.

The following provisions of RTB Policy Guideline 17 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.*

Based on the undisputed evidence before me, I find that the landlords have neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. As was noted above, their right to even apply for dispute resolution was extinguished in mid-April 2019, months before they applied for authorization to keep part of the security deposit for this tenancy. The tenant gave sworn oral testimony that they have not waived their rights to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlords' failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the value of their security deposit with interest calculated on the original amount only. No interest is payable over this period.

As was noted at the hearing, costs associated with preparing for and attending a dispute resolution hearing are not recoverable from a Respondent. The only hearing related costs eligible for recovery are for the filing fees paid by the Applicant. At the hearing, I also noted that arrangements that the parties appear to have undertaken as part of their Agreement, a copy of which was not provided as part of their written evidence, for the recovery of interest over and above that which is allowed by the *Act* or the *Regulations* extend beyond the purview of the *Act*. As such, I make no monetary award for interest with respect to the tenant's security deposit.

Conclusion

-I issue a monetary Order in the tenant's favour, which allows the tenant to recover double the value of their security deposit, less the landlords' allowed claim for damage and recovery of their filing fee:

Item	**Amount**
Carpet Cleaning	$251.48
Repair of a Screen Window	26.88
Replacement of a Dishwasher Spray Arm	40.00
Replacement of the Damaged Microwave	228.47
Repair of Damage to Vertical Blinds	80.85
Return of Double Security Deposit as per section 38 of the Act ($900.00 x 2 = $1,800.00)	-1,800.00
Landlords' Recovery of Filing Fee	100.00
Total Monetary Order	**-$**1,072.32

The tenant is provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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. 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: July 23, 2019

Residential Tenancy Branch