



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MSD, 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;
- authorization to obtain a return of double the value of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties were represented by agents at the hearing who 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. Both agents said that they were authorized to act on behalf of the parties they were representing at this hearing.

The tenants' agent confirmed that the tenants were handed the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) by the landlord on March 5, 2019. I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As the landlord's agent confirmed that the landlord had received a copy of the tenant's dispute resolution hearing package in advance of this hearing, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. The tenant's agent testified that they provided copies of the tenants' written evidence to the landlord by placing this material in the landlord's mailbox on October 2, 2019. Although the landlord's agent had no knowledge of this evidence package, the landlord did not attend to contest the service of the tenants' written evidence. In accordance with sections 88 and 90 of the *Act*, I find that the landlord was deemed served with copies of the tenants' written evidence on October 5, 2019, three days after this material was left in their mailbox. The landlord did not provide any written evidence for this hearing.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for loss arising out of this tenancy? Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

On December 31, 2018, the parties signed a handwritten Residential Tenancy Agreement for a month-to-month tenancy that was to enable the tenants to take up occupancy in this basement suite on February 1, 2019. Monthly rent was set at \$1,400.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$700.00 security deposit paid when the tenants signed the Agreement.

The tenant's advocate gave undisputed sworn testimony supported by written evidence that no joint move-in condition inspection report was created for this tenancy nor did the landlord prepare and provide any joint move-out condition inspection report to the tenants.

The landlord issued the 1 Month Notice seeking an end to this tenancy by April 1, 2019, for the following reasons stated on that Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

Tenant has engaged in illegal activity that has, or is likely to:

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;*

The tenants and their agent maintained that the 1 Month Notice was invalid and identified the wrong effective date. They applied to cancel the 1 Month Notice and were scheduled to have that Notice considered at an April 26, 2019 dispute resolution hearing. By the time they attended that hearing, the tenants had already vacated the rental unit on April 3, 2019. The tenants' agent testified that these young tenants had to vacate the rental unit as the male landlord had become threatening and abusive and their family had become worried about their safety if they tried to remain residing there. Since the tenants had already moved by the time their application was heard, the presiding Arbitrator dismissed their application, as was noted in the April 26, 2019 decision (see above reference).

The tenant's' agent provided written evidence confirmed by sworn testimony that the tenants asked for the return of their security deposit by way of emails sent on April 8 and 10, 2019. The tenants' agent said that the landlord has thus far not returned their security deposit to the tenants.

The tenants' application for a monetary award of \$3,297.58, plus the recovery of their \$100.00 filing fee included the following items listed on their Monetary Order Worksheet entered into written evidence for this hearing:

Item	Amount
Reimbursement for Paint and Supplies	\$127.04
Reimbursement for Paint and Supplies	51.59
Cordless Window Blinds	125.10
Professional Carpet Cleaning	93.45
Recovery of Filing Fee from their Previous Application	100.00
1 Month's Rent for Incorrect Notice	1,400.00
Total of Above Items	\$1,897.18

Their claim also sought a monetary award of double the value of their security deposit, \$1,400.00 for the landlord's failure to return their security deposit in accordance with the *Act*, and the recovery of the \$100.00 filing fee for the current application.

In their written evidence and in the tenants' agent's testimony, the tenants requested reimbursement for the first three of the items listed above because they understood that the landlord was interested in keeping them as "long-term tenants." The tenants' agent provided copies of the written receipts for all of the tenants' purchases which they were claiming in this application. The tenants' agent said that the tenants painted the walls, which badly needed paint when this tenancy began under the expectation that they would be able to remain there for a long term tenancy. The tenants' agent also testified that the landlord knew that the blinds were broken when this tenancy began and gave the tenants oral authorization to go ahead and purchase the blinds, which were left behind at the end of this tenancy. The tenants' agent said that there was nothing in writing from the landlord to confirm that the landlord was willing to reimburse the tenants for any of these purchases.

The tenants' agent also provided undisputed sworn testimony that the carpets were in need of cleaning when this tenancy began and that the landlord gave the tenants' oral authorization to have them professionally cleaned, an expense that would normally be assumed by a landlord at the beginning of a tenancy.

The tenants' application for a monetary award equivalent to one month's rent was made because the landlord changed the reasons for seeking an end to this tenancy. The tenants' agent maintained that the inadequacy of the landlord's 1 Month Notice entitled the tenants to a monetary award for wrongful eviction.

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 prove on the balance of probabilities that the landlord contravened the *Act*, the Regulation or the Residential Tenancy Agreement and that the tenants are entitled to compensation for these contraventions.

Section 7(1) of the *Act* establishes that a party who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the other party for damage or loss that results from that failure to comply.

As I noted at the hearing, the tenants have not received any written authorization from the landlord to purchase paint, supplies and blinds for this tenancy. Although the tenants believed they were embarking on a long-term tenancy, the only Agreement they signed with the landlord, the legal contract between the parties, was for a month-to-month tenancy. While they may have had oral agreement from the landlord to enable them to paint the premises, the tenants have provided nothing that would indicate that the landlord agreed to reimburse them for the paint and supplies they have claimed. Similarly, allowing the tenants to purchase blinds for their residence is not the same as agreeing that the landlord would reimburse them for this expense. For these reasons, I dismiss the tenants' application for reimbursement for paint, supplies and their purchase of cordless blinds for this rental unit.

Turning to the tenants' claim for reimbursement for their retention of professional carpet cleaners at the beginning of this tenancy, I am satisfied that the carpets should have been cleaned before the tenants took occupancy of these premises. Based on the invoice date for their purchase of \$93.45 in professional cleaning, I accept that this was a valid expense for which the landlord was responsible. I allow the tenants' application for this item.

As noted at the hearing, I cannot issue a monetary Order for the recovery of a filing fee from the previous hearing of this matter. Any such application needed to be addressed at the April 26, 2019 by the presiding Arbitrator.

There is no legal authority whereby the tenants are entitled to a monetary award equivalent to one month's rent because they believe that the landlord evicted them without proper cause. Their recourse would have been to continue with their challenge of the validity of the 1 Month Notice at the hearing scheduled for April 26, 2019. By choosing to vacate the rental unit prior to that hearing, they abandoned their challenge to the validity of the 1 Month Notice. While I am sympathetic to the concerns they and their families may have felt for their safety, which is of course of primary importance, they did not successfully challenge the validity of the 1 Month

Notice. There is no mechanism to obtain a monetary award when a tenant vacates premises, even though they believe the Notice given to them was invalid. Had they chosen not to vacate the premises, it is possible that they may not have had to end their tenancy for the reasons stated on the landlord's 1 Month Notice. I dismiss this portion of the tenants' application without leave to reapply.

Turning to the final portion of the tenants' application, I noted at the hearing that the landlord is under no obligation to return the tenants' security deposit until 15 days after the landlord has been provided with the tenants' forwarding address in writing. The emailed forwarding addresses and any return address provided in the context of the dispute resolution hearing process do not satisfy the requirement that the forwarding address be provided to the landlord in writing. I advised the tenants' agent that they will need to provide the forwarding address to the landlord in writing, preferably by registered mail, in order to initiate the 15-day time period whereby the landlord must return their security deposit in full. If, as the tenants' agent maintained, the landlord did not conduct a joint move-in condition inspection with the tenants when this tenancy began, or did not produce a report of that inspection to the tenants at that time, the landlord's right to apply to retain any portion of the deposit has been extinguished. Similar provisions of the *Act* apply to joint move-out condition inspections and reports. If the landlord's right to apply to keep the security deposit has been extinguished, the landlord must return all of the \$700.00 security deposit to the address provided by the tenants or their agent within 15 days of being served or deemed served with a forwarding address where the deposit can be returned. Failure to do so, would expose the landlord to a potential additional claim from the tenants for a monetary award of double the value of their security deposit pursuant to section 38(6) of the *Act*, plus the recovery of the tenants' filing fee for that application. As the tenants' application for the return of their security deposit is premature, I dismiss this portion of the tenants' claim with leave to reapply.

Since the tenants' application has been partially successful, I allow the tenants to recover the \$100.00 filing fee they paid for this application from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$193.45, which enables the tenants to recover their carpet cleaning costs from the beginning of their tenancy and their filing fee for this application. 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.

I dismiss the tenants' application for the recovery of their security deposit with leave to reapply in the event that the landlord does not return all of their deposit within 15 days of having been served with their forwarding address in writing.

I dismiss the remainder of the tenants' application without leave to reapply.

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: October 29, 2019

Residential Tenancy Branch