



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL/ MNSD, FFT

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

- a Monetary Order for damages, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, 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 testified that she received the tenants' application for dispute resolution via registered mail but could not recall on what date. The tenants testified that they sent their application for dispute resolution at the end of June 2019 but could not recall the specific date. I find that the tenants' application was served on the landlord in accordance with section 89 of the *Act*.

Both parties agree that the landlord did not serve the tenants with her application for dispute resolution but did serve them with some evidence in June of 2019. The tenants testified that they called the Residential Tenancy Branch to obtain the specifics of the

landlords claims. The tenants testified that while they were not properly served with the landlord's application, they did have an opportunity to review the claims made against them and wished to have both the landlord's application and their application heard today. The landlord testified that she wanted to proceed with both applications on today's date.

While the landlord's application was not served on the tenants in accordance with section 89 of the *Act*, I find that the tenants were sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*.

Preliminary Issue- Names of Parties

The tenants' application listed the landlord's husband as a second landlord, the landlord's application only listed herself. The landlord testified that she is separated from her husband. No evidence was presented by either party confirming that the landlord's husband was served with the tenants' application. The tenancy agreement entered into evidence only lists the landlord as a landlord.

Based on the above, I amend the tenants' application, pursuant to section 64 of the *Act*, to remove the landlord's husband's name.

The landlord's application has the tenant S.H.'s legal last name in brackets and lists tenant S.H.'s last name as the same as tenant J.B. Pursuant to section 64 of the *Act*, I amend the landlord's application to state tenant S.H.'s legal last name.

Preliminary Issue- Landlord's Evidence

Both parties agree that the landlord did not serve the tenants with any invoices or estimates related to the landlord's monetary claims.

The landlord uploaded invoices for damages claimed to the Residential Tenancy Branch.

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 tenants did not receive the landlord's invoices/estimates, the invoices/estimates are not admitted into evidence.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to section 38 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. Is the landlord entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?
4. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
5. Is the landlord entitled to recover the filing fee for this application from the tenants, 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 April 1, 2009 and ended on May 31, 2019. Monthly rent in the amount of \$4,350.00 was payable on the first day of each month. A security deposit of \$1,975.00 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.

Both parties agree that the landlord did not ask the tenants to complete a move in or move out condition inspection report and no reports were completed. The landlord queried whether or not condition inspections and inspection reports were required under the *Act* in 2009, when this tenancy began.

The tenants testified that they provided the landlord with their forwarding address via email on June 10, 2019 and via text on June 2, 2019. The above email and text were entered into evidence. The landlord confirmed receipt of the tenant's forwarding address

on the dates provided by the tenants. The landlord filed her application for dispute resolution on June 14, 2019.

The landlord testified that she did not have any of her materials with her for this hearing and was not sure on the specifics of her monetary claim.

Both parties agreed that the landlord's husband was the tenant's main point of contact for all tenancy related communications.

The landlord testified that the tenants left three light fixtures uninstalled when they vacated the subject rental property which cost \$120.00 to have installed by a professional. No receipts or invoices for same were accepted into evidence.

The tenants testified that the landlord's husband told them not to worry about it and that he would re-install the lights.

The landlord testified that the windows inside and outside of the subject rental property required cleaning at the end of the tenancy and cost \$500.00 to be cleaned. No receipts or invoices for same were accepted into evidence. The tenants testified that they hired a professional cleaner at the end of the tenancy and that the interior windows were clean at the end of the tenancy.

The landlord testified that the interior of the subject rental property required repair at the end of the tenancy. The landlord testified that the following interior items required repair:

- mouldings;
- blinds;
- flooring;
- door handles;
- chimney;
- doors; and
- drywall.

The landlord testified that she hired a handyman to complete the repairs which cost her approximately \$2,000.00. No receipts or invoices for same were accepted into evidence.

The tenants testified that any damage to the subject rental property was due to regular wear and tear over the course of a 10-year tenancy with the exception of a door frame chewed by the tenants' dog.

The landlord testified that the tenants did not have the carpets professionally cleaned at the end of the tenancy and she spent \$200.00 having the carpets cleaned. No receipts or invoices for same were accepted into evidence.

The tenants testified that the carpets were 20 years old and it was their understanding that they would be replaced after they moved out.

The landlord testified that the grout around the fireplace was very dirty when the tenants moved out and the fireplace required significant cleaning. The landlord testified that she spent between \$100.00 and \$110.00 cleaning in an around the fireplace. No receipts or invoices for same were accepted into evidence. The tenants testified that the fireplace was left in good condition.

The landlord testified that the tenants did not do a good job maintaining the garden and that she spent approximately \$3,000.00 repairing the garden. No receipts or invoices for same were accepted into evidence. The tenants testified that they clipped and watered the lawn and had a gardener come in on a regular basis, fulfilling their obligation to maintain the garden.

The landlord testified that she could not recall if she made any other claims in her application.

Analysis

Policy Guideline 16 states that 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.

A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

I find that the landlord has failed to prove the amount of or value of the damage to the subject rental property as no invoices or receipts were accepted into evidence. I therefore dismiss the landlord's monetary claim pursuant to section 67 of the *Act* and Residential Tenancy Branch Policy Guideline #16.

As the landlord was not successful in her application, I find that she is not entitled to recover her filing fee, pursuant to section 72 of the *Act*.

Condition Inspection Reports

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 tenants. These sections of the *Act* were in existence prior to the beginning of this tenancy. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 24(2) of the *Act* states that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not offer the tenant two opportunities to complete the condition inspection. Pursuant to section 17 of the *Residential Tenancy Act Regulations* (the "Regulations"), the second opportunity must be in writing.

Sections 35 and 36 of the *Act* state that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not complete a condition inspection report in accordance with the regulations and provide the tenant a copy of that report in accordance with the regulations.

The landlord admitted that the tenants were not asked to complete a joint move-in condition inspection or inspection report. Responsibility for completing the move in inspection report rests with the landlord. I find that the landlord did not complete the condition inspection and inspection report in accordance with the Regulations, contrary to section 24 of the *Act*.

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-in inspection and inspection report, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy is extinguished.

As I have determined that the landlord is ineligible to claim against the security deposit, pursuant to section 24 of the *Act*, I find that I do not need to consider the effect of the landlord failing to provide two opportunities, the last in writing, to complete the move out inspection and failing to complete the move out inspection report.

Security Deposit Doubling Provision

While text and email are not recognized methods of service under section 88 of the *Act*, I find that the landlord was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the tenants' forwarding address as the landlord confirmed receipt of it.

Section 38 of the *Act* requires the landlord to either return the tenants' 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)).

Section C(3) of Policy Guideline 17 states that unless the tenants have 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 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*.

In this case, while the landlord made an application to retain the tenants' security deposit within 15 days of receiving the tenants' forwarding address in writing, she is not entitled to claim against it due to the extinguishment provisions in section 24 of the *Act*.

Therefore, the tenants are entitled to receive double their security deposit in the amount of \$3,950.00.

As the tenants were successful in their 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 issue a Monetary Order to the tenants in the amount of \$4,050.00

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: October 02, 2019

Residential Tenancy Branch