



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MARY STREET APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT MNSD RPP

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to recover the security deposit from the landlord pursuant to section 38; and
- A return of personal property pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by their agent and property manager.

As both parties were present service was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?
Is the tenant entitled to a return of the security deposit?
Is the tenant entitled to a return of personal property?

Background and Evidence

This tenancy began in March 2018 when the tenant assumed the tenancy from their deceased spouse. A new tenancy agreement was signed by the parties. Monthly rent

was \$960.00 payable on the first of each month. A security deposit of \$465.00 was transferred from the previous tenancy to this one. No condition inspection report was prepared at any time for this tenancy.

The tenant gave lengthy, rambling testimony about harassment from other occupants of the rental complex, their belief that others had access to the rental suite and their frustration with the landlord's inaction. The tenant testified that on numerous occasions neighbors would come over to harass the tenant and their family or that authorities would be called to attend and investigate complaints about the tenant.

The tenant eventually vacated the rental unit and provided a forwarding address by a letter dated September 25, 2019. The tenant did not authorize the landlord to retain any portion of the security deposit. The landlord has not returned any portion of the deposit as of the date of the hearing.

The tenant submits that they left personal possessions in the rental unit and they were either taken by other occupants of the rental complex or disposed of by the landlord. The tenant seeks a monetary award for various items including an award for loss of quiet enjoyment due to the landlord's inability to intercede in their conflicts with other occupants of the rental complex, cost of storage and moving, costs related to serving the landlord with their application and the filing fee for the earlier hearing and the value of items that they claim were lost due to the landlord allowing unauthorized access to the rental unit.

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.

The tenant seeks a monetary award of \$100.00 for filing of a previous application under the file number on the first page of this decision. As a monetary award has already been issued in the earlier decision I find that the principle of *res judicata* prevents me

from making a subsequent determination on a matter that has already been conclusively decided.

I find that items such as the cost of serving the landlord by registered mail is simply the cost of pursuing an application and not recoverable as they do not arise from a violation by the landlord. Accordingly, I dismiss this portion of the application.

I find there is insufficient evidence in support of the tenant's application for a monetary award. Their testimony was unfocused and rambling consisting of subjective complaints, irrelevant personal history and general accusations and suspicions without support in documentary evidence. I find that the tenant's submissions regarding the ongoing conflicts between other occupants to be insufficient to demonstrate that there has been a violation of the Act, regulations or tenancy agreement on the part of the landlord. Much of the complaints by the tenant is not supported in documentary materials and there is little evidence that the antagonistic relationship with others is not instigated by the tenant's own conduct and behaviour. I find it unreasonable to expect a landlord to prevent occupants from contacting emergency services when they have concerns. I find little evidence that the landlord breached the Act, regulations or tenancy agreement.

Similarly, I find there is insufficient evidence in support of the tenant's claim for a return of items or a monetary award in the amount of their value. I find that a few photographs to be insufficient to establish that the items claimed existed, that the tenant suffered a loss of the items due to the landlord or that their value is as claimed by the tenant.

I do not find that the tenant has met their evidentiary burden to demonstrate on a balance of probabilities that there is a basis for a monetary award. Consequently, I dismiss this portion of the tenant's application.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy and or upon receipt of 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.

I accept the evidence that the tenant provided written notice of the forwarding address on September 25, 2019. I accept the evidence of the parties that the landlord failed to

return the security deposit to the tenant within 15 days of September 25, 2019, the time frame granted under section 38 (1)(c) of the *Act* nor did the landlord make an application claiming against the security deposit during that period. If the landlord had concerns arising from the condition of the rental unit, the landlord should have addressed these matters within 15 days of receiving a copy of the tenant's forwarding address.

The landlord submitted some evidence of the rental unit's condition, the conflict with the tenant and the circumstances that led to the end of the tenancy. All of this evidence is irrelevant to the issue of the return of the security deposit.

It is inconsequential if repairs to the rental unit were required, if the landlord does not take proper action to pursue this matter. Landlords are in the business of renting out residential property and it is their responsibility to educate themselves as to what is permitted under the *Act*. The landlord cannot decide to simply keep the damage deposit as recourse for their loss.

In addition, the parties have testified that no condition inspection report was prepared at the start of the tenancy. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) 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

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I also find that the landlord has extinguished any right to claim against the security deposit by failing to prepare a condition inspection report at the start of the tenancy.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenants' security deposit in full within the required 15 days of receiving the tenant's forwarding address. I accept the tenant's evidence that they have not waived the right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's 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 entitled to an \$930.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$930.00. 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.

The balance of the tenant's application is dismissed 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: January 14, 2020

Residential Tenancy Branch