



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFT MNSD MNDCT FFL MNDL-S MNCL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- a monetary order for money owed or compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion 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 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

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both parties were duly served with each other’s Applications and evidence.

Issue(s) to be Decided

Are the parties entitled to the monetary orders applied for?

Are the tenants entitled to the return of all or a portion of their security deposit?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on August 1, 2016, with monthly rent set at \$1,300.00, payable on the first of every month. It was undisputed by both parties that the tenants gave verbal notice that they would be moving out on August 31, 2019. In their application, the tenants state that they gave verbal notice to the landlord near the end of June 2019, while the landlord testified that she did not receive notice until August 7, 2019. Both parties confirmed that the landlord still holds the security deposit for this tenancy. The tenants indicate in their application that they had paid a security deposit in the amount of \$580.00 which the landlord testified that only \$570.00 was paid. The tenants provided a forwarding address to the landlord on September 4, 2019, and the landlord applied for dispute resolution on September 19, 2019, 15 days later. Both parties confirmed that no move-in or move-out inspection reports were completed for this tenancy.

It was undisputed by both parties that the tenants were unable to remove all their belongings by August 31, 2019. The tenants testified that the landlord agreed to allow them 3 further days to complete the move upon payment of an additional \$660.00 refundable deposit, but instead had started moving their items onto the front lawn, damaging several items. The tenants testified that despite the agreement, the landlord denied them access to finish moving, cleaning and repairing the home. The tenants testified that after moving the landlord had retained the entire \$660.00 deposit without their permission.

The landlord does not dispute that she gave the tenants additional time to move out, but that it was only 2 days, and disputes the fact that the tenants' access to the home was denied. The landlord testified that the tenants failed to leave the 95 year old in

reasonably clean and undamaged condition, and submitted photos in support of her claim for losses. The landlord does not dispute that she kept the \$660.00 in satisfaction of these losses. The landlord testified that although the home was “very old”, it was “immaculate” as she had resided there prior to the tenants moving in. The landlord testified in the hearing that the home was last repainted in 2014.

The tenants called a witness in the hearing, KD, who testified in the hearing, and also provided a statement included in the tenants’ evidentiary materials. KD testified to the damage she noted on the tenants’ personal belongings that were moved to the front lawn by the landlord. The landlord does not dispute that these items were moved there, but disputes that she had caused the damage.

The tenants submitted the following monetary claim:

| Item | Amount |
|---|-------------------|
| Return of Security Deposit | \$580.00 |
| Compensation s. 38 | 580.00 |
| Return of \$660.00 deposit less 3 days rent | 530.01 |
| Dishwasher | 150.00 |
| Damaged Headboard | 100.00 |
| Damaged Dyson Vacuum | 300.00 |
| Damaged keyboard | 150.00 |
| Damaged Lawnmower | 75.00 |
| Filing Fee | 100.00 |
| Total Monetary Order Requested | \$2,565.01 |

The tenants provided photos of the damaged items as well as estimates of the replacement value of the damaged items.

Both parties agreed in the hearing that the landlord may keep the dishwasher, and the tenants would be compensated \$150.00 for the value of this item. The tenants confirmed that they are not disputing the landlord’s monetary claim for unpaid utilities, but are disputing the rest of the landlord’s claims.

The landlord submitted the following monetary claim:

| Item | Amount |
|-----------------------|---------------|
| Loss of Rental Income | \$390.00 |

| | |
|--|-------------------|
| Doors, wood for frames, locks, door handles, screws, painting & cleaning supplies, baseboard heaters, ceiling light & fan, paint thinner, landfill garbage dump | 1,384.91 |
| Repairs-bathroom/bedroom door, drywall rips/holes, baseboard heaters, ceiling lights/fans, repair to basement door, electrical outlet | 500.00 |
| Repairs-front/basement entry door frames, install security door handles/locks replacement door plates, repair drywall rips/holes, electrical plug for basement heater in bedroom | 750.00 |
| Repair-drywall holes, rips/tears, repair front of sliding kitchen drawers, install bathroom ceiling fan cover | 945.00 |
| Cleaning, painting, project management | 1,560.00 |
| Unpaid Utilities | 541.09 |
| Blinds | 408.50 |
| Installation of Blinds | 60.00 |
| Replacement refrigerator door racks | 186.38 |
| Replacement refrigerator door rack | 63.07 |
| Filing Fee | 100.00 |
| Total Monetary Order Requested | \$6,888.95 |

The landlord included photos in their evidentiary materials, which the landlord states were taken July 20, 2016 before the tenancy began on August 1, 2016, as well as photos taken of the damage after the tenants had moved out. The landlord also submitted invoices and receipts, and utility bills.

Analysis

During the hearing both parties agreed that the landlord may keep the tenant's dishwasher in exchange for \$150.00. On this basis, I order that the landlord compensate the tenants \$150.00 for the dishwasher that is to remain in the landlord's possession.

The tenants also consented to reimburse the landlord for the unpaid utilities for this tenancy. Accordingly, I allow the landlord a monetary order in the amount of \$541.09 for the unpaid utilities for this tenancy.

Section 38(1) of the *Act* requires that landlords, within 15 days of the end of the tenancy or the date on which the landlords receive the tenants' forwarding address in writing, to either return the deposit 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), then the landlord may not make a claim against the deposit, and the landlord must return the tenants' security deposit plus applicable interest and must pay the tenants 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 tenants' provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenants agree in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlord filed her application within 15 days of receipt of the tenants' forwarding address in writing. On this basis, the tenants' application for compensation under section 38 of the *Act* is dismissed without leave to reapply.

I find it undisputed that the landlord had collected, and held a deposit in the amount of \$660.00 during the move out at the end of the tenancy. The tenants are seeking the return of this deposit less rent for the 3 days they overheld in September 2019. The landlord is seeking compensation for lost income in the amount of \$390.00 for this tenancy due to the tenants' failure to end this tenancy in accordance with the *Act*.

Section 44 of the *Act* states how a tenancy may be ended:

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*]...

(c) the landlord and tenant agree in writing to end the tenancy...

(f) the director orders that the tenancy is ended.

Section 45 of the *Residential Tenancy Act* reads in part as follows:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that it was undisputed that the tenants did not give written notice to end this tenancy. While the tenants did notify the landlord of the termination of this tenancy, they did not end it in a manner that complies with the *Act*, as stated above. Although I find that the tenants did not comply with the *Act* in ending this periodic tenancy by giving at

least one month's notice as required by section 45(1) of the *Act*, I am not satisfied that the landlord provided sufficient evidence to support the \$390.00 in lost rental income claimed by the landlord. Accordingly, I dismiss this portion of the landlord's monetary claim without leave to reapply.

I find that the landlord had collected and withheld a deposit in the amount of \$660.00 at the end of the tenancy. I find that this deposit was collected and contrary to sections 19 and 20 of the *Act* as set out below. Accordingly, I allow the tenants' application for the return of this deposit less 3 days rent in the amount of \$130.00 for overholding until September 3, 2019.

Limits on amount of deposits

- 19** (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.
- (2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Landlord prohibitions respecting deposits

- 20** A landlord must not do any of the following:
- (a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;
 - (b) require or accept more than one security deposit in respect of a tenancy agreement;
 - (c) require a pet damage deposit at any time other than
 - (i) when the landlord and tenant enter into the tenancy agreement, or
 - (ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;

I also note that the landlord had failed to comply with sections 23 and 35 of the *Act* which requires the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that “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”, as noted in sections 24(2) and 36(2) of the *Act*.

Despite the photos, invoices, and receipts submitted by the landlord in support of the landlord’s monetary claim for repairs, I am not satisfied that the landlord fulfilled their obligation to support what damage was caused by the tenants during this tenancy. Without any move-in or move-out inspection reports, I find that there is no way to determine which damages occurred during this tenancy, and what the pre-existing condition of the home was, especially considering the considerable age of the home. Although I acknowledge that the landlord did incur considerable losses in repairing the home, I find that the landlord has not supplied sufficient information to support any kind of finding that the tenants are responsible for the losses claimed. Accordingly, I am dismissing the landlord’s entire claim for repairs without leave to reapply.

Section 37(2) of the *Act* states that “when a tenant vacates a rental unit, the tenant must a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I accept the tenants’ testimony that although the landlord had agreed to give more time for the tenants to move out, the tenants were unable to properly clean and repair the rental unit at the end of the tenancy due to the landlord’s actions. I find it undisputed that the tenants were given more time to move, but the landlord had entered the home with other parties, and moved the tenants’ belongings without their permission. By moving the tenants’ belongings without proper notice, and without the tenants written agreement to do so, or without an Order from an Arbitrator, I find that the landlord impeded the ability of the tenants to fulfill their obligations under section 37 of the *Act*. On this basis, I dismiss the landlords’ monetary claim against the tenants for the cost of cleaning.

The tenants submitted a monetary claim for damage to the items removed by the landlord. The tenants called a witness who was present during the move. I find that the landlord had moved the tenants’ personal belongings without their permission. In assessing the tenants’ monetary claim, I first note that the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. Based on the evidence before me, I accept that the landlord had contravened the *Act*.

However, I am not satisfied that the tenants had provided sufficient evidence to support that the damage was due to the landlord's actions.

Residential Tenancy Branch ("RTB") Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

I accept the tenants' evidence that there was been an infraction of a legal right. As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the tenants nominal damages of \$500 for the removal of their personal belongings without their permission.

The recovery of the filing fee is normally awarded to the successful party after a hearing. As both parties' applications contained some merit, no order will be made in regards to the recovery of their filing fees.

Conclusion

I issue the tenants a monetary order in the amount of \$1,218.91 in order to implement the monetary awards granted in this application as set out below.

The remaining portions of both applications are dismissed without leave to apply.

| Item | Amount |
|---|---------------|
| Return of the Security Deposit retained by the landlord | \$580.00 |
| Return of \$660.00 deposit held by landlord | 660.00 |
| Nominal Award for Removal of Tenants' belongings | 500.00 |
| Dishwasher | 150.00 |

| | |
|--|-------------------|
| Less Overholding Rent Owed to the Landlord | -130.00 |
| Less Unpaid Utilities Owed to landlord | -541.09 |
| Total Monetary Order | \$1,218.91 |

The tenants are provided with this Order in the above terms and the landlord must be served with a copy of 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: January 21, 2020

Residential Tenancy Branch