Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $1,650 pursuant to sections 62 and 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 2:05 pm in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 pm. Tenant MP attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that MP and I were the only ones who had called into this teleconference.

Preliminary Issue – Service of Application Materials

MP testified she served that the landlord with the notice of dispute resolution form and supporting evidence package via registered mail on January 9, 2020. She provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision.

MP sent the registered mail to the residential property address. The rental unit is the lower floor of the residential property. The landlord does not reside on the upper floor of the residential property. Near the end of the tenancy, the upper floor was rented out to the landlord's son and some of the son's co-workers (indeed, as discussed below, this precipitated the end of the tenancy).

The tenancy agreement did not include an address for service (as required by section 13 of Act). MP testified that the landlord maintains an office on the upper floor of the residential property. She testified that when the tenants signed the tenancy agreement, the landlord took them into this office to sign it.

Section 89 of the Act permits a landlord to be served by sending a copy by registered mail to the address at which the person carries on business as a landlord. I find that the landlord carries on business at the residential property, as he maintains an office on the upper floor.

Accordingly, I find that the landlord is deemed served with this package on January 14, 2020, five days after MP mailed it, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Are the tenants entitled to:

1) a monetary order of $1,650; and
2) recover their filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of MP, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

The parties entered into a written month to month tenancy agreement starting November 1, 2019. Monthly rent is $1,100. The tenant paid the landlord a security deposit of $550. The landlord has returned $500 of this amount.

MP testified that the tenants moved out of the rental unit on December 4, 2019. She testified that the tenants who moved into the upper unit at the start of December were very loud late into the night. She testified that they did laundry until 11:00 pm, and that the upper floor laundry room is above rental unit bedroom. She testified that this made it difficult for the tenants and their 10-month-old child to sleep. She testified that the upper tenants made an unreasonable amount of noise late at night, unconnected to laundry.

MP testified that the tenants notified the landlord of this on December 2, 2019 and December 3, 2019. She submitted the texts messages sent to the landlord on these dates which state:

> December 2, 2019
>
> > Tenant

Hey [landlord]. Was wondering if the internet changed? The server hunter is no longer available

Landlord
Upstairs is being painted they may have shut down the router…I will call

Tenant
Ok could you also mention out [sic] little one has gone to sleep. It's been pretty loud.

Thank you

Landlord
Yes

December 3, 2019

Tenant
[landlord] it's well after 11 [pm] and they are still hanging and stomping away upstairs. Our little been woken up every 20 min.

MP testified that the morning of December 4, 2019, tenant CP had had enough and advised the landlord that the tenants would move out immediately. She testified that they did so the following day.

MP testified that she emailed the landlord the tenants forwarding address on December 10, 2019. She testified that she also included it in the application package she sent to the landlord on January 9, 2020. She testified that the landlord returned $300 of the security deposit on December 27, 2019 and $200 of the security deposit on January 3, 2020.

MP testified that the tenants paid rent for the month of December and argued that this amount should be returned to them, as they were forced to leave the rental unit as a result of the landlord's breach of their right to quiet enjoyment.

Analysis

1. Security Deposit

Section 38(1) of the Act states:

Return of security deposit and pet damage deposit
38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
(a) the date the tenancy ends, and

> (b) the date the landlord receives the tenant's forwarding address in writing,
> the landlord must do one of the following:
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the testimony of MP, I find that the tenancy ended on December 5, 2019. I do not need to determine if the tenants served the landlord with their forwarding address on December 10, 2019 or January 9, 2020, as the landlord has not:

- returned the full amount of the security deposit to the tenants; or
- made an application for dispute resolution claiming against the security deposit

within 15 days of either date, or at all.

As such, I find that the landlord has failed to comply with his obligations under section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

> (6) If a landlord does not comply with subsection (1), the landlord
> (a) may not make a claim against the security deposit or any pet damage deposit, and
> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Policy Guideline 17 considers how section 38(6) is to be applied when a landlord has returned part, but not all, of the security deposit.

> The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:
>
> • Example A: A tenant paid $400 as a security deposit. At the end of the tenancy, the landlord held back $125 without the tenant’s written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.
>
> The arbitrator doubles the amount paid as a security deposit ($400 x 2 = $800), then deducts the amount already returned to the tenant, to

> determine the amount of the monetary order. In this example, the amount of the monetary order is $525.00 ($800 - $275 = $525).

As such, and as the landlord has returned $500 of the security deposit to the tenants, I order that the landlord pay the tenant $600 ($550 x 2 = $1,100, $1,100 - $500 = $600).

2. Loss of Quiet Enjoyment

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.
>
> (the "**Four-Part Test**")

Section 28 of the Act states:

> **Protection of tenant's right to quiet enjoyment**
>
> **28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
>
> […]
>
> (b) freedom from unreasonable disturbance;

Policy Guideline 6 states:

> A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.
>
> Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or

> unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.
>
> In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.
>
> A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it
>
> [emphasis added]

I find that, by vacating the rental unit two days after first notifying the landlord of the disturbance caused by the occupants of the upper floor, the tenants did not allow the landlord a reasonable amount of time to take steps to correct the disturbance. As such, I do not find that the landlord breach section 28 of the Act by failing to protect the tenants' right to quiet enjoyment.

Accordingly, the first step of the Four-Part Test is not satisfied. I dismiss this portion of the tenants' application.

3. Filing Fee

Pursuant to section 72(1) of the Act, as the tenants have been successful in the application, they may recover their filing fee from the landlord.

Conclusion

Pursuant to sections 62 and 72 of the Act, I order that the landlord pay the tenants $700, representing the following:

Double the deposit	$1,100
Filing fee	$100
Deduction for portion of deposit returned	-$500
Total	**$700**

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: May 15, 2020

Residential Tenancy Branch