Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing 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 sections 38 and 67;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Tenant S.G.P. and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlord was served with the tenants' application for dispute resolution in person on or around November 21, 2019. I find that the landlord was served in accordance with section 89 of the *Act.*

Preliminary Issue- Tenant's Evidence

Both parties agree that the tenants provided the landlord with their evidence on a CD when they served the landlord with their application for dispute resolution on November 21, 2019. Both parties agree that the tenants did not confirm with the landlord that he could access the evidence on the CD. The landlord testified that he does not have a CD reader and has not been able to view the tenants' evidence.

The relevant portion of Rule 3.10.5 of the Residential Tenancy Branch Rules of Procedure states:

> Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.
>
> If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

I find that the tenants did not follow Rule 3.10.5 of the Residential Tenancy Branch Rules of Procedure. I accept the landlord's testimony that he did not have the necessary playback equipment and was not able to review the evidence. I therefore find that the tenants' evidence is inadmissible and will not be considered in this decision.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Are the tenants entitled to recover the filing fee for this application from the landlord, 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 September 15, 2017 and ended by way of Mutual Agreement to End Tenancy on January 15, 2018. The Mutual Agreement to End Tenancy was entered into evidence by the landlord. Monthly rent in the amount of $1,100.00 was payable on the 15th day of each month. A security deposit of $550.00 was paid by the tenants to the landlord. A written tenancy agreement was signed; however, neither party entered it into evidence. The subject

rental property is a basement suite and the landlord resides in the main portion of the house above the tenants' suite.

Loss of Quiet Enjoyment

Tenant S.G.P. testified that they are seeking $450.00 for loss of quiet enjoyment of the subject rental property for:

- Landlord's repeated entry into the subject rental property without 24 hours notice;
- Water leaks;
- Laundry issues; and
- Broken fridge.

Tenant S.G.P. testified that the landlord completed renovations at the subject rental property from October 23 to November 18, 2017 and that the noise from the renovations disturbed their quiet enjoyment of the property. Tenant S.G.P. testified that the renovations sometimes continued throughout the day and as late at 7 to 8 p.m. and on a few Saturdays.

Tenant S.G.P. testified that the landlord and or his renovators required access to their unit six to seven times to turn off the water as the shut off valve was accessed through their unit. Tenant S.G.P. testified that she informed the landlord that she wanted 24 hours notice before the landlord or his renovators entered the property but the landlord or his renovators usually knocked on their door to request access. Tenant S.G.P. testified that she always granted access as she did not feel she had a choice. Tenant S.G.P. testified that on one or two occasions the landlord/ renovators required access to the subject rental property when she was not at home and that the landlord texted her to request permission to enter. Tenant S.G.P. that she granted the entry but again, felt that it was not a viable option to say no.

The landlord testified that he informed tenant D.K. of the planned renovations to the main portion of the house before the tenancy agreement was signed and that tenant D.K. said that it was not a problem. The landlord testified that during the upstairs renovations the tenants never complained to him about his access needs and that he and his renovators only entered the subject rental property when the tenants granted permission. The landlord testified that the renovators only worked between the hours of 9 a.m. to 5 p.m. from Monday to Friday.

Tenant S.G.P. testified that the renovations were never mentioned to tenant D.K. before the tenancy agreement was signed.

Both parties agree that within the first one to two weeks of living at the subject rental property the hot water tank at the subject rental property leaked. The tenants informed the landlord and he had a new hot water tank installed that day, the installation was completed by 10:00 p.m.

Both parties agree that approximately one week after the initial hot water tank failure, a hose from the hot water tank started leaking. The tenants informed the landlord who repaired the hose the same day.

Both parties agree that the tenancy agreement states that laundry is included in the rent and that no limitations on laundry use were listed in the tenancy agreement. Tenant S.G.P. testified that once they moved in, the landlord wanted to limit their laundry to two loads per week. Tenant S.G.P. testified that she refused and so the landlord did not grant her access to the laundry room for the first 2.5 weeks of the tenancy, until the parties reached an agreement that the tenants could do laundry two days per week.

The landlord testified that tenant D.K. verbally agreed to do two loads of laundry per week when the tenancy agreement was signed and then changed his mind after speaking with tenant S.G.P. The landlord did not dispute the tenant's testimony that he denied the tenants access to the laundry room for 2.5 weeks.

Tenant S.G.P. testified that tenant D.K. never agreed to two loads per week. Tenant S.G.P. testified that she and tenant D.K. have a one year old and two loads of laundry per week would not meet their needs and tenant D.K. would not have agreed to such a limitation.

Both parties agree that within the first one to two weeks of the tenancy, the refrigerator stopped working and the landlord replaced it the same day. Tenant S.G.P. testified that she suffered a financial loss from food spoilage. The landlord testified that the tenants never told him about any food spoilage until this dispute. Tenant S.G.P. did not dispute the landlord's above testimony.

Tenant S.G.P. did not provide any evidence as to how the loss of quiet enjoyment claim of $450.00 was calculated.

Security Deposit

Both parties agree that while the Mutual Agreement to End Tenancy states that the tenancy ends on January 15, 2018, the tenants actually moved out on December 15, 2017 but paid their rent in full until January 15, 2018.

Tenant S.G.P. that she posted her forwarding address on the door of the subject rental property on December 15, 2017. Tenant S.G.P. testified that in the December 15, 2017 letter, the tenants also stated that the landlord could retain their security deposit for part of January 2018's rent; however, the landlord did not agree to this, so they paid their rent in full. The above testimony was not disputed by the landlord. The landlord testified that he received the above described letter in December 2017 but could not recall on what date.

Both parties agree that the landlord did not return any portion of the tenants' security deposit. The landlord testified that he did not file an application for authorization to retain the security deposit.

The landlord testified that he retained the security deposit because the tenants did not properly clean the subject rental property when they moved out. Tenant S.G.P. testified that they did not do a detailed clean, but the property was not a mess.

Analysis

Loss of Quiet Enjoyment and Landlord's Obligation to Repair and Maintain

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a)reasonable privacy;

(b)freedom from unreasonable disturbance;

(c)exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;

(d)use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Policy Guideline 6 states that 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.

Section 32 of the *Act* states that a landlord must provide and maintain residential property in a state of decoration and repair that:

> (a) complies with the health, safety and housing standards required by law, and
>
> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find that the landlord acted reasonably and expediently when the tenants informed him of the issues with the hot water tank and the fridge. I find that in replacing and or repairing the malfunctioning appliances the same day the issues were reported, the landlord sough to decrease the disturbance to the tenants as much as possible. No evidence was led that the appliance failure resulted from improper maintenance.
I find that the landlord did not breach section 28 or 32 of the *Act* regarding the appliances.

Section 29 of the *Act* states:

> **29** (1)A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
>
> (a)the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i)the purpose for entering, which must be reasonable;

(ii)the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c)the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d)the landlord has an order of the director authorizing the entry;

(e)the tenant has abandoned the rental unit;

(f)an emergency exists and the entry is necessary to protect life or property.

(2)A landlord may inspect a rental unit monthly in accordance with subsection (1)(b).

Based on the testimony of both parties, I find that at the time of entries into the subject rental property, the tenants gave the landlord their permission. I therefore find that the landlord did not breach section 29 of the *Act.* If the tenants were uncomfortable with the landlord entering their unit without providing 24 hours written notice, it was incumbent on the tenants to inform the landlord of same and deny the landlord entry. The tenants are not entitled to give permission and later claim a breach of section 29 of the *Act.*

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

I find that the tenants have not proved that the upstairs renovations occurred outside of the hours of 9 am. and 5 p.m. as the oral evidence from the parties differs and other evidence does not clarify the issue. I accept the undisputed testimony of tenant S.G.P. that the upstairs unit was renovated between October 23 to November 18, 2017 and that this resulted in disruptive noise during this time. I find that renovation noise of approximately 3.5 weeks unreasonably disturbed the tenants.

Section 67 of the *Act* allows me to issue a monetary award for damage or loss. I find that the tenants are entitled to damages in the amount of $50.00 per week for the renovations noise. $50.00 * 3.5 weeks = $175.00.

Based on the testimony of both parties, I find that the tenancy agreement stated that laundry was included in the rent. Based on the undisputed testimony of Tenant S.G.P., I find that the landlord withheld laundry facilities for 2.5 weeks.

Section 65(1)(f) states:

> Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:
>
> that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

I find that the landlord breached the tenancy agreement. I find that the restriction of laundry facilities decreased the value of the tenancy. Pursuant to section 65(1)(f) and section 67 of the *Act*, I find that the tenants are entitled to a reduction in past rent in the amount of $25.00 per week for loss of laundry facilities. $25.00 * 2.5 = $62.50.

Security Deposit

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 tenants' 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.

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 because the landlord confirmed receipt of the tenant's forwarding address in December 2017. As both parties agree that the tenant paid rent in full up until January 15, 2018, I find that the tenant's written authorization to retain the security deposit is not valid because it was an offer to settle which was not accepted by the landlord.

I find that the landlord did not return the tenants' security deposit within 15 days of the end of the tenancy and did not file for dispute resolution within 15 days of the end of the tenancy. Pursuant to section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to the return of double their deposit, in the amount of $1,100.00.

The landlord testified that the tenants left the subject rental property dirty; however, an application seeking damages was not made against the tenants. I therefore am not able to consider the landlord's claims.

As the tenants were successful in their application for dispute resolution, 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 under the following terms:

Item	**Amount**
Loss of quiet enjoyment-renovation noise	$175.00
Loss of tenancy value	$62.50
Doubled security deposit	$1,100.00
Filing Fee	$100.00
TOTAL	**$1,437.50**

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: May 30, 2020

Residential Tenancy Branch