Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT, MNDL-S, FFL

Introduction

This hearing dealt with cross applications filed by the parties. On December 11, 2019, the Tenants made an Application for Dispute Resolution seeking a return of double their security deposit and pet damage deposit pursuant to Section 38 of the *Residential Tenancy Act* (the "*Act*"), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On January 5, 2020, the Landlords made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking to apply the security deposit and pet damage deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

These Applications were originally set down for a hearing on May 11, 2020 at 1:30 PM but were subsequently adjourned twice, for reasons set forth in two Interim Decisions. The Tenants attended the June 12, 2020 reconvened hearing; however, they did not make an appearance at the July 7, 2020 reconvened hearing. Both Landlords attended the June 12, 2020 and the July 7, 2020 reconvened hearings. All parties that attended the July 7, 2020 reconvened hearing provided a solemn affirmation.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a return of double the security deposit and pet damage deposit?
- Are the Tenants entitled to monetary compensation?
- Are the Tenants entitled to recover the filing fee?
- Are the Landlords entitled to monetary compensation?
- Are the Landlords entitled to apply the security deposit and pet damage deposit towards this debt?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 1, 2018 and ended when the Tenants gave up vacant possession of the rental unit on November 15, 2019 after they provided the Landlords with their keys. Rent was established at $2,999.00 per month and was due on the first day of each month. A security deposit of $1499.50 and a pet damage deposit of $300.00 were also paid.

Landlord W.L. advised that he conducted a move-in inspection report with the Tenants on September 1, 2018, but they did not sign this report. He stated that he did not submit a copy of this report as documentary evidence as there was no point in doing so.

Tenant M.T. advised that W.L. did not have a move-in inspection report with him, but simply had a notebook where he marked down notes of comments that they had about appliances.

W.L. advised that he took this same move-in inspection report with him on November 15, 2019 to conduct a move-out inspection, but the Tenants did not sign this report either. Again, he advised that he did not submit a copy of this report as documentary evidence as there was no point in doing so.

M.T. advised that W.L. simply brought a blank inspection report, filled in the applicable move-out portion, and then presented it to him, but he would not give him the copy to sign. He stated that W.L. told him that he would send a copy of this report later.

M.T. advised that their forwarding address was provided to the Landlords by Whatsapp on November 12, 2019 as this was their primary form of communication. He read from their text message communication, that was submitted as documentary evidence, and noted that W.L. responded to this text message. He also noted that the text message history indicated that the Landlords had received and read this text.

W.L. acknowledged that he received this message by Whatsapp but noted that this forwarding address was not provided in writing pursuant to the *Act*. He stated that he was "not sure what this message meant" so he did not reply to it. He then contradictorily stated that he "may not have read this message" due to the fact that his children have access to his phone and they "may have" opened the message to view it, as opposed to him. However, he did acknowledge that he responded to this message, regardless. He advised that he made their Application for Dispute Resolution based on receiving the Tenants' new address on the Tenants' Notice of hearing package that they received on December 19, 2019.

The original hearing ended at this point. During the reconvened hearing on June 12, 2020, as the Tenants made the first Application, their claims were heard first. The Tenants did not submit a Monetary Order Worksheet outlining their claims; however, they relied on a documentary package to explain their claims for compensation.

They advised that they are seeking compensation in the amount of **$500.00** because the Landlords did not provide a fridge that was suitable for use. M.T. stated that the fridge was not cooling to the proper temperature from the start of the tenancy and he advised the Landlords of this within the first two days of the tenancy. The Landlords told him that they would replace it if it could not be repaired, and it was eventually replaced on October 14, 2018. He referenced his communication with the Landlords about this issue, that was submitted as documentary evidence, and he stated that they lost food due to quicker spoilage because the fridge was not functioning properly. He advised that the compensation they are seeking is for $250.00 per month for this lost food and for having to constantly shop more frequently for groceries.

W.L. advised that he had "no recollection" of investigating whether there was an issue with the fridge, but he stated that it still functioned, just not properly. He did acknowledge that there was something wrong with the fridge, so he ordered a new one

on September 5, 2019 and it was scheduled to be delivered within a week. In the meantime, he offered to buy the Tenants a mini fridge, but the Tenants told him that as they had a freezer still, they would not need a mini fridge. However, he received an email from the store he purchased the fridge from on October 16, 2019 that delivery of the fridge would be delayed, so he cancelled this order and immediately purchased a new one from a different store.

M.T. advised that the fridge was operating four degrees warmer than optimal temperature. He stated that the Landlords offered him the mini fridge in October 2019, and it was not a suitable solution. He stated that this was only offered by the Landlords after being pressured to remedy the situation.

M.T. advised that they are seeking compensation in the amount of **$3,500.00** because the Landlords did not provide a secure entrance to the rental unit due to the condition of the front stairs. He stated that the wooden stairs are old and not level, that he requested that the Landlords fix this problem many times, and that the Landlords simply put tape down to make this issue look more visible. He stated that this was a high safety risk to his pregnant wife and that his mother almost fell on one occasion because of this. He advised that he did not request this repair in writing, and he did not push for any repairs because they feared eviction. They submitted a number of pictures as documentary evidence to support this problem, and the breakdown of their requested compensation is $250.00 per month for the 14 months that they lived there.

Tenant F.T. advised that she had a high-risk pregnancy, and she told M.T. that this stair problem needed to be fixed. They had lots of friends visit who also witnessed this issue. She stated that they feared losing their security deposit.

M.T. stated that it was not a “huge complaint” at the start of the tenancy and that instead of addressing this problem during the tenancy, they “decided to wait until the end of the tenancy to ask for compensation.” He advised that they did not submit any documentation or evidence that this stair issue did not meet housing, health, or safety standards required by law.

W.L. advised that they never received any verbal or written requests that this was an issue during the tenancy.

M.T. advised that they are seeking compensation in the amount of **$2,800.00** because the Landlords did not provide properly functioning appliances throughout the tenancy. He stated that the fireplace worked when they moved in, but it stopped working after

that. He stated that they advised the Landlords of this verbally, but never in writing, and that they did not submit any evidence or documentation from friends that allegedly witnessed that this did not function. He also advised that the oven was not working, that he did not address this problem with the Landlords in writing, and that he did not have any proof of his verbal requests to the Landlords about this issue. They submitted that the breakdown of their requested compensation is $100.00 per month, per appliance, for the 14 months that they lived there.

F.T. advised that when they moved in, they were happy that there were two ovens in the rental unit, but the Landlords never checked whether they were both working.

W.L. advised that they never received any verbal or written requests that this was an issue during the tenancy. He stated that the Tenants claimed in the first hearing that a move-in inspection report was never conducted, then they contradictorily indicated that one was conducted between the parties. He advised that he would have fixed the problem if they were advised that it was an issue, similar to the fridge incident. He stated that the current tenants have not experienced any problems.

M.T. advised that they are seeking compensation in the amount of **$1,500.00** because the Landlords did not provide a copy of the initial and final copy of the inspection reports; however, he could not point to the relevant Section in the *Act* which provides for such a claim. He stated that he did not make any efforts to attempt to get a copy of these reports.

W.L. did not make any submissions with respect to this issue.

The second reconvened hearing ended at this point. As the Tenants did not attend the final, reconvened hearing to make submissions pertaining to the rest of their claims in their written submissions, those claims are dismissed without leave to reapply. However, as the Landlords also claimed against the security deposit and pet damage deposit, these respective issues will be addressed in this Decision.

As the Tenants did not attend the final, reconvened hearing to finish making submissions in their Application, the Landlords were provided with an opportunity to make submissions with respect to their claims.

W.L. advised that they were seeking compensation in the amount of **$2,257.50** because there was water damage to the rental unit that the Tenants were responsible for. He stated that during the move-out inspection with the Tenants, he went to an area where

there was water damage, but M.T. denied having caused this damage. He stated that the company that he purchased the new fridge from was paid to install the appliance and connect the water line to it, but M.T. chose to help install this water line instead. He referred to a text dated October 16, 2018, submitted as documentary evidence, where M.T. acknowledged having connected the water line himself. W.L. then referred to an email from a repair technician, dated October 18, 2018, where it confirms that the "water inlet value[sic] was loosely connected. I have tighten[sic] the connection and it should not leak again."

W.L. referred to an estimate that was submitted as documentary evidence to support the cost of the work to repair the water damage. He also submitted pictures as documentary evidence to demonstrate the extent of the water damage. He advised that they have not paid to have this damage fixed yet.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlords and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlords and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlords must offer at least two opportunities for the Tenants to attend the move-out inspection.

Section 20 of the *Residential Tenancy Regulations* (the "*Regulations*") lists the standard information that must be included in a condition inspection report.

Section 21 of the *Regulations* outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlords or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlords to claim against a security deposit or pet damage deposit for damage is extinguished if the Landlords do not complete the condition inspection reports.

With respect to claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

The first issue I will address is whether a move-in or move out inspection report was ever conducted. While the parties have conflicting testimony with respect to these reports, as the Landlords have made an Application for damages caused by the Tenants, it would be up to the Landlords to prove that these were conducted pursuant to the *Act*. I find it important to note that neither copy of a move-in or move out inspection report was submitted as documentary evidence by the Landlords. While W.L. advised that there was no point in doing so because the Tenants did not sign them, in my view, even having these unsigned reports before me would lend weight to the Landlords' position that they brought inspection reports, that complied with the *Act* and *Regulations*, with them before the tenancy began and after the tenancy ended.

Without these reports before me, in conjunction with the conflicting testimony of the parties, I am not satisfied that W.L. had a move-in inspection report, that complied with the *Act* and *Regulations*, with him at the start of the tenancy. I find it more likely than not that he had his own notebook with him at that time. While he may have had a move-out inspection report, that complied with the *Act* and *Regulations*, with him at the end of the tenancy, I find it more likely than not that the reason this was not submitted as documentary evidence is because it would demonstrate that a move-in inspection report was never conducted in the form that complied with the *Act* and *Regulations*.

As I am not satisfied that the Landlords completed a move-in and move-out inspection report with the Tenants, I find that the Landlords extinguished their right to claim against the deposits.

Section 38(1) of the *Act* requires the 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 deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposits. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposits, and the Landlords must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

Regarding the provision of the forwarding address, the undisputed, solemnly affirmed testimony is that the Tenants' forwarding address was provided to the Landlords by text message on November 12, 2019. While W.L. made the point that this did not constitute in writing pursuant to the *Act*, I find it important to note that he made varying contradictory statements with respect to this text. He initially stated that he was "not sure what this message meant" so he did not reply. However, when reading the message, it clearly states "Here is my new address…." In my view, the message of this text is entirely obvious, and I reject W.L's suggestion that he did not understand its message.

He then attempted to allude to his children possibly accessing his phone and reading this message as the reason the message was noted as being read. However, he later acknowledged that he did reply to the Tenants' text. When I review the evidence before me, I find it important to note that the Tenants' text was read at 17:35 on November 12, 2019 and a response was sent immediately. Furthermore, the response was clearly addressed to Tenant M.T.

Firstly, I do not find that there was any ambiguity in the Tenants' text about their new address, and W.L.'s statement that he did not understand this message causes me to doubt the truthfulness of his testimony. Secondly, he attempted to place blame on his children opening up the messages on his phone as the reason it was read. However, a message was crafted by someone immediately after it was read, and it directly addressed M.T. As such, I am doubtful that if W.L.'s children had opened the Tenants' message, as W.L. suggested, that his children crafted the reply message directly to M.T. As W.L. eventually admitted to replying to M.T.'s text, I find it more likely than not this text message was read and replied to by W.L. at 17:35 on November 12, 2019.

It is not clear to me why W.L. initially attempted to blame his children for possibly accessing his phone. In addition, the conflicting testimony that he provided with respect to the text messages back and forth cause me to doubt the truthfulness of W.L.'s testimony on this matter, and it causes me to question his credibility on the whole.

Furthermore, I find that this doubt further supports my finding that he likely did not complete a move-in inspection report that complied with the *Act* or *Regulations*.

While W.L. noted that this forwarding address provided by text message did not comply with the *Act*, as I am satisfied that this was clearly understood to be a forwarding address and that W.L. responded to it, I am satisfied that this would constitute the provision of a forwarding address in writing as contemplated by the *Act.* Consequently, as the tenancy ended when the Tenants gave up vacant possession of the rental unit on November 15, 2019, I am satisfied that the 15 days started from this date.

As an aside, even if I did not consider this text as a valid forwarding address in writing, I find it important to note that the Landlords acknowledged receiving the Tenants' new address when they received the Notice of Hearing package on December 19, 2019 and that this was the address they used to make their Application. However, the Landlords made their Application to claim against the deposits on January 5, 2020. As the Landlords made their Application over 15 days after receiving the Tenants' address from the Notice of Hearing package, they were still outside the legislated timeframe to do so.

Based on the above, as the Tenants did not provide written authorization for the Landlords to keep any amount of the deposits, as the Landlords extinguished their right to claim against the deposits, and as the Landlords did not return the deposits in full or make an Application to keep the deposits within 15 days of November 15, 2019, I find that the Landlords did not comply with the requirements of Section 38 and illegally withheld the deposits contrary to the *Act.* Thus, under these provisions, I grant the Tenants a Monetary Order amounting to double the original security deposit, or **$2,999.00**.

In addition, the pet damage deposit can only be claimed against if there is damage due to the pets. As the Landlords did not advise of any damage that was due to the pets, the pet damage deposit should have been returned in full within 15 days of November 15, 2019. As the Landlords did not return the pet damage deposit in full within 15 days of November 15, 2019, the Landlords in essence illegally withheld the pet damage deposit contrary to the *Act*. Thus, I am satisfied that the Landlords breached the requirements of Section 38. As such, under these provisions, I grant the Tenants a Monetary Order amounting to double the original pet damage deposit, or **$600.00**.

As the Tenants made the first Application, their claims will be addressed first. As above, with respect to claims for damages, the burden is on the Applicants to prove their

claims. Furthermore, 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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlords fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenants prove the amount of or value of the damage or loss?
- Did the Tenants act reasonably to minimize that damage or loss?

With respect to the Tenants' claims for compensation in the amount of $500.00 due to the fridge issue, the consistent and undisputed evidence is that the Landlords took immediate action when advised that there was a problem with the fridge and ordered a new one on or around September 5, 2018. While I acknowledge that the Landlords cannot be faulted for the delay in delivery of the fridge, by the time the Tenants received a replacement, it was well into October 2018 and this would be an unreasonable amount of time to be without a fridge. However, I do also find it important to note that the Landlords offered the Tenants the use of a mini fridge at some point, and this would have been a way to mitigate the problem until the new fridge arrived, but the Tenants refused this offer. As per the four-part test above, a component of assessing whether compensation is warranted is if the Tenants acted reasonably to minimize this loss. While the Tenants were entitled to a working fridge, as they refused a temporary solution to partially mitigate this loss, I find that the Tenants are only entitled to a nominal monetary award in the amount of **$25.00**.

Regarding the Tenants' claims for compensation in the amount of $3,500.00 because the front stairs were uneven, while the Tenants claim to have brought this issue to the Landlords' attention, they have not provided any proof of this and the Landlords refute being advised that this was an issue. Furthermore, the Tenants have not provided any evidence to prove that this stair issue did not meet housing, health, or safety standards required by law. Moreover, while they claimed to have many people who could attest to this problem, they did not submit any evidence from any of these people supporting their claim that there was a problem. Finally, when applying the four-part test to assess this claim, as they indicated that they "decided to wait until the end of the tenancy to ask for compensation", if this truly was a hazard as they purport, it is not clear to me why they would wait until the end of tenancy to claim for compensation as opposed to having this issue corrected during the tenancy.

Based on my assessment of this claim, I do not find that the Tenants have provided sufficient evidence to support that this was an issue that needed to be corrected. Furthermore, while the Tenants were adamant that this issue jeopardized their health, as they did nothing during the tenancy to have it corrected and simply waited until after the tenancy was over to make a monetary claim, I find that I am doubtful of their submissions on the significance of this issue. I give no weight to their testimony on this claim and I find it more likely than not that the stair issue has been embellished in an effort to inflate artificially a claim for compensation. Consequently, I dismiss this claim in its entirety.

With respect to the Tenants' claims for compensation in the amount of $2,800.00 because the Landlords did not provide properly functioning appliances, I again find that the Tenants have not provided any evidence that they brought these issues to the Landlords attention during the tenancy and the Landlords refute being advised that there were these issues. There is also insufficient evidence that has been submitted that supports the Tenants' claims that these appliances were not functioning. In addition, had they not been functioning, there is no evidence that the Tenants took any action during the tenancy to have this corrected. Consequently, based on what has been presented by the Tenants, I find that their evidence and testimony is not compelling. As a result, I dismiss the Tenants' claims on this point in its entirety.

Regarding the Tenants' claim for compensation in the amount of $1,500.00 because the Landlords did not provide a copy of the initial and final copy of the inspection reports, there are no provisions in the *Act* that state that there is a prescribed amount of compensation if the Landlords do not comply with the *Act* and provide copies of the move-in and move-out inspection reports. As M.T. stated that he requested this amount because it was equivalent to the security deposit, I am satisfied that this is simply an unsubstantiated attempt to obtain an unreasonable amount of compensation back from the Landlords for a potential breach of the *Act*. I also find it important to note that M.T. advised that he made no efforts to attempt to get a copy of these reports. Consequently, I find the Tenants' claim to be nonsensical, unsupported, unreasonable, and a blatant attempt to make a claim for an amount of compensation that is not commensurate with any potential breach of the *Act*. As such, I dismiss this claim in its entirety as well.

As the Tenants were not present to speak to the rest of their claims, those remaining claims are dismissed without leave to reapply. I will now turn my mind to the Landlords' claim for compensation in the amount of $2,257.50 due to the water damage to the rental unit. Based on the undisputed evidence before me, I am satisfied that M.T. hooked up the water line from the fridge. Furthermore, the consistent evidence is that

there was a water leak and that this originated from a loose connection of this water line. When reviewing the undisputed evidence and testimony before me on this issue, I am satisfied that the Landlords have substantiated this claim. As a result, I grant the Landlords a monetary award in the amount of **$2,257.50** to satisfy this claim.

As the Tenants were partially successful in their claims, I find that the Tenants are entitled to recover $5.00 of the $100.00 filing fee paid for this Application.

As the Landlords were entirely successful in their claims, I find that the Landlords are entitled to recover the $100.00 filing fee paid for this Application.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlords to the Tenants

Item	Amount
Double the security deposit	$2,999.00
Double the pet damage deposit	$600.00
Compensation for fridge	$25.00
Recovery of Filing Fee	$5.00
Total Monetary Award	**$3,629.00**

Calculation of Monetary Award Payable by the Tenants to the Landlords

Item	Amount
Water damage	$2,257.50
Recovery of Filing Fee	$100.00
Security deposit	-$1499.50
Total Monetary Award	**$858.00**

Conclusion

I provide the Tenants with a Monetary Order in the amount of **$2,771.00** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should

the Landlords 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: July 21, 2020

Residential Tenancy Branch