



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order for the landlords to return the security deposit, pursuant to section 38; and
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlords confirmed receipt of the tenant's packages containing the notice of hearing and the evidence (the materials) on August 04, 2020. I find the landlords were served the materials in accordance with section 89(1)(c) of the Act.

The landlords affirmed they did not serve the tenant their evidence. Based on the foregoing, pursuant to Rule of Procedure 3.15, I do not accept the landlords' evidence.

Issues to be Decided

Is the tenant entitled to:

1. an order for the landlords to return the security deposit?
2. a monetary order for compensation for loss?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is their obligation to present the evidence to substantiate their application.

Both parties agreed the periodic tenancy started on December 30, 2019. Monthly rent was \$700.00, due on the first day of the month. The landlords collected and still hold a security deposit of \$350.00. The parties did not sign a written tenancy agreement. Rent included internet and cable services.

The tenant affirmed the tenancy ended on May 31, 2020, when he moved out and left the keys in the rental unit. The landlord stated the tenant did not return the keys and did not give notice to end tenancy.

The tenant submitted into evidence a rent payment receipt dated May 01, 2020 stating the tenant must move out of the rental unit by May 31, 2020.

Both parties also agreed the forwarding address was provided in writing when the tenant served the application packages.

The tenant said he moved to a new rental unit and had to pay monthly rent of \$850.00 because he did not have enough time to look for another rental unit costing the same amount of rent. The tenant is seeking for the \$150.00 rent difference for five months, in the total amount of \$750.00.

The tenant stated he could not use the internet and cable services during the tenancy. The tenant paid \$10.00 per month for internet service and \$40.00 per month for cable service during the 5-month tenancy. The tenant is seeking for a compensation for internet and cable in the total amount of \$250.00.

The landlords affirmed the tenant said he was not able to use the internet in the first month of the tenancy because he lost the password to connect to the internet. The landlords provided again the password to the tenant. The tenant did not submit any complaint to the landlords about the cable service. Both the internet and the cable services were available during the entire tenancy.

The tenant is also seeking for compensation for loss of quiet enjoyment and aggravated damages, as the two other tenants in the rental unit were placing their dirty laundry in the bathtub almost every morning and the tenant had to remove the dirty laundry from the bathtub to be able to use it. Furthermore the tenant stated the other tenants constantly cooked food that had a strong odour and the landlord almost daily asked the tenant to remove his shoes before entering the rental unit. The landlord affirmed the tenant did not submit a complaint regarding the other tenants.

Analysis

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.

Return of the Deposit

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 or upon receipt of the tenant's forwarding address in writing.

Based on the landlord's testimony, I find the landlord has not brought an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(d) of the *Act*.

Pursuant to section 38 of the *Act*, the landlord must pay a monetary award equivalent to double the value of the security deposit:

- (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.
- [...]
- 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.

Residential Tenancy Branch Policy Guideline 17 states:

Unless the tenant has 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 not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- 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 accept the coherent tenant's testimony and documentary evidence that the tenancy ended on May 31, 2020, the tenant gave the landlord written notice of his forwarding address on August 04, 2020 and that the landlord did not return the security deposit.

Under these circumstances and in accordance with sections 38(6) and 72 of the Act and Policy Guideline 17, I find the tenant is entitled to a monetary award of \$700.00. Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit.

Rent difference

Sections 7 of the Act state:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch 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.

Based on the undisputed testimony, I find the tenant failed to minimize his losses by moving out of the rental unit instead of submitting an application to dispute the landlord's request to end the periodic tenancy. Therefore, the tenant is not entitled to compensation for rent difference.

For the purpose of educating the landlords, I note that under section 44(1)(a) of the Act the landlord may only terminate a periodic tenancy by giving the proper notice to end tenancy.

Internet and cable services

Both parties offered conflicting testimony about the availability of internet and cable services during the tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The tenant did not provide any documentary evidence to support his claim. The applicant did not call any witnesses. I find the tenant failed to prove, on a balance of probabilities, that internet and cable services were not available during the tenancy.

As such, I dismiss the tenant's application for compensation for internet and cable services.

Loss of quiet enjoyment and aggravated damages

Section 28 of the Act states:

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 Tenancy Branch 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.

(emphasis added)

Residential Tenancy Branch Policy Guideline 16 states:

"Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. **Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence.** Aggravated damages are rarely awarded and must specifically be asked for in the application.

(emphasis added)

Based on the tenant's testimony, I find the disturbance described by the tenant is not a substantial interference with the ordinary and lawful enjoyment of the premises. I also find the tenant did not suffer a significant damage or loss.

Thus, I dismiss the tenant's application for compensation for loss of quiet enjoyment and aggravated damages.

For the purpose of educating both parties, I note that under section 13(1) of the Act a tenancy agreement must always be in writing.

Conclusion

Pursuant to section 38 and 72 of the Act, I grant the tenant a monetary order in the amount of \$700.00

This order must be served on the landlords by the tenant. If the landlords fail to comply with this order the tenant may file the order in the Provincial Court (Small Claims) to be enforced as an order of that Court.

The tenant's application for compensation for loss 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: November 20, 2020

Residential Tenancy Branch