# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The "female landlord" did not attend this hearing, which lasted approximately 66 minutes. The tenant and the male landlord ("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. The landlord confirmed that he had permission to represent the female landlord, who is his wife, at this hearing (collectively "landlords").

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord confirmed that the landlords did not submit any documentary evidence for this hearing.

Both parties confirmed that they were ready to proceed with this hearing and they had no objections.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to obtain a return of double the amount of the security deposit?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the tenant's documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 15, 2019 and ended on June 30, 2020. Monthly rent in the amount of $1,850.00 was payable on the first day of each month. A security deposit of $850.00 and a pet damage deposit of $100.00 were paid by the tenant. The landlords returned the full pet damage deposit of $100.00 to the tenant and retained the full security deposit of $850.00. Move-in and move-out condition inspection reports were completed for this tenancy. The tenant provided a written forwarding address to the landlords on July 7, 2020, by way of email. The landlords did not file an application for dispute resolution to keep any amount from the security deposit. A written tenancy agreement was signed by both parties. The rental unit is two-level house, where the tenant occupied the upper level and different occupants occupied the lower level of the house.

The tenant stated that she did not give written permission for the landlords to keep any part of her security deposit. She said that she expressly told the landlord in emails that he had to return it to her. The landlord claimed that the tenant signed an addendum to the tenancy agreement, at the beginning of the tenancy, that the landlord could keep the security deposit. He maintained that the tenant said negative things about him online, so he should be able to keep her deposit. He explained that he was not given written permission by the tenant to keep the deposit at the end of the tenancy.

The tenant seeks a monetary order of $8,506.49, plus the $100.00 application filing fee. As per her monetary order worksheet, this includes a loss of quiet enjoyment of $2,605.00 and $2,975.00, moving truck costs of $275.67 and $80.34, moving cleaning expenses of $120.00 and $125.00, excess utilities of $220.00, mail costs of $89.25 and $36.23, and lawncare costs of $280.00. The tenant also seeks double the value of her security deposit of $850.00, totalling $1,700.00. The landlords dispute the tenant's entire application.

The tenant testified regarding the following facts. She suffered a loss of quiet enjoyment for 13 months while living at the rental unit. There were four different "sets" of occupants living below her at the rental property. The "first set" got along with the tenant and left after three months. The "second set" was a family that caused multiple issues, including yelling, swearing, noise, threats, and smoking weed. The tenant pointed to a police report for same. The "third set" was a mother and three kids, including a baby, that caused excessive noise and smoking of weed and cigarettes. The "fourth set" was a lady and her boyfriend who smoked weed and cigarettes, used alcohol and drugs, sold drugs, trespassed, overdosed, and was the subject of a police report. There was an arrest for domestic violence after the tenant vacated the rental unit. The tenant is a single mother with children and moved out of the rental unit to escape the violence. The smoking of weed and cigarettes by other occupants living on the lower level of the rental property, was a breach of a material term of the tenant's tenancy agreement, for which she gave notice to the landlords to vacate the rental unit. The tenant vacated the rental unit during the covid-19 pandemic. The tenant pointed to copies of text messages and emails regarding the above issues.

The tenant stated the following facts. The electrical utilities were split between the tenant and occupants at the rental property, but the downstairs occupant was using portable space heaters. This increased the amount of utilities, causing the tenant to pay more, resulting in $220.00 of extra utilities, for which the tenant pointed to emails regarding same. The tenant incurred moving and cleaning expenses, as a result of having to vacate the rental unit. The tenant incurred mail costs because the downstairs occupant had a key to the shared mailbox with the tenant, and the tenant did not want the occupant to access her mail. The occupant threatened the tenant, so the tenant had her mail held and forwarded. The tenant incurred lawncare costs, having to pay her 7-year-old son to mow the lawn, at a rate of $10.00 per week for 28 weeks, for a total of $280.00, as referenced in the emails she provided.

The landlord testified regarding the following facts. The tenant did not have use of the yard and lawn on her own at the rental property. The lower-level occupants were permitted to share the yard with the tenant, as per their tenancy agreement. The tenant did not get along with any of the lower-level occupants, but the landlord did whatever he could to resolve the conflicts between them. He always sided with the tenant because she had lived at the rental unit for a longer period of time. He persuaded the lower-level occupants to vacate the rental unit. The tenant then left the rental unit. The tenant did not mention the covid-19 pandemic to the landlord before moving out, telling him that she was not concerned because it was "fake news." The tenant told "horrible" stories to prospective occupants who came to view the rental property with the landlord. The tenant engaged in negative social media chatting online regarding the "bad landlord," which was online bullying and threats. The tenant said online that the landlord needed psychiatric help. The tenant was trying to get revenge against the landlord.

Analysis

*Burden of Proof*

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1) Proof that the damage or loss exists;
2) Proof that the damage or loss occurred due to the actions or neglect of the landlords in violation of the *Act*, *Regulation* or tenancy agreement;
3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4) Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The following Residential Tenancy Branch ("RTB") *Rules of Procedure* are applicable and state the following, in part:

> *7.4 Evidence must be presented*
> *Evidence must be presented by the party who submitted it, or by the party's agent…*
> …

*7.17 Presentation of evidence*
*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence…*

*7.18 Order of presentation*
*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof…*

The tenant spoke for the majority of the hearing time, as compared to the landlord. The tenant spoke for approximately 36 minutes, while the landlord spoke for approximately 10 minutes. The remaining 20 minutes was used to discuss service of documents, settlement, and basic tenancy-related questions with both parties.

I find that the tenant did not properly present her evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having been giving the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure.*

The tenant did not reference any sections of the *Act* when she presented her submissions. She moved from one monetary claim to another without properly explaining the basis for making each of her claims, nor did she review the amounts being claimed. I notified the tenant during the hearing that I found her submissions to be confusing and she agreed she was discussing overlapping claims; yet she did not make a concerted effort to clarify or properly explain her claims.

The tenant submitted numerous documents for this hearing in support of her application, mainly consisting of text messages and emails. The tenant referenced these emails and text messages, while telling a lengthy story about her tenancy. However, the tenant did not confirm all of the amounts in the monetary order worksheet provided, despite the fact that I asked questions about the amounts. The tenant did not explain how she came up with the numbers and calculations indicated in the worksheet. I find that the tenant did not provide sufficient evidence to substantiate her monetary claims and she failed to satisfy the above four-part test.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for compensation of $6,806.49 without leave to reapply. This includes a loss of quiet enjoyment totalling $5,580.00, moving truck costs totalling $356.01, moving cleaning expenses totalling $245.00, excess utilities of $220.00, mail costs totalling $125.48, and lawncare costs of $280.00.

*Utilities, Mail, and Lawncare Expenses*

I find that the tenant is not entitled to excess utilities of $220.00. I find that the tenant failed to go through any utility bills during the hearing or to provide a breakdown for the above number, including any dates.

I find that the tenant is not entitled to mail costs totalling $125.48, for having to hold or forward her mail. I find that the tenant failed to show any reasonable or credible threat from the lower-level occupant, that would warrant having her mail being held or forwarded. I find that this cost was the tenant's choice and she must bear the cost for same.

I find that the tenant failed to provide sufficient documentary evidence that she incurred lawncare costs of $280.00, that she claims to have paid to her 7-year-old son. I find that this cost was the tenant's choice and she must bear the cost for same.

*Loss of Quiet Enjoyment, Moving, and Cleaning Expenses*

Section 28 of the *Act* deals with the right to quiet enjoyment (my emphasis added):

> *28 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 Policy Guideline 6 "Entitlement to Quiet Enjoyment" states the following, in part (my emphasis added):

> *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.*

While the tenant found the lower level occupants to be noisy and was bothered by their behaviour related to smoking, drugs and drinking, these complaints were not necessarily subject to intervention by the landlord. Residing in a multi-unit rental property sometimes leads to disputes between tenants. A certain level of noise is to be expected in a multi-unit house, given the location of the tenant's unit directly above the occupants' unit. The occupants living below the tenant were entitled to quiet enjoyment of their unit, including completing activities of daily living and using the unit for different purposes. The tenant cannot decide how or when the occupants' unit is to be used and for what purposes. The rights of both parties must be balanced.

When concerns are raised by one tenant, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*. Landlords often try to mediate such disputes if they can, but sometimes more formal action is required.

I find that the landlord described an appropriate process that was initiated to address the tenant's complaints regarding the occupants. The landlord spoke to these occupants when the tenant raised complaints, confirmed that he always took the tenant's "side" because she had lived at the rental property for longer, and "convinced" the other occupants living on the lower level to move out. In the time that the tenant lived at the rental unit, the tenant claimed that there were four different sets of occupants living below, and the tenant had issues with at least three sets of them. I see insufficient evidence to demonstrate that the landlords failed to take appropriate action to follow up on the tenant's complaints about the occupants living below her. I find that the noise referenced by the tenant was a temporary inconvenience and not an

unreasonable disturbance, as noted in Policy Guideline 6, above. The tenant did not provide or reference that the occupants living below her violated any noise bylaws.

I find that the tenant was unable to show that she was forced to vacate the rental unit, due to breach of a material term. I find that the tenant moved on her own accord, because she did not get along with a number of different lower-level occupants. I find that the police records submitted by the tenant show that the tenant engaged in what was described by the police as "trivial neighbour issue" with the other occupants at the rental property. One of the complaints was made by the lower-level occupant against the tenant.

The tenant called the police, related to claims about drugs, trespass and threats, related to the lower-level occupants. The tenant provided three police records but did not review these during the hearing. One is an email from July 2020, which includes a police file number but no police report or details about what occurred, as I do not have access to the police database to research the file number. The second is an online incident report with no names of any parties, including the tenant. That report appears to provide the tenant's account of what happened in May 2020, which she describes as "no signs of trespassing nor noticed any missing property." The third is a police report from September 2019, based on a complaint made by the lower-level occupant against the tenant. In the report, the occupant complains that the tenant told her not to smoke on the property and the tenant parked her vehicle on the shared lawn. It also states that when questioned by the police officer, the tenant told the police that the occupant was into "bad things" but "could not give details" and that the occupant was being evicted at the end of the month. The police report concludes by stating "Trivial neighbour issue. Police attendance no longer required."

Accordingly, I find that the tenant is not entitled to a loss of quiet enjoyment of $5,580.00, moving truck costs of $356.01, and moving cleaning expenses of $245.00.

*Security Deposit*

Section 38 of the *Act* requires the landlords to either return the tenant's 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 tenant's provision of a forwarding address in writing. If that does not occur, the landlords are 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 landlords have obtained the tenant's 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 tenant to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

Section 20(e) of the *Act* states the following:

> *Landlord prohibitions respecting deposits*
> *20 A landlord must not do any of the following:*
> *(e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.*

I make the following findings based on the testimony and evidence of both parties. The tenancy ended on June 30, 2020. The landlord did not return the security deposit to the tenant or file an application to retain it.

I find that the tenant did not give the landlords written permission to retain any amount from her security deposit. Section 20(e) of the *Act*, noted above, indicates that the landlords cannot include as a term of the tenancy agreement (or an addendum, in this case), that they can keep the deposit at the end of the tenancy agreement. Further, the tenant sent express emails to the landlords at the end of the tenancy that they could not keep her deposit, as the landlord agreed that he did not have permission to keep the deposit at the end of the tenancy.

I find that the tenant provided a written forwarding email to the landlords on July 7, 2020. Although email is not permitted by section 88 of the *Act*, I find that the landlords were sufficiently served as per section 71(2)(c) of the *Act*, with the tenant's forwarding email.

Over the period of this tenancy, no interest is payable on the landlords' retention of the tenant's security deposit of $850.00. I find that the tenant is only entitled to receive the original amount of her security deposit of $850.00, from the landlords. I find that the tenant is not entitled to the return of double the amount of her deposit because she did not serve a forwarding address using a proper method under section 88 of the *Act*, which does not permit email as a "written" form.

As the tenant was mainly unsuccessful in her application, I find that she is not entitled to recover the $100.00 filing fee from the landlords.

Conclusion

I issue a monetary order in the tenant's favour in the amount of $850.00 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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.

The remainder of the tenant's application 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: January 15, 2021

Residential Tenancy Branch