



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NADRA AND PATEL PROFESSIONAL HOLDING
COMPANY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL; MNSDS-DR, FFT

Introduction

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

- a monetary order for damage to the rental unit and for compensation under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for its application, pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- authorization to obtain a return of double the amount of the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The landlord's two agents, "male landlord" and "female landlord" (collectively "landlords") and the two tenants, male tenant ("tenant") and "female tenant" (collectively "tenants") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 43 minutes.

The male landlord confirmed that he was the owner and director and the female landlord was the owner and shareholder, both of the landlord company named in these applications. The male landlord confirmed that both landlords had permission to represent the landlord company at this hearing.

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

The tenants' application was originally scheduled as a direct request proceeding, which is a non-participatory hearing. The direct request proceeding is based on the tenants' paper application only, not any submissions from the landlord. An "interim decision," dated November 27, 2020, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

The tenants were required to serve the landlord with a copy of the interim decision, the notice of reconvened hearing and all other required documents. The male landlord confirmed receipt of the above documents from the tenants. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the above required documents.

The male landlord confirmed receipt of the tenants' original 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 tenants' application.

During the hearing, I explained the hearing and settlement process to both parties. Both parties confirmed that they were ready to proceed with the hearing.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit and for compensation under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' security deposit?

Are the tenants entitled to a return of double the amount of their security deposit?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the 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 both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 15, 2017 and ended on September 30, 2020. Monthly rent in the amount of \$5,245.00 was payable on the first day of each month. A security deposit of \$2,497.50 was paid by the tenants and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. No move-in or move-out condition inspection reports were completed for this tenancy. The landlord did not have written permission to retain any amount from the tenants' security deposit. The landlord's application to retain the tenants' security deposit was filed on November 23, 2020.

The tenants claimed that they provided a written forwarding address on September 30, 2020, by way of a note handed to the landlords in person. They explained that they gave the tenant's employment address as their forwarding address. The landlords denied receiving this note, claiming that they found the tenants' employment address on the envelope of the tenants' application for dispute resolution. They said that they sent mail to that address and it was returned to sender. They claimed that they had to drive to a location to serve the tenants in person.

As per its application, the landlord seeks a monetary order of \$6,562.00 plus the \$100.00 filing fee. The tenants dispute the landlord's application. The tenants seek the return of double the amount of the security deposit, totalling \$4,995.00, plus the \$100.00 application filing fee. The landlord disputes the tenants' application.

The landlords testified regarding the following facts. The landlords completed an inspection on move-out, but no formal report was completed because the landlords did not know it was a requirement. This was their first time renting out the property. The landlords took photographs both before the tenants moved in and after they moved out. The landlords held back the tenants' security deposit and told the tenants that they would receive it back when the damages were repaired. The landlords had to renovate and replace the carpet due to heavily soiled stains, which cost over \$5,000.00. The new tenants were delayed by two weeks, in coming into the rental unit. The landlords spent \$4,278.13, not including the carpet. The tenants scratched the wooden floors which cost the landlords \$15,000.00. It cost the landlords \$20,000.00 to have the

carpets redone. Keeping the tenants' security deposit is reasonable because it cost the landlords \$4,278.13 for renovations. There was damage to the basement bathroom and grout, and it was not cleaned. The cleaning company told the female landlord about the bad status of the rental unit, which was not cleaned. They had to clean the carpets three times. The tenants told their cleaners not to clean the closets, as per their text messages. The windows and refrigerator were not cleaned. The landlords provided photographs of same. The landlords told the tenants about the cleaning issues. The oven racks were corroded and had to be replaced. The dishwasher racks were missing. The landlords had to hire a painter/decorator to fix the drywall and ceiling, as it was more than wear and tear. Plumbers had to be hired. The male landlord was worried about the water bills because the landlords received these during the tenancy, as the tenants had a history of not paying these bills. The landlords had to take time off work to deal with the repairs. The tenants' application for double the amount of their security deposit is not justified.

The tenants testified regarding the following facts. They dispute the landlord's application. The female landlord walked through the rental unit for the move-out inspection, earlier than the agreed time with the tenants. This was done without the tenants' permission and no notice was given to them. There was no move-in report to compare with the move-out inspection. The tenants spent over \$3,000.00 to hire A+ cleaning companies to clean the house and did not tell their cleaners not to clean the closets. If the rental unit was so bad, then the new tenants would not have been able to move in when they were supposed to do so. The male landlord told the tenants that they would not receive their security deposit back until they showed that they paid the utility bills, which the tenants did not know when they would receive them, as it could be two weeks. The wooden floors were not mentioned by the landlords during the move-out inspection. The landlords told their companies to bill the tenants directly for repairs, which the tenants refused to pay. The landlords had the stain in the carpet looked at twice.

Analysis

Landlord's Application

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 landlord 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 tenants 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 landlord 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...

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties.

At the outset of the hearing, I notified the landlords about the above four-part test. During the hearing, the landlords failed to go through any specific claims or the amounts for each claim, as noted on the landlords’ monetary order worksheet. I informed both parties that the applicants in each application had the burden of proof to present their claims. I find that the landlords did not properly present the landlord’s evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*.

This hearing lasted 43 minutes so the landlords had ample opportunity to present the landlord’s application and respond to the tenants’ allegations. During the hearing, I repeatedly asked the landlords if they had any other information they wanted to add to their submissions. However, the landlords failed to go through the landlord’s numerous

documents that were submitted for this hearing, including invoices, estimates, receipts, and other documents. The landlords referenced photographs during the hearing but did not point me to any specific photographs, claiming simply that I could look through all of them. The landlords focussed more on arguing with the tenants about the cleaning and how the tenants instructed their cleaners not to clean the closets.

I dismiss the landlord's application of \$6,562.00 without leave to reapply. This includes painting and decorating of \$1,747.29, bathroom tile remediation of \$580.13, bathroom plumbing of \$200.00, replacing oven racks of \$500.00, missing dishwasher parts of \$135.00, window cleaning of \$200.00, closet cleaning of \$200.00, and replacing carpet of \$3,000.00. These amounts have been taken from the landlord's monetary order worksheet, which was not reviewed by the landlords during the hearing.

The landlords did not indicate the above amounts during the hearing. The landlords did not go through any invoices, estimates, quotes or receipts during the hearing. The landlords did not complete move-in or move-out condition inspection reports with the tenants to show the condition of the rental unit when the tenants moved in or out. The landlords did not indicate whether costs were paid and if so, how and when they were paid.

I find that the landlord did not provide sufficient documentary evidence to support its monetary claims. I reviewed the landlord's documents, even though the landlords did not point me to any documents or review these documents during the hearing.

The landlord provided invoices for painting and decorating of \$1,747.29 and basement bathroom tile remediation for \$580.13. These amounts were indicated in the landlord's monetary order worksheet. No receipts or proofs of payment were provided to show if, when or how any payments were made by the landlord or if the above work was completed. The invoice for the bathroom tile remediation is dated November 13, 2020, which is almost 1.5 months after the tenants vacated the rental unit on September 30, 2020.

The landlord provided an invoice for plumbing of \$445.20, dated December 16, 2020. This is over 2.5 months after the tenants vacated the rental unit on September 30, 2020. In the monetary order worksheet, the landlord claimed \$200.00 for plumbing indicating "exact costs awaited." No receipts or proofs of payment were provided to show if, when or how any payments were made by the landlord or if the above work was completed.

The landlord provided a quote for window washing of \$728.44, on December 5, 2020. This is over 2 months after the tenants vacated the rental unit on September 30, 2020. The quote indicates that the online or telephone price has to be confirmed by the technician on-site before the job commences. In the monetary order worksheet, the landlord claimed \$200.00 for window cleaning indicating "exact quote awaited." No receipts or proofs of payment were provided to show if, when or how any payments were made by the landlord or if the above work was completed.

The landlord provided an estimate for oven racks and missing dishwasher parts of \$707.07, dated December 3, 2020. This is over 2 months after the tenants vacated the rental unit on September 30, 2020. The estimate is not signed by the landlords in order to make it a legally binding contract of sale and purchase, as noted on the estimate itself. In the monetary order worksheet, the landlord claimed \$500.00 for replacing oven racks and \$135.00 for missing dishwasher parts. No receipts or proofs of payment were provided to show if, when or how any payments were made by the landlord or if the above work was completed.

The landlord also indicated \$3,000.00 for replacing carpet and \$200.00 for closet cleaning. The landlord did not provide invoices, receipts, quotes or estimates for same and did not review these claims during the hearing.

As the landlord was unsuccessful in its application, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenants.

Tenants' Application

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 deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the 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)).

I make the following findings on a balance of probabilities and based on the evidence of both parties. The tenancy ended on September 30, 2020. The landlord did not have written permission to retain any amount from the tenants' security deposit.

I find that the tenants did not provide sufficient evidence to show that they provided a written forwarding address to the landlord on September 30, 2020, by way of a note handed to the landlords in person. The tenants did not reference or point me to this note during the hearing. The tenants did not provide independent witness evidence to show that they served this note to the landlords. The landlords denied receipt of the note. The landlords maintained that they received the work address on the tenants' application for dispute resolution, which is not a permitted method of service, as per section 88 of the *Act*. The landlords provided documentary and testimonial evidence indicating that they attempted to serve the tenants with evidence at a work address and the mail was returned to sender.

Therefore, I find that the doubling provision for the security deposit was not triggered without a written forwarding address from the tenants. Accordingly, I find that the tenants are not entitled to double the amount of their security deposit.

The landlord continues to hold the tenants' security deposit of \$2,497.50. Over the period of this tenancy, no interest is payable on the deposit. In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to the regular return of their security deposit of \$2,497.50 from the landlord. I issue a monetary order to the tenants for \$2,497.50.

As the tenants were only partially successful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$2,497.50 against the landlord. 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.

The remainder of the tenants' 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: February 12, 2021

Residential Tenancy Branch