Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNETC, MNSD, FFT
For the landlords: MNDL-S, FFL

Introduction

On October 26, 2020 the tenant applied for dispute resolution requesting compensation for a return of the security deposit, and compensation related to the end of the tenancy, as well as their application filing fee.

On December 2, 2020 the landlord applied for dispute resolution requesting monetary compensation for damage caused by the TT, and reimbursement of their application filing fee.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on February 5, 2021.

At the start of the hearing, both parties confirmed they received the prepared evidence of the other in advance of the hearing. On this basis, the hearing proceeded.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation of monetary loss or other money owed, pursuant to section 67 of the *Act*?

Is the tenant entitled to the return of the security deposit pursuant to section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for their application, pursuant to section 72 of the *Act*?

Is the landlord entitled to monetary compensation for damage to the rental unit, pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for their application, pursuant to section 72 of the *Act*?

Background and Evidence

Both parties provided a copy of the tenancy agreement. They jointly signed the agreement on April 9, 2018, for the initial fixed-term tenancy. This tenancy reverted to a month-to-month tenancy after the expiry of the fixed term. The tenant paid $1,350 rent monthly and paid a security deposit of $750 at the start of the tenancy.

In the hearing, the tenant stated there was never an initial move-in condition inspection meeting with the landlord. Neither side provided a document showing such a meeting took place.

The tenant submitted they received a text message from the landlord on September 13 in which the landlord stated they would move back into the unit on November 15, 2020. In response to this, the tenant sent a link to the “rtb32” form which is the printed form ‘Two-Month Notice to End Tenancy’, a four-page document.

On September 18, the tenant sent a message stating: “Still haven’t received the eviction notice.” A separate message from the tenant to the landlord on September 21 states: “Never received the email with the notice” and asks for the landlord to re-send the document via email.

The landlord provided a copy of their September 13, 2020 message to the tenant; this message refers to their earlier message of August 13. They provided their letter of September 10, 2020 giving the same details of the end of tenancy.

In the hearing, the landlord stated they followed up this communication with an email dated September 29 (not in the evidence). They described this in the hearing: “We had been in conversation before that so that when he received RTB 32 it would not be a shock.”

The tenant wrote a letter to the landlord on September 24, 2020, entitled ’10 Day Notice to Move Out Early’. They stated they will move out prior to the effective date of the landlord’s notice, with the last day being October 4, 2020.

a. tenant’s security deposit claim

In their September 24 letter in which they advised of the end-of-tenancy date (Oct. 4), the tenant requested a move-out condition inspection meeting on the last day of the tenancy.

The tenant provided a copy of the RTB form ‘Proof of Service Tenant Forwarding Address’ dated October 30, 2020. This indicated the method of service was registered mail, delivered on “Oct 07 2020.” In the hearing, the tenant stated the landlord did not respond to text messages or email messages about this. The tenant stated they forwarded the form to the landlord on October 8; the tracking record for this registered mail piece shows delivery on October 9.

The landlord stated they received the keys on October 3 (Saturday), after the tenant moved out on October 2, 2020 (Friday). A letter from the property strata dated October 20 advised of the tenant’s infraction for moving out on September 30, 2020, in contravention of the bylaw wherein they “illegally conducted a move out without prior notice.” In the hearing, the landlord advised this was because the tenant used alternate exit stairs instead of using the elevator in its reserved time on October 4. They provided that the property manager advised them of this on Oct 2 By October 23, the strata imposed a fine of $200 after “[h]aving considered the complaint.”

In the hearing, the landlord advised this fine was levied by the strata because the tenant used alternate exit stairs instead of using the elevator in its reserved time on October 4. They provided that the property manager advised them on October 2 that the tenant was moving on that day. The landlord stated they were of the understanding the move-out inspection meeting would happen on the day of October 4, the agreed-upon tenant scheduled move-out day.

Additionally, the strata council held a $500 deposit for this tenancy. This is normally given back to a landlord where there is no damage. This was the damage deposit for moving out. In line with the tenant being fined $200 for use of the stairs on the incorrect day for move out, the landlord’s retained this $500 amount from the security deposit.

The landlord advised the tenant of this on September 30. They took $500 from the tenant's security deposit here and gave that to the strata. Additionally, they retained $200 from the deposit for the tenant's fine.

In sum on this point for the return of the security deposit, the tenant reiterated that there was no initial move-in condition inspection meeting, nor was there a meeting on move out. The landlord did not respond to their attempts to schedule the meeting.

b. tenant's claim for rent entitlements

The tenant meanwhile found their new residence in advance of the November 15 final date initially provided by the landlord. The tenant stated they "found a place" for October 1, and they would send "the 10 days notice in a few days". The final date "Might be for the 3rd or 4th then we can figure out the prorated days and the 1350 for the eviction".

The above messages appear in the printed evidence of the tenant. They also provided a copy of their September 24 document entitled '10 Day Notice to Move Out Early' wherein they provided that: they will move out prior to the effective date of the landlord's notice; the last day of the tenancy will be October 4; and a copy of section 50 of the *Act*.

The tenant stated in the letter as follows:

> I have already paid my full rent for this month and will need to be reimbursed for the days after our tenancy ends. Based on the move out day [October 4] you will owe me $450.00. Additionally section 51 of the *residential tenancy agreement* requires you to pay me one month rent ($1350) as compensation for the last month of my notice. Please provide me with payment of $1800 by the last day of my tenancy.

After this, the landlord provided a payment to the tenant of $650. Taking this into account, the tenant's Application for rent amounts owing breaks down as follows:

Item(s)	Amount Claimed
rent paid for Sept 15 – Oct 15, 2020	$ 1,350
amount paid from landlord	- 650
Subtotal	$ 700
$ for 10 days move out early	$ 450
Total	$ **1,150**

c. landlord's damage claim

The landlord provided the amount of $14,000 on their Application. This was prior to obtaining estimates for the work of a countertop replacement. This is a custom-made unit piece, including its backdrop. The landlord provided a copy of the estimate for $8,641.50. This was the most reasonable price on an estimate they could find. They provided a depiction of the dimensions of the countertop piece, as well as a photo of the damage. This shows a crack stemming from an inward corner of the countertop.

The landlord maintained this was "very noticeable" damage. They provided the countertop specialist's theory that the damage was caused by someone jumping up on the counter. They reiterated that the unit was "immaculate" on move in, with the building being only 5 years old.

In the hearing the landlord stated they were willing to drop their claim down to $10,000. This is based on the estimate received, and with consideration to the other issues in the unit, that of overall cleanliness and other damaged items shown in their provided photos.

The tenant stated they did not notice the countertop damage. For other items depicted in the photos, the tenant admitted to responsibility for a chip along a counter side edge, though stated that most of the other pictures show what amounts to a "simple cleaning job".

Analysis

a. tenant's security deposit claim

The *Act* section 24 prevents a landlord from claiming against a security deposit where they do not provide the opportunities for a move-in inspection and do not complete a condition inspection report. Section 36 mirrors this for the end of a tenancy.

The evidence here is that the tenant requested a move-out inspection meeting at the end of the tenancy. This was in their letter dated September 24 in which they advised of the final day of the tenancy. The landlord stated they believed the move-out inspection would occur on this final day; however, this meeting was precluded when the tenant actually moved out two days earlier.

From this I conclude the landlord did not schedule the move out inspection meeting as the *Act* section 35 requires. They are thus prevented from claiming against the security deposit they have withheld, as per section 36(2). I accept the tenant's evidence that they were the ones who initiated the move-out meeting process: this is in line with no record in the evidence of a move-in condition meeting, normally documented in a Condition Inspection Report document.

Because of this, the landlord is barred from making a claim against the security deposit they have withheld. They stated they retained certain portions of the deposit to cover the strata's deposit requirement, as well as the penalty imposed for the tenant's alternate move-out methods. This is not a legitimate claim where the landlord applied within the timeframe and method set out in the *Act*. Moreover, the landlord did not specifically make a claim through dispute resolution against the security deposit to apply it to the tenant's move-out penalty and other matters with the strata. This is not a legal withholding or dispensation of the security deposit.

The *Act* section 38(1) states:

1) . . .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. . .any security deposit . . . to the tenant
   d) make an application for dispute resolution claiming against the security deposit

Further, section 38(6) provides that

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 . . .

Here, the evidence shows the last day of the tenancy was October 2, 2020. The tenant had already provided their forwarding address to the landlord on October 9 through delivery of the specific form created for just this purpose. The landlord is deemed to have received this on October 14 as per the *Act* section 90.

The landlord applied to use the security deposit toward damages – here in their counterclaim – on December 2, 2020. This is beyond the 15-day time period the *Act* provides for in section 38(1)(d). The landlord did not repay the full amount of the

security deposit to the tenant; moreover, their own account is that they applied the security deposit amount to matters involving the strata. Therefore, section 38(6) applies to this fact scenario here, and my finding is that the landlord must pay to the tenant double the security deposit amount. This is $1,500.

b. tenant's claim for rent entitlements

The *Act* section 51 provides for compensation to the tenant where the landlord ends the tenancy for their own use of the property. This is one month's rent, with the tenant entitled to receive this "on or before the effective date of the landlord's notice." Though otherwise unexplained in the evidence and submissions, I find the landlord paying $650 to the tenant is an acknowledgement of this section 51 requirement. With the effective date of the landlord's notice to the tenant being November 15, 2020, there is still a remaining amount owed to the tenant here. This is $700.

The tenant was permitted to end the tenancy early by the provision of section 50(1)(a). This is a situation where the tenant paid ahead for the month of September 15 – October 30, the full amount of rent at $1,350. It was legally valid for the tenant to provide a notice prior to the end-date given by the landlord; this means section 51(1.2) also applies, and the landlord is bound to refund the rent the tenant paid ahead. This is the amount for the period October 4 to October 15: $450.

c. landlord's damage claim

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I find the landlord has sufficiently presented their case that actual damage to the countertop exists. Given the timeframe wherein the tenant was the first occupant in this rental unit, I find it more likely than not the damage occurred while the tenant resided in the unit.

The landlord presented that they checked with several different contractors on the cost of countertop replacement. This is a custom-made countertop, and I accept this evidence that there is a larger-scale project involved for its replacement. I find this is a matter of a crack in granite; however, the evidence does not show damage throughout such that replacement of an entire surface, complete with the backsplash is warranted.

Though the landlord presented the lowest-cost option for the entire countertop replacement, they did not present if there were any options for repair. This would be a step toward mitigating the damage, unfortunate as it is. The image in the photo appears to be a separated crack, and even a cursory examination reveals that epoxy or other fillable material would not suffice. I find the contractor who provided the estimate here did not advise on repair options, though it is unknown if they were asked. If there are no repair options available, the landlord did not set this out in their account.

I have established the damage to the countertop is actual and real, and easily observable in a key section. Moreover, I find it more likely than not the damage occurred during this tenancy, and this would involve some means of force or an inordinate amount of weight placed on top of the counter as the landlord described, minus any other explanation. I find the landlord is entitled to an amount of recompense for an effort at repairing the countertop, for this I award the landlord the sum of $1,500.

Additionally, the landlord presented photos depicting the state of the unit after the tenant had moved out. Despite no condition inspection report for the purpose of comparison, the tenant admitted in the hearing that a clean-up was needed, and incidental damage to a shelf and baseboard was a result of their actions. For this, I award the landlord $250, for the extra cleaning and incidental damage. The cleaning and damage here, as shown in the landlord's evidence, is something beyond the parameters set out in section 37 of the *Act*.

I find the tenant and landlord were both successful in their claims. For this, I factor in the reimbursement of the Application filing to both. This is $100 each.

I award the tenant $2,750, as set out above, including the $100 Application filing fee. The landlord has established an amount of $1,850, including the $100 Application filing

fee. By subtracting the landlord's awarded amount from that of the tenant, the amount owing by the landlord to the tenant is $900.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenant a Monetary Order in the amount of $900, in satisfaction of their claim. The tenant is 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: February 8, 2021

Residential Tenancy Branch