Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, MNRL-S

Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The landlords, tenant S.S. and agent for tenant M.K. (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agreed that the tenants were served with the landlords' application for dispute resolution at the end of November 2020. I find that the tenants were sufficiently served for the purposes of this *Act,* with the landlords' application for dispute resolution in accordance with section 71 of the *Act.*

Issues to be Decided

1. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Are the landlords entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Are the landlords entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?

4. Are the landlords entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
5. Are the landlords entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on September 1, 2016 and ended on October 1, 2020. Monthly rent in the amount of $1,050.00 was payable on the first day of each month. A security deposit of $475.00 was paid by the tenants to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The subject rental property is a basement suite in a house and the landlords live in the upper part of the house.

Both parties agree that this tenancy ended by way of a Two Month Notice to End Tenancy for Landlord's use of Property (the "Notice") with an effective date of September 30, 2020. The Notice was not entered into evidence.

The tenant and agent testified that the landlords were served with the tenants' forwarding address via registered mail on October 26, 2020. A receipt for same was entered into evidence. The landlords testified that they received the tenants' forwarding address but could not recall on what date. The landlords filed this application for dispute resolution on November 9, 2020.

Both parties agree that the landlords did not complete a move in condition inspection report with the tenants at the start of this tenancy and did not ask for one to be completed.

Both parties agree that the landlords did not complete a move out condition inspection report with the tenants at the end of this tenancy and did not ask for one to be completed.

The landlords testified that the following damages arose from this tenancy:

Item	**Amount**
False fire alarm	$228.00
Two day overstay	$67.74
Repair shower floor	$900.00
Repair railing	$100.00
Total	$1,295.74

False fire alarm

The landlords testified that at 11:43 p.m. on August 6, 2020 the tenants triggered the smoke alarm by burning food on the stove. The landlords testified that their smoke detectors are monitored, and the fire department was dispatched to the subject rental property. The landlords testified that the subject rental property was full of smoke that the fire department cleared. The landlords testified that the City sent them a bill for the unnecessary visit in the amount of $228.00, which was entered into evidence. The landlords also entered into evidence a photograph of the alarm display which reads "Alarm triggered: basement smoke, 24…." The remainder of the readout was cut off.

Tenant S.S. and the agent testified that:

- the tenancy agreement does not state that the tenants are responsible for false alarms;
- the tenants did not leave food on the stove, the alarm tripped when there was no smoke due to the system being faulty; and
- it is not clear what smoke detector was tripped and it could have been tripped by the landlords.

Two day overstay

Both parties agree that the tenants were originally supposed to move out of the subject rental property on September 30, 2020 pursuant to the Notice. Both parties agree that the tenants did not finish moving out until the evening of October 1, 2020. The landlords testified that they are seeking two days' rent in the amount of $67.74 for the overstay from the tenants because the tenants were supposed to be out by 1:00 p.m. on September 30, 2020 but did not move out until after 9:00 p.m. on October 1, 2020. The landlords testified that they were not able to move their parents into the suite until October 2, 2020.

The tenants testified that they moved most of their belongings out on September 30, 2020 and that they had a mutual understanding with the landlords that they would move whatever was left the next day.

Both parties agree that some of the landlords' parents' possessions were moved into the subject rental property on September 30, 2020.

Repair shower floor

The landlords testified that the shower floor was in good condition at the start of this tenancy and that is was cracked when the tenants moved out. The landlords testified that they received a verbal over the phone quote for the repair for $900.00 not including labour. The landlords testified that they are seeking $900.00 from the tenants. No receipts, estimates or quotes were entered into evidence. No documentary proof of the condition of the shower at the start of the tenancy was entered into evidence. Pictures of the cracked floor were entered into evidence. The landlords testified that the shower was less than 10 years old.

The tenants testified that the shower floor was already cracked when they moved in. The tenants testified that they believe the shower is more than 10 years old.

Repair railing

Both parties agree that there is a set of stairs running from the basement suite into the landlord's portion of the house. Both parties agree that this staircase was not ordinarily used during this tenancy but was used to get a large couch into and out of the subject rental property. The landlords testified that the tenants broke the railing off the wall when they moved their large couch out of the subject rental property. The landlords testified that they received a verbal over the phone quote for a new railing in the amount of $100.00 not including labour. No documentary proof of the condition of the railing at the start of the tenancy was entered into evidence. Pictures of the broken railing were entered into evidence.

Both parties agree that the landlords' father slipped on the stairs and the railing came off the wall when he grabbed it. The tenants testified that the landlords' father broke the railing. The landlord testified that the tenants must have broken it and then re-hung it without properly affixing it to the wall.

Analysis

Section 67 of the *Act* states:

> Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

False fire alarm

The testimony regarding the fire alarm provided by the parties is in opposition. I find that the landlord's testimony is supported by the alarm display readout and the attendance of the fire department. I find that the tenant and agent's testimony does not accord with common sense and the tenants have not provided any evidence to support a conclusion that the alarm system was faulty. I accept the landlords' version of events over that of the tenants.

Section 32(2) of the *Act* states:

> A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

I find that the tenants breached section 32(2) of the *Act* by leaving food on a hot surface, resulting in smoke and the potential for a fire. I find that the landlords suffered a loss in the amount of $228.00 from this breach of the *Act*, as the City levied that fee against the landlords. I find that the landlords have proved the value of their loss as the fire department invoice was entered into evidence. I find that there are not mitigation issues present in this case. Pursuant to my above findings, I award the landlords $228.00.

Two day overstay

Section 37(1) of the *Act* states:

> Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

I find that the tenants did not vacate the subject rental property by 1 p.m. on September 30, 2020. I find that there is no proof to establish that the landlords agreed to give the tenants extra time to move out.

I find that the tenants moved out approximately 1.5 days later than they were supposed to under section 37(1) of the *Act* and are required to pay the landlords compensation. However, I also note that the landlords' father moved some items in on September 30, 2020 and that this benefit should be taken into account. I find that the tenants owe the landlords 1 days rent pursuant to the following calculation:

> $1,050.00 (rent) / 31 (days in October) = $33.87

Repair shower floor and railing

I find that the landlords have not proved the value of the loss they are claiming to have suffered for the shower floor and railing as no receipts, quotes or estimates were entered into evidence. I find that the landlords' verbal testimony regarding telephone quotes does not meet the burden of proof required for the landlords to be successful in

their claims. The landlords' claim for the cost of repairing/replacing the shower and railing is dismissed without leave to reapply.

Condition Inspection Reports

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 24(2) of the *Act* states that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not offer the tenant two opportunities to complete the condition inspection. Pursuant to section 17 of the *Residential Tenancy Act Regulations* (the "Regulations"), the second opportunity must be in writing.

The landlords admitted that no joint move-in condition inspection was conducted and that no move in condition inspection report was completed. The landlords also testified that they did not ask the tenants to complete a move in condition inspection report. Responsibility for completing the move in inspection report rests with the landlords. I find that the landlords did not complete the condition inspection and inspection report in accordance with the Regulations, contrary to section 24 of the *Act.*

Since I find that the landlords did not follow the requirements of the *Act* regarding the joint move-in inspection and inspection report, I find that the landlords' eligibility to claim against the security deposit for **damage** arising out of the tenancy is extinguished.

As I have determined that the landlord is ineligible to claim against the security deposit, pursuant to section 24 of the *Act,* I find that I do not need to consider the effect of the landlord failing to provide two opportunities, the last in writing, to complete the move out inspection and failing to complete the move out inspection report.

Security Deposit Doubling Provision

I find that the landlords were deemed served with the tenants' forwarding address on October 31, 2020, five days after its mailing, in accordance with sections 88 and 90 of the *Act.*

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 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 tenants' 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 tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

Section C(3) of Policy Guideline 17 states that unless the tenants have 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 claimed against the deposit for **damage** to the rental unit and the landlords' right to make such a claim has been extinguished under the Act.

In this case, while the landlord made an application to retain the tenants' security deposit within 15 days of receiving the tenants' forwarding address in writing, he is not entitled to claim against it for **damage** to the property due to the extinguishment provisions in section 24 of the *Act.* However, the extinguishment provisions only apply to claims for **damage**, not for unpaid rent. I find that the landlords were entitled to hold the tenants' security deposit until the outcome of this decision as part of the landlords' claim is for unpaid rent. The tenants are therefore not entitled receive double their security deposit.

Section 72(2) states that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant. This provision applies even though the landlord's right to claim from the security deposit has been extinguished under sections 24 and 36 of the *Act*.

As the landlords was successful in this application, I find that the landlords are entitled to recover the $100.00 filing fee from the tenants, pursuant to section 72 of the *Act.*

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlords are entitled to retain $361.87 from the tenants' security deposit. I Order the landlords to return the remaining $113.13 from the tenants' security deposit to the tenants.

Conclusion

I issue a Monetary Order to the tenants under the following terms:

Item	Amount
Security deposit	$475.00
Less fire alarm fee	-$228.00
Less overstay fee	-$33.87
Less filing fee	-$100.00
TOTAL	**$113.13**

The tenants are provided with this Order 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: March 3, 2021

Residential Tenancy Branch