Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNRL-S, FFL
MNDCT, MNSD, FFT

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security and pet damage deposits, pursuant to section 38;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

- a Monetary Order for damages, pursuant to section 67;
- a Monetary Order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

Both parties 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 they were each served with the other's application for dispute resolution via registered mail. I find that the parties were each served in accordance with section 89 of the *Act.*

The tenant filed an amendment on April 7, 2021 increasing the claim for damages.

The landlord filed an amendment on April 9, 2021 changing the respondent's address for service. Both parties agreed that they were each served with the other's amendment via registered mail. I find that both parties were each served in accordance with section 88 of the *Act.*

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security and pet damage deposits, pursuant to section 38 of the *Act*?
2. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
4. Is the landlord entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?
5. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
6. Is the landlord entitled to retain the tenant's security and pet damage deposits, pursuant to section 38 of the *Act*?
7. Is the landlord entitled to recover the filing fee for this application from the tenant, 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 tenant's and landlord's claims and my findings are set out below.

Both parties agreed that the tenant moved in on June 1, 2018. The tenant testified that she moved out on December 1, 2020. The landlord testified that he did not know if the tenant moved out on December 1, 2020 because he did not attend at the property on that day. The tenant entered into evidence a text message from the tenant to the

landlord dated December 1, 2020 informing the landlord that the tenant had vacated the property. Both parties agreed that the monthly rent in the amount of $1,600.00 was payable on the first day of each month. Both parties agreed that a security deposit of $800.00 and a pet damage deposit of $800.00 were paid by the tenant to the landlord.

The tenant testified that she left a letter addressed to the landlord containing her forwarding address in the mailbox of the subject rental property on December 4, 2020. The landlord testified that he received the tenant's forwarding address in the first week of December 2020.

Both parties agree that the landlord did not ask the tenant to complete a move in or out condition inspection report. No condition inspection reports were entered into evidence.

Rent

Both parties agree that the tenant provided a notice to end tenancy via text on November 21, 2020. The November 21, 2020 text message was entered into evidence and states:

> Hey [landlord], so I just wanted to let you know that I've found a pet friendly rental with yard, take possession on the 15th of December so I will be getting my stuff out before them. I want to thank you so much for letting me live her [sic] for the past two years and being such an amazing landlord

The landlord testified that he received the November 21, 2020 text on November 21, 2020. The landlord testified that the tenant did not provide one month's notice to end tenancy and is responsible for December 2020's rent in the amount of $1,600.00.

The tenant testified that the landlord accepted her notice to end tenancy and then later tried to get her to pay December 2020's rent. The tenant testified that on December 11, 2020 the landlord served her with a 10 Day Notice for Unpaid Rent. The following text messages from November 22-23 were entered into evidence:

- Tenant- Okay if you find someone to move in as of the 15th I can be out, and I am happy to help in that process, if not I will move out as of the 31st of December.
- Landlord- I donno. I mite move back in there. See how it goes in [City name]
- Tenant: Okay well please keep me posted because it would benefit me greatly to find you a tenant for the 15th as I'm struggling to come up with the full 1600 rent for December and still pay my bills

- Landlord: I ran an ad for rental [City name]. It's a little harder to get good renters out here so will see. You will still have to pay rent in the meantime. If I can get into your place by 15th we can discuss. I need to fill this rental before I move…

The tenant also entered into evidence text message between the tenant and the landlord which show that the tenant allowed the landlord access to show the subject rental property for rent.

The landlord testified that he accepted that the tenant would move out early, but he did not agree that the tenant did not need to pay December 2020's rent. The landlord testified that a new tenant was not found for December 2020.

Doors

The landlord testified that the tenant and or guests damaged the front and back door by kicking them in. The landlord entered into evidence photographs of damaged doors.

The landlord testified that when the previous tenant moved out, he deducted $150.00 from the previous tenant's security deposit for the damages doors and that the tenant agreed that he could deduct $150.00 from her security deposit for the doors at the end of the tenancy as compensation. The tenant testified that she did not agree to a deduction of $150.00 from her security deposit and that the matter was settled when $150.00 was deducted from the previous tenant's security deposit.

Both parties agree that the agreement made to pay for the damage to the door was all verbal and no documentary evidence to support either position was entered into evidence. The landlord testified that he was originally satisfied with $300.00 for the doors but as the receipt for new doors shows, they cost more than $300.00. A receipt for new doors totalling $593.73 was entered into evidence.

The landlord testified that the previous settlement agreement did not include the cost of labour. The landlord testified that he is seeking compensation for his labour installing the doors, eight hours at a rate of $92.00 per hour for a total of $736.00. The landlord testified that he is in the heating and plumbing business and charges $92.00 per hour for his services. The landlord testified that he has no idea what a carpenter would charge to install the doors, but since he had to take time away from his business, he charged his rate.

The tenant testified that this claim is from a previous verbal tenancy between the landlord, herself and the previous tenant that ended September 1, 2018.

The tenant's written submissions state:

> The tenant and [the previous tenant] entered into a tenancy agreement with the landlord on June 1, 2018, no written Tenancy Agreement was signed. [The previous tenant] moved out of the Rental on September 1, 2018. The landlord deducted $150.00 from [the previous tenant's] damage deposit to repair damage caused to the doors by [the previous tenant] and a further $150.00 from the Tenant's damage deposit.

Floors

The landlord testified that the hardwood floors of the subject rental property were newly refinished when the tenant moved in and in good condition. The landlord testified that when the tenant moved out the living room the hardwood floor in the living room was covered in dog urine stains and the bedroom floor was scratched. The landlord testified that the floors required refinishing. The landlord entered into evidence photographs of the living room that show the floors in good condition. The landlord testified that the photographs were taken before the tenant moved in. I asked the landlord when the photos were taken and the landlord testified that they were taken "in between tenancies". The photo is not date stamped. The landlord entered into evidence photographs taken after the tenant moved out that who stains on the living room floor and scratches on the bedroom floor.

The landlord testified that he is seeking $736.00 for his labour refinishing the floors. The landlord testified that this figure accounts for eight hours of work at his hourly wage of $92.00 per hour. The landlord testified that he does not know what a professional floorer would charge but since he had to take time away from his busines, he charged his rate. The landlord also entered into evidence a receipt in the amount of $218.23 for refinishing supplies which he is seeking to recover from the tenant.

The tenant testified that the floors were not newly refinished or in good condition when the tenant moved in. The tenant testified that the "before" photo of the living room does not represent the condition of the living room floor when the tenant moved in. The tenant acknowledged that the bedroom floor scratches occurred during this tenancy by another tenant/roommate and that she is responsible for those damages but not at the rate claimed by the landlord.

The tenant testified that she is seeking the return of double the security and pet damage deposit because the landlord did not return them to her within 15 days of the end of the tenancy.

Analysis

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

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.

I find that the landlord failed to complete the move in and move out condition inspection reports, contrary to sections 23 and 35 of the *Act.* The responsibility to completing the above reports rests with the landlord.

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.

Rent

Section 45(1) of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that:

> (a)is not earlier than one month after the date the landlord receives the notice, and
>
> (b)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the tenant provided the landlord notice to end the tenancy via text message on November 21, 2020. While text message is not an approved method of service under section 88 of the *Act,* I find that the landlord was sufficiently served, for the purpose of this *Act*, with the tenant's notice to end tenancy on November 21, 2020 in accordance with section 71 of the *Act* as the landlord acknowledged receipt on that date.

Section 45 of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the date before the day in the month that rent is payable under the tenancy agreement.

Residential Tenancy Policy Guideline #5 explains that, where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the *Act*, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

Residential Tenancy Policy Guideline # 3 states:

> The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Based on the text messages entered into evidence, I find that the landlord accepted that the tenant was moving out, but never agreed to give up the right to receive December 2020's rent. Indeed, the landlord stated in a November 23, 2020 text message:

> I ran an ad for rental [City name]. It's a little harder to get good renters out here so will see. You will still have to pay rent in the meantime. If I can get into your place by 15th we can discuss.

In the above text message the landlord clearly informs the tenant that she is responsible for rent unless he could find a new tenant.

In this case, contrary to section 45 of the *Act,* less than one month's written notice was provided to the landlord to end the tenancy. The earliest date the tenant was permitted to end the tenancy was December 31, 2020. I therefore find that the tenant owes the landlord $1,600.00 for December 2020 for loss of rental income.

Floors

I find that the landlord has not proved the move in condition of the floors of the subject rental property because no condition inspection reports were entered into evidence, the parties dispute the condition of the floors and the "before" photographs were not dated. As the move in condition of the floors was not proved by the landlord, I find that the landlord has not proved, on a balance of probabilities, that the tenant damaged the living room floor.

As both parties agree that the tenant or a person permitted on the property by the tenant scratched the floor in the bedroom, I find that the tenant breached section 37 of the *Act.* I find that the landlord has not proved the value of the loss suffered for the scratches pursuant to Residential Tenancy Policy Guideline #16 as no quotes or estimates were entered into evidence from floorers. I find that the landlord has not proved that the repair rate of $92.00 per hour is reasonable. While this may be the landlord's charge out rate, the landlord has an obligation to mitigate his damages and

should have sought out estimates to determine if the repairs could have been done more cost effectively than his charge out rate of $92.00 per hour. It is not possible to determine what percentage of the re-finishing supplies were used on the living room versus the bedroom. I find that the landlord has not proved the value of his loss pertaining to the scratches in the bedroom.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that the landlord has proved that a loss was suffered due to the scratches in the bedroom floor. I therefore award the landlord $400.00 in nominal damage for the scratches to the bedroom floor.

Doors

Based on the testimony of both parties, I find that the parties came to a settlement agreed regarding the damage to the doors when the previous tenant moved out on September 1, 2018. The testimony of the parties on the terms of that settlement agreement diverge. I prefer the landlord's testimony to the tenant's regarding the terms of the settlement agreement because the verbal testimony and the written submissions of the tenant are divergent. The tenant's written submissions acknowledge that $150.00 was to be deducted from the previous tenant's security deposit in addition to $150.00 from the tenant's security deposit. In the hearing the tenant verbally testified that the agreement was only for $150.00. However, I do not accept the landlord's testimony that the settlement agreement was only for the cost of the doors, and not the labour to install them. I find that such as agreement does not accord with common sense as the previous tenant was moving out, the time to recover the loss would be at that time.

I find that the tenant agreed to pay $150.00 from the tenant's security deposit for the damage done to the door (in addition to the $150.00 paid from the previous tenant's security deposit). I find that the landlord is entitled to $150.00 from the tenant's security deposit pursuant to that verbal settlement agreement. However, I find that the landlord is not entitled to damages over and above the $300.00 agreed upon. While the cost of the door(s) exceeded the damages agreed to in the verbal settlement, the landlord is bound by the terms of the verbal settlement agreement.

I also note that the landlord is also unsuccessful in his claim for labour because the landlord has not proved that the repair rate of $92.00 per hour is reasonable. While this may be the landlord's charge out rate, the landlord has an obligation to mitigate his damages and should have sought out estimates to determine if the repairs could have

been done more cost effectively than his charge out rate of $92.00 per hour. I find the charge out rate to unreasonable and that the landlord failed to mitigate his damages.

Given my above findings on the verbal settlement agreement, I find that it is not necessary to distinguish between tenancies if different tenancies existed. I find that the tenant agreed to allow the landlord to retain $150.00 from her security deposit when she moved out of the subject rental property for damage done to the doors. This sum is in addition to the $150.00 taken from the previous tenant's security deposit. I award the landlord authorization to retain $150.00 from the tenant's security deposit.

Security and Pet Damage Deposits

Based on the testimony of the parties, I find that the landlord was served with the tenant's forwarding address by December 7, 2020 because the landlord testified that he received the tenant's forwarding address in the first week of December 2020. I find that the tenant's forwarding address was sufficiently served for the purposes of this *Act,* pursuant to section 71 of the *Act.* Based on the text message entered into evidence and the testimony of both parties, I find that this tenancy ended on December 1, 2020 when the tenant moved out.

Section 38 of the Act requires the landlord 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 landlord is 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 landlord has 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 tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)). I find that the landlord did not have the tenant's written authorization to retain any portion of her deposits.

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 landlord's right to make such a claim has been extinguished under the Act.

In this case, the landlord made an application to retain the tenant's security deposit and pet damage deposit on January 29, 2021, more than 15 days after receiving the tenant's forwarding address and the end of this tenancy. Therefore, pursuant to section 38(6)(b) of the *Act,* the tenant is entitled to receive double the security deposit and pet deposit as per the below calculation:

$800.00 (security deposit) * 2 (doubling provision) = $1,600.00
$800.00 (pet damage deposit) * 2 (doubling provision) = $1,600.00
Total = $3,200.00

As both parties were successful in their applications for dispute resolution, I decline to award either party their filing fee, pursuant to section 72 of the *Act.*

The parties provided or confirmed their email addresses during the hearing, and they also confirmed their understanding that the Decision would be emailed to both parties and any Orders sent to the appropriate party.

Conclusion

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

Item	**Amount**
Doubled deposits	$3,200.00
Less door settlement	-$150.00
Less floor nominal damages	-$400.00
Less December 2020 rent	-$1,600.00
TOTAL	**$1,050.00**

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: April 27, 2021

Residential Tenancy Branch