



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prospero international realty Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNSD, MNDCT, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on December 20, 2020 (the "Application"). The Tenants applied as follows:

- For return of the security deposit
- For compensation for monetary loss or other money owed
- To recover the filing fee

The Tenant appeared at the hearing. S.G., S.P. and S.C. appeared at the hearing for the Landlord. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

The agents for the Landlord confirmed the full name of the Landlord which is reflected in the style of cause.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The agents for the Landlord acknowledged receipt of the hearing package which was sent to them by the RTB. The agents for the Landlord confirmed receipt of the Tenants' evidence. The Tenant confirmed all evidence uploaded was served on the Landlord. The Tenant confirmed receipt of the Landlord's evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the parties and all documentary evidence submitted. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to return of the security deposit?
2. Are the Tenants entitled to compensation for monetary loss or other money owed?
3. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties agreed there were two written tenancy agreements in this matter and that the agreements submitted are accurate.

The first tenancy agreement started August 01, 2019 and was for a fixed term ending July 31, 2020. Rent was \$2,325.00 per month due on or before the first day of each month. The Tenants paid a \$1,162.50 security deposit.

The second tenancy agreement started September 01, 2020 and was for a fixed term ending August 31, 2021. Rent was \$2,335.00 per month due on or before the first day of each month. The parties agreed the security deposit from the first tenancy agreement carried over to the second tenancy agreement.

The parties agreed the tenancy ended December 15, 2020.

Security Deposit

The agents for the Landlord testified that the Landlord never received a forwarding address from the Tenants.

The Tenant testified that the only forwarding address provided to the Landlord was on the Application.

Compensation

The Tenants sought \$27,500.00 in compensation for issues with the rental unit and being forced to move.

The Tenants submitted four different outlines of the compensation sought including the following:

Item	Description	Amount
1	Moving costs	\$1,511.72
2	Stress and anxiety	\$3,805.00
3	The cost difference between the rental unit and the Tenants' new place (for eight months)	\$6,439.00
4	Loss of use of a portion of the rental unit due to smoke	\$9,300.00
5	100 hours of cleaning at the start of the tenancy	\$3,000.00
6	Time spent preparing to move and cleaning the rental unit for the next tenants	\$3,000.00
7	Time spent finding a new place	\$4,250.00
8	Filing fee	\$100.00
	TOTAL	\$31,405.72

The Tenant testified as follows. When the Tenants moved into the rental unit, everything was supposed to be new and high-end. The rental unit turned out to be a nightmare. S.C. was at the rental unit all the time due to the issues with the rental unit.

The Tenant further testified as follows. The rental unit was dirty at the start of the tenancy. The Tenants spent 100 hours cleaning the rental unit. The Tenants did not ask the Landlord to address the cleanliness issue at the start of the tenancy. The Tenants had to move into the rental unit on the agreed upon date and could not stay somewhere else. Photos with the notation "UDEF" show the condition of the rental unit at the start of the tenancy.

The Tenant testified that there were mice in the rental unit.

The Tenant further testified as follows. Approximately 25% of the rental unit smelled of cigarette smoke or cannabis all the time. The Tenants are seeking \$9,300.00 for loss of use of this 25% of the rental unit for 16 months. The Tenants could not enjoy the full rental unit because the bedroom and bathroom smelled of smoke for 16 months. The neighbours who were responsible for the smoke smell were evicted; however, a few weeks later new tenants moved in and caused the cannabis smell.

The Tenant testified that Tenant A.V. suffers from anxiety and stress which was increased due to the issues with the rental unit including mice and cigarette smoke from the neighbour.

The Tenant further testified as follows. The Tenants were going to live in the rental unit for a couple of years; however, they had to move due to the issues with the rental unit. Moving was difficult and took time given the pandemic. Finding a place and moving required the Tenants to rent a truck, take the ferry three times and pay for gas. The Tenants now pay higher rent and more for utilities at their new place.

The Tenant confirmed that the Tenants ended the tenancy. The Tenant testified that the Tenants felt forced to move due to the issues with the rental unit including the paint job, mice and smoke issue. The Tenant testified that it was small events over time that built up and forced the Tenants to move.

The Tenants submitted 273 pieces of evidence. The evidence includes many duplicates. The Tenants submitted photos, receipts, videos, correspondence, handwritten notes, a floorplan and a list of deficiencies in the rental unit. Many of the photos are not labelled or dated and therefore I cannot tell what the Tenants are seeking to show with these photos.

S.G. testified as follows. The Landlord did their best to address the Tenants' concerns when raised. Experts were sent to deal with the issues in the rental unit when they arose. There were mice in the building and other deficiencies. The Tenants were given free rent for half a month due to the deficiencies. The Tenants were given a \$300.00 rent reduction for March of 2020 due to the smoke issue. The Landlord took steps to address the smoking issue including putting notices up in the building about not smoking and evicting the Tenants' neighbours for smoking. The Landlord agreed to the tenancy becoming a month-to-month tenancy when the Tenants no longer wanted to stay. She cannot speak to how dirty the rental unit was at the start of the tenancy. The rental unit was new. There may have been some construction debris in the rental unit. If there was an issue with the cleanliness of the rental unit at the start of the tenancy, the Landlord would have sent someone to clean it.

The Landlord submitted a timeline of events referencing evidence items 1 through 49 and have attached these items for reference.

Analysis

Security Deposit

Section 38(1) of the *Residential Tenancy Act* (the “Act”) states:

38 (1) Except as provided in subsection (3) or (4) (a), 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, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 39 of the *Act* states:

39 Despite any other provision of this Act, **if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,**

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

The first step in the Tenants having their security deposit returned was to provide the Landlord with their forwarding address in writing. Providing an address on the Application is not sufficient. The Tenants were required to provide the Landlord with a forwarding address in writing prior to applying for the return of the security deposit.

Given the Tenants did not provide the Landlord with a forwarding address in writing other than on the Application, the request for return of the security deposit was premature and is **dismissed with leave to re-apply**. I told the parties this at the hearing. The Tenant confirmed that the address on the Application is the Tenants' forwarding address. Given this, I told the agents for the Landlord that the Landlord was considered to have received the Tenants' forwarding address as of the date of the hearing, April 27, 2021. I told the parties that the Tenants can re-apply for return of the security deposit if the Landlord does not comply with the *Act* in relation to the security deposit.

Compensation

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

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

I acknowledge that there were many issues with the rental unit as noted throughout the evidence. However, I must consider the claims as made and have considered whether the Tenants are entitled to the compensation sought on the basis provided.

Moving costs

I am not satisfied the Tenants are entitled to moving costs for the following reasons.

The Landlord did not force the Tenants to move out of the rental unit. The Tenants ended the tenancy. I acknowledge that the Tenants ended the tenancy due to issues with the rental unit; however, the Tenants were not obligated to move out of the rental unit. The Tenants chose to move out of the rental unit. The Landlord is not responsible for the costs associated with the Tenants moving when the Tenants ended the tenancy.

Further, moving costs are rarely awarded given tenants will incur these costs at some point. The Tenant acknowledged that the Tenants intended to live in the rental unit for a couple of years. The Tenants would have incurred the costs associated with moving at some point and therefore are not entitled to recover these costs from the Landlord.

This request is dismissed without leave to re-apply.

Stress and anxiety

To award compensation for stress and anxiety, I would expect to see medical evidence showing the Tenants experienced increased stress and anxiety as a direct result of the tenancy issues alleged. The Tenants have not submitted such evidence. I do not find the evidence submitted to be sufficiently compelling to prove that the Tenants suffered increased stress and anxiety as a direct result of the tenancy issues alleged or that the amount or value of this loss or damage is \$3,805.00.

I also note that the Tenants chose to stay in the rental unit past the end of the first fixed term tenancy which does not support the Tenants' position that tenancy issues resulted in increased stress and anxiety that they should be compensated for. Further, the Tenants failed to mitigate the loss claimed by choosing to remain in the rental unit.

This request is dismissed without leave to re-apply.

The cost difference between the rental unit and the Tenants' new place (for eight months)

I am not satisfied the Tenants are entitled to the cost difference between the rental unit and the Tenants' new place for the same reasons noted above in relation to moving costs. Further, the Tenants are not entitled to these costs because it was the Tenants who chose to rent a new place that cost more than the rental unit. The Landlord is not responsible for this choice or associated costs.

This request is dismissed without leave to re-apply.

Loss of use of a portion of the rental unit due to smoke

Section 28 of the *Act* states:

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.

Policy Guideline 6 deals with the right to quiet enjoyment and states in part:

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.

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

The smoke smell was caused by other tenants and therefore I have considered when the Tenants advised the Landlord of the issue. There is an email in evidence showing the issue was brought to the Landlord's attention August 20, 2019. I am satisfied based on the Landlord's evidence that the Landlord did take steps to address the smoking issue. However, based on the Landlord's own timeline, I find the Landlord did not issue a written warning to the tenants who were smoking until February 05, 2020. Further, I find the Landlord did not issue a One Month Notice due to the smoking until February 18, 2020. I also find the tenants who were smoking did not vacate their rental unit until April 01, 2020.

I find the Landlord did not take meaningful steps to address the smoking issue for more than five months after being advised of the issue, which I find to be too long.

I am also satisfied based on the evidence provided, including the correspondence from the Tenants, that they started to smell cannabis in their rental unit and that they notified the Landlord of this October 04, 2020.

In total, I am satisfied the Tenants had to deal with the smell of smoke or cannabis in their rental unit for nine months. I am not satisfied the Tenants had to deal with the smell of smoke or cannabis in the rental unit outside of the months noted above as I do not see where the correspondence supports this and the Tenant did not point to where the correspondence supports this.

I am satisfied based on the correspondence provided that the smoke and cannabis smell affected the bedroom and bathroom of the rental unit.

I am not satisfied based on the evidence provided that the Tenants are entitled to 25% of their rent back for the nine months they had to deal with the smell of smoke or cannabis in the rental unit. Although I accept that the smell of smoke and cannabis was disruptive, I do not accept that the Tenants could not use the bedroom or bathroom due to the smell. Therefore, I am not satisfied the Tenants are entitled to compensation for a total loss of use of the bedroom and bathroom.

I find the Tenants are entitled to \$900.00 being \$100.00 for each month that they had to deal with the smell of smoke or cannabis in the rental unit. I find \$900.00 accounts for the disruption but also for the fact that the Tenants could still use the bedroom and bathroom. I also find that \$900.00 accounts for the length of time that the Tenants had to deal with the smell of smoke or cannabis in the rental unit. The Tenants were already given a rent reduction of \$300.00 and therefore are entitled to a further \$600.00.

100 hours of cleaning at the start of the tenancy

The Tenant acknowledged that the Tenants did not raise the issue of the cleanliness of the rental unit with the Landlord at the start of the tenancy. If the rental unit required cleaning at the start of the tenancy, the Tenants should have told the Landlord this and asked the Landlord to have the rental unit cleaned. Raising the issue with the Landlord was part of mitigating loss. I do not find it relevant that the Tenants had to move into the rental unit on the agreed upon date and could not stay somewhere else as the cleaning could have occurred while the Tenants were moving into the rental unit and were in the rental unit.

Further, I have reviewed the photos that the Tenant relied on for this issue. I acknowledge that the photos show issues with the rental unit. However, I do not find that the photos support the need for 100 hours of cleaning, which is an extensive amount of time. As well, many of the photos show general repair issues or cosmetic issues versus cleanliness issues.

I am not satisfied based on the evidence provided that the Tenants are entitled to compensation for cleaning. This request is dismissed without leave to re-apply.

Time spent preparing to move and cleaning the rental unit for the next tenants

I am not satisfied the Tenants are entitled to compensation for time spent preparing to move and cleaning the rental unit for the next tenants for the same reasons noted above in relation to moving costs. Further, the Tenants were required to clean the rental unit pursuant to section 37 of the *Act*. The Landlord is not responsible for compensating the Tenants for doing what they are required to do pursuant to the *Act*.

This request is dismissed without leave to re-apply.

Time spent finding a new place

I am not satisfied the Tenants are entitled to compensation for time spent finding a new place for the same reasons noted above in relation to moving costs.

This request is dismissed without leave to re-apply.

Filing fee

Given the Tenants were successful in relation to the smoking issue, the Tenants are entitled to reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

The Tenants are entitled to the following:

Item	Description	Amount
1	Moving costs	-
2	Stress and anxiety	-
3	The cost difference between the rental unit and the Tenants' new place (for eight months)	-
4	Loss of use of a portion of the rental unit due to smoke	\$600.00
5	100 hours of cleaning at the start of the tenancy	-
6	Time spent preparing to move and cleaning the rental unit for the next tenants	-
7	Time spent finding a new place	-

8	Filing fee	\$100.00
	TOTAL	\$700.00

The Tenants are issued a Monetary Order for \$700.00 pursuant to section 67 of the *Act*.

Conclusion

The request for return of the security deposit was premature and is **dismissed with leave to re-apply**.

The Tenants are awarded compensation in the amount of \$700.00 and are issued a Monetary Order for this amount. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: May 26, 2021

Residential Tenancy Branch