Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

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

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67;
- 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.

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 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.

Both parties confirmed their email addresses for service of this decision and order.

Both parties agree that the tenant served the landlords with the tenant's application for dispute resolution and amendment via registered mail. I find that the above documents were served in accordance with section 89 of the *Act.*

Both parties agree that they were each served with the other's evidence. The landlords testified that they could not access all items on the usb drive provided by the tenant. I instructed the landlords to inform me if they did not have access to any of the evidence presented by the tenant. The landlords confirmed their understanding. In the hearing the landlords did not indicate that any evidence presented by the tenant was not

received by themselves. I find that the landlord's evidence was sufficiently served for the purposes of this *Act,* on the tenant, pursuant to section 71 of the *Act* as the tenant confirmed receipt. I find that all evidence presented by the tenant was served on the landlords in accordance with section 88 of the *Act.*

Rule 7.4 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states:

> Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Pursuant to Rule 7.4 of the Rules, I will only consider evidence that has been presented by the parties.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 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*?

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 landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy started on November 1, 2020 and ended on January 31, 2021. Monthly rent in the amount of $1,200.00 was payable on the first day of each month. A security deposit of $600.00 was paid by the tenant to the landlords and a hydro deposit of $600.00 was paid by the tenant to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Deposits

The tenant testified that in December of 2020 she learned that the landlord was not permitted to charge a hydro deposit addition to the security deposit. The tenant testified that on December 20, 2020 she verbally asked the landlord to return the hydro deposit and requested the landlord return it via email on December 29, 2020. The December 29, 2020 email was entered into evidence. The landlords did not dispute this testimony.

Both parties agree that the tenant provided the landlords with her forwarding address via email. The tenant testified that the email was sent on January 4, 2021. The landlords confirmed receipt in January 2021 but could not recall on what day.

The landlords testified that the hydro hold back was provided in the addendum to the tenancy agreement and the tenant read the tenancy addendum and signed the tenancy agreement knowing its terms. The addendum, which was entered into evidence, states at section 1 of the addendum:

> Tenant to pay a Hydro deposit of $600 since bill remains in landlord's name. Tenant will thereafter pay their portion of subsequent bills issued every 2 months by [City] Hydro, due no later than the next rent due date. The hydro bill is shared 1/2 and 1/2 with occupants of West side [subject rental property].

Both parties agree that the landlords returned $300.00 of the deposits to the tenant on January 2, 2021, in addition to $4.47 for vermin traps. Both parties agree that the landlords returned $794.00 of the tenant's deposits on February 12, 2021. Both parties agree that the landlords withheld $106.00 of the deposits for the final hydro bill.

The tenant testified that she did not authorize the landlord to withhold any portion of her deposits, this was not disputed by the landlords.

The tenant is seeking double the return of the $106.00 hold back because the landlord was not permitted to retain in.

The tenant's submissions in this application for dispute resolution state:

> The overpaid portion of the security deposit ($600) from the beginning of the tenancy (November 1, 2020) that I asked to be returned on December 20, 2020, was only fully returned until February. Half of this ($300) was returned to me on January 2, 2021, while the other half ($300) was not returned until February 12,

2021, more than two weeks later. I understand that I could have left this out of my rent, had I known the legislation. I am hoping to use the damage deposit rules to settle this matter, as I am asking them to repay it in double because of the late return, equalling $300 owed.

Loss of Quiet Enjoyment

The tenant testified that she is seeking a monetary award in the amount of $200.00 per month for the entire three-month duration of this tenancy, for loss of quiet enjoyment of the subject rental property. The total amount sought by the tenant is $600.00.

The tenant testified that when she moved into the subject rental property the previous tenant informed her that there used to be a mouse and squirrel problem but that it had been resolved. The tenant testified that the mouse and squirrel problem were not resolved and that from the start of the tenancy she could hear mice in the walls and the squirrels in the roof. The tenant testified that she could smell their urine and feces and that nest particles from the squirrels would fall on her from the ceiling. The tenant testified that there was also a significant ant problem and that she would find ants on the walls, in her bed, in her kettle and throughout the kitchen, photographs of ants in various places were entered into evidence.

The tenant testified that she first told the landlords about the vermin problems, verbally, in early November 2020 but does not have any record of this. The tenant testified that on November 10, 2020 she texted the landlords about the vermin. The November 10, 2020 text message exchange between the tenants and the landlord was entered into evidence by the landlords and states:

- Tenant:
    - So the squirrels are definitely in the roof and inside the wall between the bedrooms. Trying to find the holes where they come in and block them off. Not sure how to convince them to leave besides making noise so far.
- Landlords:
    - I had borrowed a trap for [the previous tenant]… probably borrowing a dog or cat will be more effective.

The tenant testified that the landlords did not properly deal with the vermin problem and that advising her to borrow a cat or a dog did not resolve the problem.

The tenant testified that she also advised the landlords about the vermin in a November 27, 2020 text. The landlords entered into evidence the November 27, 2020 text exchange between the parties:

- Tenant:
    - The squirrels are definitely all over in the attic, there's a few entrances we've found and who knows where else they're getting in since they're in the walls too. I can hear them during the day and at night now.
    - They're pretty rambunctious…it's actually starting to wake me up at night. And I imagine it can't be great for the house either.
- Landlord:
    - I've contacted [the handyman] who has said he's willing to help… If you don't hear from him please give him a call [phone number].
- Oh OK. Sounds good!

Both parties agree that on or around December 12, 2020 a handyman attended at the subject rental property and closed holes in the soffits the squirrels were entering. The tenant testified that this did not solve the squirrel problem.

The landlords testified that they arranged for pest control to attend at the subject rental property on December 30, 2020 to prepare a quote. The tenant texted the landlord on December 30, 2020:

> [the pest control person] was here and will let you know about a quote soon.

The tenant testified that the pest control person did not return to deal with the pests during this tenancy. This was not disputed by the landlord.

The landlords testified that before the tenant moved in, they were aware that there had been a mouse and squirrel problem but the previous tenant told them it had been dealt with. The landlords testified that ants are seasonally a problem but can be controlled by proper cleaning. The tenant testified that the ants could not be controlled by proper cleaning.

The tenant testified that she is seeking damages for loss of quiet enjoyment because the living conditions were unsuitable, and the landlords were slow to remedy the issues.

The tenant testified that she moved out of the subject rental property because of the vermin issues.

Analysis

Deposits

Section 19(1) of the *Act* states:

> **19** (1)A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.
> (2)If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Section 20(b) of the *Act* states:

> **20** A landlord must not do any of the following:
> (b)require or accept more than one security deposit in respect of a tenancy agreement;

Section 1 of the *Act* defines security deposit as follows:

> "security deposit" means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property, but does not include any of the following:
>
> (a)post-dated cheques for rent;
> (b)a pet damage deposit;
> (c)a fee prescribed under section 97 (2) (k) *[regulations in relation to fees]*;

I find that the hydro deposit required in the addendum, meets the definition of security deposit as it is money paid by the tenant to the landlords that is to be held as security for any outstanding hydro bill(s) owed by the tenant at the end of this tenancy. I find that

in requiring a security deposit and a hydro deposit, the landlords effectively required a security deposit equivalent to one month's rent, contrary to section 19(1) of the *Act.*

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 accept the tenant's undisputed testimony that she did not authorize the landlords to retain any portion of her security deposit. The landlords did not file an application for dispute resolution to seek authorization to retain any portion of the tenant's security deposit.

I find that the landlords were sufficiently served for the purposes of this *Act,* pursuant to section 71 of the *Act,* with the tenant's forwarding address by January 31, 2021 because the landlords confirmed receipt in January 2021.

Based on the testimony of both parties, I find that the landlords did not return the tenant's entire security deposit within 15 days from the later of the end of this tenancy and the tenant's provision of a forwarding address in writing. Therefore, pursuant to section 38(6)(b) of the *Act,* the tenant is entitled to double the security deposit as set out in the following calculation:

$1,200.00 (security deposit) *2 = $2,400.00 (doubled deposit)

$2,400.00 (doubled deposit) – $1,094 (amount landlords returned) = **$1,306.00**

Loss of Quiet Enjoyment

Section 28 of the *Act* states that 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.

Residential Policy Guideline 6 states that 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.

Section 32(1) of the *Act* states:

32 (1)A landlord must provide and maintain residential property in a state of decoration and repair that

(a)complies with the health, safety and housing standards required by law, and

(b)having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Residential Policy Guideline #1 states:

> The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

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I find that it is not reasonable to expect a tenant to live in a vermin infested property. I find that a vermin filled property is not suitable for human occupation as the droppings of vermin are unsanitary. Pursuant to section 32(1) of the *Act* and Residential Policy Guideline #1, I find that it was the landlords' responsibility to ensure that the subject rental property was vermin free and that the landlords were responsible for removing any vermin that infiltrated the subject rental property.

Based on the testimony of both parties I find that the subject rental property had a significant mouse, squirrel and ant problem. I find that the landlords did not initially take the tenant's complaints seriously because instead of hiring a professional to deal with the vermin they told the tenant to borrow a cat or dog. I find that such a suggestion does not accord with the landlord's duty to properly maintain the residential property and make it suitable for occupation by a tenant, contrary to section 32(b) of the *Act.*

I accept the tenant's submissions that the vermin woke her up at night and the tenant's submissions that she found ants all over the subject rental property, including in her bed. I accept the tenant's testimony that the above noted disturbances lasted for the duration of this tenancy. I find constantly hearing, seeing and smelling vermin constitutes a substantial interference with the tenant's ordinary and lawful enjoyment of the premises. I find that the disturbance caused by the vermin was frequent and ongoing for the duration of this tenancy

Pursuant to my above findings, I find that the tenant's right to be free from unreasonable disturbance (section 28(b) of the *Act*) was breached by the ongoing and disturbing presence of vermin at the subject rental property from November 2020 to January 2021. I find that the landlord was aware of the vermin and failed to take reasonable steps to correct the issues while the tenant resided at the subject rental property. I find that while the landlords eventually contacted pest control, the pest control person did not attend to provide a quote until December 30, 2020 and did not eradicate the vermin while the tenant resided at the subject rental property.

The tenant testified that she is seeking $200.00 per month from November 2020 to January 2021 but did not provide any testimony on how this sum was arrived at. I find that the tenant has not proved that the value of her loss is the equivalent of $200.00 per

month. I find that while the presence of vermin significantly disturbed the tenant, the tenant was still able to fully reside in the subject rental property for the duration of this tenancy. I find that the tenant is entitled to damages for loss of quiet enjoyment in the amount of 10% of rent paid from November 2020 to January 2021. 10% of $1,200.00 is $120.00. $120.00 * 3 = $360.00.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the $100.00 filing fee in accordance with section 72 of the *Act*.

Conclusion

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

Item	Amount
Doubled deposits less amount returned	$1,306.00
Loss of quiet enjoyment	$360.00
Filing Fee	$100.00
TOTAL	**$1,766.00**

The tenants are 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: June 09, 2021

Residential Tenancy Branch