Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT / MNDCL-S, MNDL-S, FFL

Introduction

This hearing dealt with two applications application pursuant to the *Residential Tenancy Act* (the "**Act**"). The landlord's for

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $8,021 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And the tenants' application for:

- authorization to obtain a return of their security deposit ($1,725) pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $8,725 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

This hearing was not the first hearing of the parties at the Residential Tenancy Branch (the "**RTB**").

The landlord filed her application, claiming against the security deposit, on September 11, 2020. The matter came to a hearing before a different arbitrator, who issued a final decision on January 21, 2021. The tenants successfully applied for a review consideration, and, on February 3, 2021, a different arbitrator ordered that the landlord's application be re-heard. This re-hearing of the landlord application was to take place on May 3, 2021.

Additionally, the parties attended a hearing on March 26, 2021 regarding the tenants' application. At that hearing, the tenants had the opportunity to make submissions regarding their application. There was not enough time for the landlord to make any response submissions. I issued an interim decision following that hearing, reconvening the matter to a later date and ordering that the landlord's application be heard at the same hearing. That decision, along with notices of reconvened hearing, were sent to the parties.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:52 pm in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 pm. The both tenants attended the hearing, as did a witness of theirs ("**YW**"). I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Reconvened Hearing. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

Preliminary Issue – Effect of Landlord's Non-Attendance

As stated above, the tenants had concluded their submissions on their application at the March 26, 2021. The landlord was to have an opportunity to respond to the tenants' application at this hearing and make submissions regarding her own application. By failing to attend the hearing, she was not able to do either of these things.

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**
>
> 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. In most circumstances this is the person making the application.

So, the landlord bears the evidentiary burden to prove the facts supporting her claim. By failing to attend the hearing, so was unable to do this.

The tenants bear the evidentiary burden to prove the facts supporting their claim. They must still do this regardless of whether the landlord attended the hearing. As such, I must still evaluate the merits the tenants' application. By not attending this hearing, the landlord deprived herself of the ability to provide evidence responding to the tenants' claims.

Rule 7.3 states:

> **7.3 Consequences of not attending the hearing**
>
> If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Accordingly, I have not considered any of the documentary evidence the landlord has submitted in support of her application or in response to the tenants' application.

I dismiss the landlord's application, without leave to reapply.

The balance of this decision will address the tenants' undisputed claim.

Issues to be Decided

Are the tenants entitled to:

1) a monetary order of $8,725;
2) the return of the security deposit; and
3) recover the filing fee?

Background and Evidence

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

The parties entered into a written, fixed-term tenancy agreement starting August 28, 2019. Monthly rent was $3,450 and was payable on the 28th day of each month. The tenants paid the landlord a security deposit of $1,725. The landlord still retains this deposit. The tenants vacated the rental unit on August 27, 2020. The parties conducted a move-in inspection at the start of the tenancy and a move out inspection at the end of the tenancy. Copies of the move-in and move-out inspection reports were submitted into evidence. The tenants provided their forwarding address to the landlord in writing on August 27, 2020, on the bottom of the move-out inspection form.

The landlord filed her application, claiming against the security deposit, on September 11, 2020.

The tenants testified that they left the rental unit undamaged at the end of the tenancy. They testified that the landlord failed to disclose the existence of water damage inside the rental unit at the start of the tenancy. The tenants testified that the ceiling beside the stairway started leaking water in October 2019. Thy testified that they noticed minor discoloration to this area of the ceiling during the move-in inspection, but the landlord assured them it was "hockey damage" and nothing to be worried about.

The move-in condition inspection report does not record this damage. However, the tenants submitted a photo dated August 28, 2019 which shows the discoloration to the ceiling.

Additionally, the tenants stated that they noticed some residual water marks on the wall above the stairs beneath a skylight, but the landlord told them it was the result of water guns being used in the house.

The tenants testified that the damage to the ceiling and the wall was, contrary to the assurances of the landlord, not innocuous damage caused by the former occupant's children. Rather, they testified that the damage was caused by existing problems with the rental unit that had yet to cause more significant damage. They testified that on October 16, 2019, the ceiling where the "hockey damage" could be seen started leaking water. They submitted a photograph of the water-damaged ceiling. They also testified that water was leaking through the skylight above the stairs dripping water along the wall where the "water gun" marks were.

A contractor, hired by the landlord, attended the rental unit to repair and remediate the problem from October 16 to November 20, 2019. Large dehumidifiers had to be run inside the rental unit for long periods of time. The tenants testified that the remediation work and dehumidifiers caused them and their family (which included themselves, their child, and one of the tenant's parents) a great deal of inconvenience and disturbance. The tenants testified that one or both of them had to be at the rental unit whenever the contractors were there. They testified that their entire family had trouble sleeping due to the loud dehumidifiers running.

The tenants provided an email from the contractor dated December 12, 2019, which stated the cause of the leaks as:

> Tenant found two leak areas during heavy rain.
> 1. drain pipe in the unit from the roof which caused ceiling damage
> 2. roof damage (skylight) leaking, water running along walls.

The tenants seek $3,450 in compensation for the landlord "hiding truth from unit damage".

The tenant also seeks a monetary order of $5,175, for loss of quiet enjoyment caused by the actions of the landlord. Part of this loss, the tenants say, was caused by the disruption caused by the leak and subsequent repairs. However, the tenants also argued that they were deprived of their right to quiet enjoyment due to:

1) the landlord scheduling an excessive number of showings after they gave notice to end the tenancy; and
2) the landlord sending rude or harassing emails to them and making defamatory posts about them on social media.

The tenants testified that they told the landlord of their intention to end the tenancy at the end of the fixed term on July 19, 2020 via email. They testified that in a 2.5 week window, the landlord scheduled 9 separate showings of the rental unit (some with

multiple families). They testified that two more showings were scheduled, but then cancelled by the landlord with less than 24 hours-notice.

They testified that the landlord required the tenants to clean the rental unit before each showing and required the tenants and their family to vacate the rental unit for the entirety of the showing. However, they submitted emails into evidence in which they volunteered to clean the rental unit prior to the showings (without any prompting from the landlord). They wrote that they were doing this to "work with [the landlord] on showing the unit". They did write that such cleaning was quite onerous. Additionally, they submitted an email dated July 28, 2020, where the landlord wrote: "you may choose to stay home but we still suggest you to leave for your safety as well and for the ease of showing".

The tenants, on more than one occasion, suggested that the landlord limit the showings of the rental unit to once a week. The landlord did not do this.

The tenants also testified that the landlord was not flexible with the timing of these showings. However, they provided email exchanges where the landlord provided times for an inspection from which they could choose. One such email, dated July 24, 2020 read:

> Unfortunately one family cannot change to afternoon as they work with Asia so we would like to still get access to your unit 11:00 AM Sunday. What I can do is I will not take pics and video to save your time period but please advise if you prefer the second family come same slot 11 AM - 11:55 AM or we come back at 4:00 PM. I can arrange according to your preference.

Additionally, they testified that the landlord intimated that if they did not cooperate with her demands she would hold them liable for the loss of September 2020 rent. The tenants submitted an email from the landlord dated July 24, 2020 in which the landlord wrote:

> We will need to do showings in July so new tenants can have time to notify their landlords about their termination one month in advance.
>
> If you cannot cooperate with our showings, we will lose one month rental because new tenants cannot move in September 1st.

On July 31, 2020, the landlord wrote:

> […] Also as I mentioned before the common practice here about how to do showings if you would like to test you can. If you refuse to are showing request you need to be responsible for my loss.

The tenants also testified that the landlord engaged in harassing and threatening behavior via email. An example of this, they say, is an email dated August 13, 2020, where the landlord wrote:

> The contractor said that this wall was damaged before they came so they didn't repair it for free. They will charge $480 for that. If you have pictures to show that it was from their poor work you can let me know. Otherwise you are responsible for this repair cost.

In an email dated August 30, 20202, with a subject line “You broke the dryer”, the landlord wrote:

> You didn't tell us about this. That's why you didn't provide us your home address. You will be responsible for the dryer repair.

In an email dated August 27th, 2020 the landlord wrote:

> Curtain and rails damaged will bring the cost over the damage deposit. Please let me know if you agree for me to keep your damage deposit. Or you wish to go to court and pay more application fees.

In an email dated September 3, 2020, the landlord wrote:

> I know that you have been in China, considering that you did not send me a written notice to end the tenancy with your signature and you were not able to attend the inspection procedure, we do not know where you are and how to contact you. But you still will be responsible for all damages and losses you made. We will consider adding the order to your credit history in Canada or request to get you arrested if you cannot pay for it. I hope to hear from you soon.

I note that the copy of the move out condition inspection report indicates that the tenants were present for the move out inspection edit this inspection occurred on August 28, 2020. As the landlord did not attend this hearing, I was unable to ask for clarification on this point. Additionally, I note that the tenants provided PO Box as their forwarding address on the move owed condition inspection report, and not a residential address.

The landlord sent other emails in late August 2020 relating to damage to the rental unit she alleged the tenants caused.

Finally, the tenants allege that the landlord posted defamatory comments about them on social media site WeChat. The tenants submitted a screenshot of a WeChat post, written in Chinese (with an accompanying English-language translation from Google translate), where the landlord wrote:

> Help a landlord find a new immigrant tenant from Shanghai named [redacted] in English, [redacted] in Chinese. She refused to provide a new address when she moved out. Damaged items and electrical appliances in house reached $4000, and the deposit was not enough to compensate. Her son and daughter go to a private school in [retracted street name]. Hope someone can provide more information to help find such a bad tenant. The landlord of [the city where rental unit is located] West house, don't rent it to her, it will be a nightmare experience.

At the March 26, 2020, the landlord asserted that she made no such posting and that the screenshot submitted into evidence was a forgery.

In brief, the tenant seeks a monetary order representing the following:

Description	Amount
Return of Deposit	$1,725.00
"Hiding truth from unit damage"	$3,450.00
Loss of quiet enjoyment	$5,175.00
Filing fee	$100.00
Total	**$10,450.00**

Analysis

1. Security Deposit

Section 38(1) of the Act states:

> **Return of security deposit and pet damage deposit**
> 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.

The landlord received the tenants' forwarding address on August 28, 2020. A tenant is not required to provide their new residential address as a forwarding address; they are only required to provide an address at which they can receive correspondence. It is therefore permissible to provide a PO box as a forwarding address.

The landlord applied to retain the security deposit within 15 days of receiving the forwarding address.

I have dismissed the landlord's application, in its entirety. As such, she is not entitled to keep any part of the security deposit. Therefore, I order that the landlord return the security deposit to the tenant ($1,750).

2. Damages for "hiding truth from unit damage"

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.
>
> (the "**Four-Part Test**")

So, the tenants must prove that the landlord breached the Act, that they suffered a quantifiable loss as a result, and that they acted reasonably to minimize their loss.

The tenants have not specified which section of the Act, regulation, or tenancy agreement the landlord breached by "hiding" the truth regarding the nature of the damage to the skylight or ceiling from them at the start of the tenancy. This would be different than a breach resulting from the existence of the damage itself (which I will address below). Rather, the tenants seek a monetary order as a punishment against the landlord for, in their mind, misrepresenting the nature of the damage at the start of the tenancy.

To my knowledge there is nothing in the Act requiring the landlord to make disclosures as to the nature or cause of certain damage at the start of the tenancy. As such, I find that the tenants cannot prove that the landlord breached any part of the Act. Additionally, if there were a breach of the Act (which I explicitly find there is not), I cannot say how such a breach caused the tenants any quantifiable loss. For example, the tenants did not testify that they would have rented a different unit had they known the cause of the damage before they moved in.

Accordingly, it is not necessary for me to make a determination as to whether or not the landlord misrepresented the condition of the rental unit or the cause of visible damage during the move-in inspection. Even if she did, it would not give rise to a monetary award.

I dismiss this portion of the tenants' application, without leave to reapply.

3. Loss of Quiet Enjoyment

Section 28 of the Act, in part, states:

> **Protection of tenant's right to quiet enjoyment**
> 28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
> (b) freedom from unreasonable disturbance;

The tenants claim a loss of quiet enjoyment caused by three distinction groups of activities by the landlord:

1) Disturbances caused by repairs of leaks.
2) Frequent showings of rental unit to prospective renters, with unreasonable demands made of the tenants.
3) Harassing emails and defamatory statements.

I will address each of these in turn.

a. Disturbances caused by repairs of leaks

I accept that there were leaks in the rental unit starting October 16, 2020 which required extensive repairs. I accept the tenants uncontroverted testimony that these repairs took roughly one month to complete, and that dehumidifiers were run for long stretches of time inside the rental unit which made it difficult for some of the occupants to sleep.

Section 32 of the Act states:

> **Landlord and tenant obligations to repair and maintain**
> **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.

As such, if the leaks were not caused by the tenants (as the tenants claim), the landlord had a statutory duty to repair the leaks and remediate the damage to make it suitable for occupation.

The tenants did not suggest that the repairs made were not needed or unnecessary to address the issue of the leaks. They did not suggest that the repairs could have reasonably be done in a shorter period of time, or in such a way as to be less intrusive to them. There is no basis in evidence for me to find that the landlord or her contractors acted inappropriately when making the repairs.

As such, I do not find it appropriate to make a monetary award against the landlord for comply with her obligations under the Act. She was required to repair the leak and she did so. Based on the evidence before me, I cannot say that the method of repair and remediation was unreasonable.

This is not to say that the tenants were not disturbed by the repairs and remediation. Undoubtably they were. However, the Act does not give them the right to be free from any disturbance. It only provides them the right to be free from *unreasonable* ones. I do not find that the disturbances caused by the repairs and remediation were unreasonable.

Accordingly, I decline to award the tenants any amount in connection with this portion of their claim.

b. Frequent showings of rental unit

Section 29 of the Act states:

> Landlord's right to enter rental unit restricted
> 29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
>
> […]
>
> (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
>
> (i) the purpose for entering, which must be reasonable;
>
> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

Policy Guideline 7 states that “showing the premises to prospective tenants” is a “reasonable purpose”. This does not mean that the landlord has an unfettered right of access to conduct such showings. Policy Guideline 7 continues:

> However, a "reasonable purpose" may lose its reasonableness if carried out too often. Note that under the Act a landlord may inspect a rental unit monthly.

> Where possible the parties should agree beforehand on reasonable times for entry. Where the parties cannot agree on what are reasonable times, and the tenant's quiet enjoyment of the rental unit is interrupted (**for example where the house is listed for sale and there are numerous showings of the rental unit**), the tenant may apply for arbitration to suspend the rights of the landlord, or an Order that the landlord's right of entry be exercised only on conditions.
>
> [emphasis added]

I accept the tenants' undisputed evidence that the landlord showed the rental unit to prospective renters nine times in a two-and-a-half-week period. I find that this number of showings is unreasonable. The tenants requested that these showing be restricted to a single day per week, but the landlord did not comply with this request.

Based on my review of the correspondence submitted into evidence by the tenants, I do not find that the landlord required them to clean the rental unit before or vacate the rental unit during these showings. The landlord requested that the latter occur but did not make it a requirement. I do not find that such requests amount to a breach of the Act.

I find that these excessive number of showings amounted to an unreasonable disturbance and deprived the tenants of their right to quiet enjoyment. It is difficult to quantify the tenants' loss as a result of this breach. In the circumstances, I find it appropriate to order the landlord pay the tenants $517.50, representing repayment of 50% of the amount of rent payable for each day a showing took place ($3,450 ÷ 30 days = $115 per day; $115 x 9 days of showings = $1,035; $1,035 ÷ 2 = $517.50)

c. Harassment and Defamation

The tenants argued that a series of emails from the landlord demanding compensation for damage she alleged they caused to the rental unit amounted to harassment. I have reviewed these emails and included excerpts of some of them above. I do not find that they amount to harassment.

Rather, I find that they are terse correspondence wherein the landlord attempts to assert her rights under the Act. While the tone may be more abrupt than another landlord might take and while another landlord might include all of their demands for compensation in a single email rather than peppering the tenants with a series of emails, I do not find there is anything fundamentally inappropriate with the landlord's actions.

Parties are encouraged to communicate with one another regarding claims they might have against the other before resorting to a hearing before the RTB. Parties are not required to engage in such discussions, but I do not find that one parties' attempt to

assert their rights under the Act amounts to harassment. As such, I decline to order the landlord pay the tenants any amount in connection with this portion of their claim.

With regards to the landlord's alleged post on social media, I do not find that the tenants have demonstrated they have suffered any loss in connection with the comments allegedly made by the landlord on WeChat. As such, I find they have failed to satisfy the second and third part of the Four-Part Test set out above.

As such, it is not necessary for me to determine the authenticity of the social media post or determine whether, if authentic, it amounts to a breach of the Act.

I decline to order the landlord to pay the tenants any amount with regards to this portion of their application.

Pursuant to section 72(1) of the Act, as the tenants have been partially successful in the application, they may recover their filing fee from the landlord.

Conclusion

Pursuant to sections 65, 67, and 72 of the Act, I order that the landlord pay the tenants $2,342.50, representing the following:

Description	Amount
Return of Deposit	$1,725.00
Loss of quiet enjoyment - multiple showings	$517.50
Filing fee	$100.00
Total	**$2,342.50**

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 2, 2021

Residential Tenancy Branch