



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act"). The Tenants applied for the return of their security deposit, for a monetary order for compensation for monetary loss or other money owed, and to recover their filing fee. The matter was set for a conference call.

Both Tenants attended the hearing and were each affirmed to be truthful in their testimony. As the Landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenants testified that the documents were sent by registered mail on July 16, 2021, a Canada Post tracking number was provided as evidence of service. Section 90 of the *Act* determines that documents served in this manner are deemed to have been served five days later. I find that the Landlord had been duly served in accordance with the *Act*.

The Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The Tenants were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Are the Tenants entitled to the return of their security deposit?
- Are the Tenants entitled to a monetary order for compensation for monetary loss or other money owed?
- Are the Tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have considered all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenants testified that the tenancy began on July 15, 2016, as a one-year fixed term tenancy that rolled into a month-to-month tenancy as of June 15, 2017. Rent in the amount of \$2,050.00 was to be paid by the fifteenth day of each month, and that the Tenants paid the Landlord a \$1,000.00 security deposit. The Tenants submitted a copy of the tenancy agreement into documentary evidence.

The Tenants testified that they gave written notice to their Landlord on May 1, 2021, to end their tenancy, which included their forwarding address. The Tenants submitted a copy of their notice to end tenancy into documentary evidence.

The Tenants testified that they moved out of the rental unit on May 31, 2021 and conducted the move-out inspection with the Landlord on that same day. The Tenants testified that a couple of deficiencies were noted on the move-out inspection for the rental unit. The Tenants testified that they had verbally agreed that they would pay for some of these deficiencies; however, no dollar amount was agreed to on the inspection day. The Tenants submitted a copy of the move-out inspection into documentary evidence.

The Tenants testified that they received an email from the Landlord on June 11, 2021, which included a list of costs the Landlord wished to deduct from their security deposit. The Tenants testified that they disagreed with some of the deductions the Landlord had requested in the June 11, 2021 email. The Tenants submitted a copy of the Landlord's June 11, 2021 email into documentary evidence.

The Tenants testified that they responded to the Landlord on June 18, 2021, granting permission to the Landlord to retain \$606.08, consisting of \$228.80 to replace a living room blind, \$114.41 to replace a living room screen and clips, \$86.37 to replace a bathroom vanity plug, and \$176.50 to replace the front door lock with deadbolt. The Tenants submitted a copy of the response email they sent the Landlord date June 18, 2021, into documentary evidence.

The Tenants testified that as of the date of these proceedings, the Landlord had not returned the remaining \$393.92 of their security deposit or served them with notification of a dispute resolution proceedings claiming against that amount. The Tenants are requesting the return of the remaining \$393.92 of their \$1,000.00 security deposit. The Tenants testified that they are also requesting that the doubling provision be applied to their security deposit, as the Landlord failed to file against this portion of their deposit that they did not agree to the Landlord keeping.

The Tenants testified that they are claiming for compensation in the amount of \$2,000.00 for threats the Landlord had made towards them. The Tenants testified that the Landlord threatened to take them to a hearing with the Residential tenancy branch if they did not agree to the Landlord keeping the full security deposit for this tenancy, and these threats caused them and their children emotional distress. The Tenants submitted two auto recordings and a text message into documentary evidence.

The Tenants testified that they are also claiming for compensation in the amount of \$5,000.00 in aggravated damages for the Landlord's actions of entering the rental unit to make repairs during the Covid-19 pandemic. The Tenants testified that the Landlord issued them notice that the water pumping system for the property was malfunctioning that they and a repair team would be accessing the rental unit to complete repairs. The Tenants testified that due to Covid concerns, they had to vacate the rental unit for the duration of the repair work, which took about eight hours. The Tenants also testified that the initial repair date was cancelled at the last minute a had to be rescheduled to an alternate date, which was very disruptive to them and their children. The Tenants testified that the Landlord ought to have put off doing this repair until the pandemic had ended.

The Tenants were asked to provide details of what the repair entailed; the Tenants responded that the was a problem with the water pump system, which prevented them from using any water in the rental unit until the repair was completed.

Finally, the Tenants testified that they are also claiming for compensation in the amount of \$1,500.00 for loss of quiet enjoyment. The Tenants testified that on November 7, 2020, the Landlord entered their rental unit to replace the batteries in the smoke detector and that the Landlord had not provided them with written notice before this entry. The Tenants testified that the Landlord also entered the rental unit on May 30, 2021, while the cleaners they had hired were cleaning the rental unit. The Tenants submitted four text messages into documentary evidence.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposits or repay the security deposit and pet damage deposit to the tenant.

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.

I accept the undisputed testimony of the Tenants supported by their documentary evidence, and find that this tenancy ended on May 31, 2021, the date the Tenant moved out of the rental unit and conducted the move-out inspection with the Landlord. I also accept the undisputed testimony of the Tenants, supported by their documentary evidence that they did not give the Landlord permission to keep their full security deposit for this tenancy.

Additionally, I accept the Tenants documentary evidence that they provided their forward address to the Landlord on May 1, 2021, in their written notice to end this tenancy. Accordingly, the Landlord had until June 15, 2021, to comply with section 38(1) of the *Act* by either repaying the deposit to the Tenants or submitting an Application for Dispute resolution to claim against the deposit. The Landlord, in this case, did neither.

At no time does a landlord have the right to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree, in writing, to the repayment of the security deposit or that deductions be made, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later requesting permission to keep the disputed security deposit. It is not enough that the landlord thinks they are entitled to keep even a small portion of the deposit based on unproven claims.

I find that the Landlord breached section 38 (1) of the *Act* by not returning the remaining portion of the Tenants' deposits or filing a claim against the deposit within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

38 (6) If a landlord does not comply with subsection (1), the landlord
(a) may not make a claim against the security deposit or any pet damage deposit, and
(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act*, the Tenants have successfully proven that they are entitled to the return of double their deposit.

However, I also accept the undisputed testimony of the Tenants, supported by their documentary evidence, that the Tenants gave permission to the Landlord to retain \$606.08 of their \$1,000.00 security deposit by email on June 18, 2021.

Therefore, I find for the Tenants, in the amount of **\$1,393.92**, consisting of \$2,000.00 in the return of the double value of the security deposit, less the \$606.08 deduction to the security deposit that the Tenants agreed to in their June 18, 2021 email to the Landlord.

As for the Tenant's claims for \$2,000.00 in compensation for the Landlord threatening to take them to a hearing with the Residential Tenancy Branch, \$5,000.00 in aggravated damages due to the Landlord conducting repairs to the rental unit during the Covid-19 Pandemic, and \$1,500.00 in loss of quiet enjoyment due to the Landlord entering the rental unit without written notice. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“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. 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.”

In order to be awarded compensation, an applicant must first prove that there has been a breach of the *Act* by the Respondent, in this case, that would be the Tenants who need to prove that the Landlord breached the *Act* during this tenancy.

The Tenants' have claimed that the Landlord breached the *Act* when the Landlord threatened to take them to a hearing with the Residential Tenancy Branch if they did not agree to the deductions the Landlord wanted to make to the security deposit. However, as stated above, section 38 of the *Act* requires a landlord to take a tenant to a hearing

with the Residential Tenancy Branch when they are unable to come to an agreement as to what will happen with the security deposit at the end of a tenancy. As the *Act* requires the Landlord to make this application for dispute resolution, when an agreement cannot be reached, I find that the mere fact that the Landlord communicated this legal requirement to these Tenants was not a breach of the *Act*.

Additionally, after reviewing the audio files submitted into documentary evidence by the Tenants, I find that the comments made by the Landlord during this exchange insufficient to prove a “threat” as claimed by the Tenants. Therefore, I dismiss this portion of the Tenants’ application.

The Tenants have also claimed for \$5,000.00 in aggravated damages due to the Landlord conducting repairs to the rental unit during the Covid-19 Pandemic. I accept the Tenants’ testimony that the water pump system for the rental unit broke down during the tenancy, and that they were unable to use the water in the rental unit until this system was repaired. Section 32 of the *Act* states the following regarding repairs:

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.*
- (2) 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.*
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*
- (4) A tenant is not required to make repairs for reasonable wear and tear.*
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.*

I find that section 32 of the *Act* required this Landlord to make the repairs to the broken water pump system. I have also reviewed the *Act*, the provincial health orders and all of the evidence submitted to these proceedings by the Tenants, and I find that there is no

evidence before that there was a health order in place that would have prevented the Landlord from access the rental unit to affect these required repairs. Therefore, I find that there was no breach of the *Act* by the Landlord when they conducted these repairs to the rental unit, and in the absence of a breach of the *Act* I dismiss this portion of the Tenants application.

Finally, the Tenants are claiming for \$1,500.00 in compensation due to the loss of quiet enjoyment of the rental unit during their tenancy when the Landlord entered the rental unit twice without written notice. Section 28 of the *Act* establishes a tenant's right to quiet enjoyment and reads as follows:

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:*

- (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.*

In determining if there has been a breach of the Tenants' right to quiet enjoyment, I must consider the guidance found in the Residential Tenancy Policy Guideline #6 Entitlement to Quiet Enjoyment, which states the following:

BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

"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"

I have reviewed the documentary and digital evidence submitted by the Tenants, and I find that there is insufficient evidence before me to prove to my satisfaction that the Landlord entered the rental property without written notice or invitation. Consequently, I dismiss this portion of the Tenants' claim.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been partially successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Overall, I grant the Tenants a monetary order in the amount of \$1,493.92, consisting of \$2,000.00 in the return of the doubled value of the security deposit for this tenancy, \$100.00 in the recovery of the filing fee for these proceedings, less \$606.08 in the deduction to the security deposit that the Tenants agreed to in these proceedings.

Conclusion

I find that the Landlord breached section 38 of the *Act* when they failed to repay or make a claim against the security deposit as required by the *Act*.

I find for the Tenants pursuant to sections 38 and 72 of the *Act*. I grant the Tenants a **Monetary Order** in the amount of **\$1,493.92**. 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: January 26, 2022

Residential Tenancy Branch