



Dispute Resolution Services

Page: 1

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.

Both parties agreed that they were served with the other's application for dispute resolution and evidence. I find that both parties were served in accordance with the *Act*.

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 landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2020 and ended on June 30, 2021. This was originally a fixed term tenancy agreement set to end on August 31, 2021. Monthly rent in the amount of \$1,850.00 was payable on the first day of each month. A security deposit of \$925.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenancy agreement also lists tenant K.C. as a tenant; however, tenant K.C. is not named on this application for dispute resolution.

Both parties agree that the tenant did not provide the landlord with a forwarding address prior to filing for dispute resolution and that the landlord only received the tenant's forwarding address on the tenant's application for dispute resolution. Both parties agree that the landlord has not returned any portion of the tenant's security deposit.

The tenant testified that the landlord harassed her and endangered her safety, forcing her to move out on short notice. The tenant testified that she is seeking the landlord to compensate her for her living expenses from June 30, 2021, to July 12, 2021.

The tenant testified that the problems with the landlord started in January of 2021 when the landlord demanded the tenants park on the street and not in the driveway. The tenant testified that driveway parking was a term of the tenancy agreement. The tenancy agreement states that parking for one vehicle in the driveway is included in rent. The tenant testified that she was unable to park in the driveway from January 6, 2021, to June 30, 2021. The tenant's monetary claim does not include a claim for loss of service or facility.

The landlord testified that the tenant wrote the parking into the tenancy agreement and that she did not see it because she was not wearing glasses when the tenancy agreement was signed. The landlord did not dispute that she asked the tenants to park on the street starting January 2021.

The tenant testified that from May 17, 2021, to the end of the tenancy the landlord started locking the laundry door after 10:00 p.m. at night but that sometimes it was locked before 10:00 p.m. The tenant testified that the tenancy agreement included free laundry and that the landlord was not allowed to lock the laundry room door and that the landlord breached section 14 of the tenancy agreement by changing a term of the tenancy agreement without agreement. The tenant's monetary claim does not include a claim for loss of service or facility.

The tenant testified that the landlord breached her right to quiet enjoyment by accusing her and tenant K.C. of smoking inside the subject rental property. The tenant's monetary claim did not include a claim for loss of quiet enjoyment. The tenant testified that she and tenant K.C. were not smoking inside the unit. The landlord testified that she could smell the smoke from the subject rental property in her home and witnessed tenant K.C. smoking on the dry lawn during the heat wave. The landlord testified that she was very concerned for the safety of her property and the risk of fire during such high temperatures.

The tenant testified that the landlord's allegedly harassing behaviour escalated from May 17, 2021 to June 29, 2021. In support of the above testimony the tenant entered into evidence the following text messages from the landlord:

- Landlord May 17, 2021, 1:13 a.m. to 1:17 a.m.- Please have laundry done by 10 pm on laundry days and no later We can [hear] the laundry going on now ! It's 115 am. Otherwise I will have to lock up laundry room.
- Landlord June 26, 2021at 7:56 a.m.- There's no smoking outside in yard during heat wave & on hot days Best to smoke in alley where garbage area where there no grass. Basement suite rental does not include use of yard.
- Landlord June 27, 2021at 5:03 p.m.- If a fire is started by cigarette smoke or similar of any kind The criminal charge are big & hefty here in [rental City] Just so u know! The people in this neighbourhood will not be understanding or forgiving of smokers especially if a fire happened here by it! Especially during a heat wave or hot days
- Tenant June 27, 2021at 5:12 p.m.- We are very much aware how fire is started. You don't need to remind us and threaten us about it. And just so you know,

[tenant K.C.] hasn't been smoking in your backyard since the heat wave. And if you see him outside, it is because he is cooling off from the heat. Thank you for letting us know about your concerns.

- Landlord June 27, 2021, 5:13 p.m. to 5:42 p.m.- I caught him smoking 2 days ago As well as got him on camera ! I've now told u 3 times as well as got u on camera !! I will inform all my neighbours about this. They all got security cameras as well! Also got u on how much laundry u guys do for 2 people?! Really taking advantage hey!
- Landlord June 28, 2021, 8:42 a.m. to 11:42 a.m.- DO NOT touch our security cameras again!!! Last warning And u guys need our permission to use our yard. Just cause u rent a basement suite doesn't allow u to use it when ever u feel like it And putting your stuff in our yard without asking I will be billing u guy for overconsumption of the utility bills It is inappropriate to be Installing, removing & tempering any of our stuff on our property! One of u left the gate Wide Open If that continues we will lock it! U guys will to enter form the side We feel that we have been more than accommodating to you guys Giving u guys brand new stuff, giving a few free pass on the smoking issue, use of yard even when used without permission, over consumption of utilities, tampering with our cameras numerous times however we fin that all u guys do it Take more that you can Afford! U rent a unit not the whole property! It's also [neighbourhood of subject rental property] U only get what u pay for U don't get the penthouse lifestyle for a basement suite price!
- Landlord June 28, 2021, 1:37 pm to 1:45 pm- How are u liking it at [workplace of tenant]?? My best friend works there too!
- Landlord June 28, 2021 at 2:52 pm- Ive already file a police report on tempering of our cameras!
- Landlord June 29, 2021 at 5:41- I confirm today with resident Tenancy acts we are allowed to have our cameras up I think y guys got the wrong info- FYI If you like I can do a three way call! Just so u know I'm not lying!
- Tenant June 29, 2021 at 5:47- We are not doing this again. As mentioned, you need our consent. [Residential tenancy branch website provided]. Click the link under information and privacy.
- Landlord June 29, 2021 5:48- 5:49 p.m. Ok well I just went to police station The officer [name redacted for privacy] confirmed it was wrong and even saw the video I'm allowed to have my cameras up It's not even in your suite if it's in your suite I need permission The officer [name redated for privacy] said he will come to property to talk to u guys I have a right to protect my house form intruders or

robbers [Name redacted for privacy] friends bike was just stolen in the backyard
I'm not trying to fight with u again Just letter u know my rights!

The content of the text messages were not disputed by the landlord.

The tenant testified that one of the landlord's security cameras covered the entrance to the subject rental property and that she felt the presence of the camera violated the *Privacy Act*. I informed the tenant in the hearing that I do not have jurisdiction to adjudicate breaches of *Acts* other than the *Residential Tenancy Act*. The tenant entered into evidence case law regarding security cameras breaching the *Privacy Act*. I find the case law to be of no assistance in this case as it does not concern the *Residential Tenancy Act*. Both parties agree that the tenant and tenant K.C. repeatedly took down the landlord's security camera.

The landlord testified that the tenants would use the laundry in the middle of the night for one or two towels and that it caused continued disturbance to herself, so she locked the laundry room door at night to prevent the disturbance. The landlord testified that the tenants were still permitted to do laundry during normal hours. The landlord testified that the tenant repeatedly tampered with her security system and that she spoke with the police, and they confirmed that she was permitted to have security cameras outside.

The landlord testified that the police agreed to come talk to the tenants about moving her security cameras and that after she told the tenants same, they decided to move out. Both parties agree that the tenant told the landlord on June 30, 2021, that she and tenant K.C. were moving out that day. Both parties agree that no other notice to end tenancy was provided by the tenants to the landlord and that the tenants did not provide the landlord with notification that they would move out if the text messages and other allegedly harassing behaviour did not stop.

The tenant testified that after she received the June 29, 2021, text from the landlord regarding her place of work she became emotional and psychologically distraught. The tenant testified that she felt that the landlord was stalking her and so decided to move out the next day. The tenant testified that she feared for her safety and so stayed in a hotel. The tenant testified that she is seeking the landlord to reimburse her for every expense she incurred from June 30, 2021, until July 12, 2021.

The landlord testified that she does have a friend who works at the same workplace as the tenant. The landlord testified that tenant K.C. told her daughter about where the

tenant works, and that she was not stalking her. The tenant testified that K.C. is a private person and would not have told the landlord's daughter about where she works.

The tenant entered into evidence a plethora of receipts including receipts for a hotel, restaurants, grocery stores, clothe stores, hardware stores, pharmacies, department stores, gas stations, car rentals, home and garden stores and more. When asked about the clothing receipts the tenant testified that she must have included those accidentally and that she is not claiming for the new clothes she purchased. When asked about the items purchased at the hardware stores and department stores the tenant testified that she purchased plastic bins to move her belongings.

The receipts from the department store and the hardware store total \$523.09. The itemized receipts entered into evidence show that considerably more than plastic moving bins were purchased, including zip lock bags, gloves, oven cleaner, shower cleaner, silverware, flatware, glasses, a slipcover, knife set, bedding, tape, and screen repair. The tenant testified that she had to purchase home goods because they were supplied at the subject rental property and because she had to move out earlier than expected, she did not have time to save for them.

Some of the restaurant receipts include alcohol. One such receipt totalling \$58.63 included three mimosas. The tenant entered into evidence receipts totalling \$4,185.94 which she is seeking from the landlord.

The tenant testified that she is also seeking to recover the security deposit paid to her new landlord in the amount of \$1,000.00 and the first month's rent in the amount of \$1,355.00. The tenant testified that due to the landlord's actions she had to move out before she saved up enough money for the security deposit and first month's rent and so had to take out a loan to pay the new landlord. No proof of the loan was entered into evidence. The tenant entered into evidence receipts for the new security deposit in the amount of \$1,000.00 and a receipt for rent from July 10, 2021, to July 31, 2021, in the amount of \$1,355.00.

The tenant testified that she is also seeking the return of the security deposit from the landlord in the amount of \$925.00.

Analysis

Section 45 of the *Act* states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Both parties agree that the tenants did not provide the landlord with written notification that the tenants considered the landlord's text messages or other behaviour to be a material breach of the tenancy and that if the allegedly harassing behaviour did not stop, that the tenants would move out before the end of the fixed term. I therefore find, pursuant to section 45 of the *Act*, that the tenants were not permitted to end the tenancy prior to the end of the fixed term. I find that the tenants are not therefore entitled to damages stemming from their early vacation of the subject rental property. The tenants breached the *Act* and are not entitled to claim damages that stem from their own breach. I therefore dismiss the tenant's application for a Monetary Order for damage and compensation, without leave to reapply.

In addition to my above findings, I find that the text messages from the landlord to the tenant were nowhere near serious enough to warrant the immediate move out of the tenants. The text messages clearly show that the parties were having disagreements regarding the security cameras, smoking and the laundry and other issues, but I find that these are common disagreements between landlords and tenants and could not reasonably have been believed to have put the tenants' life or safety in jeopardy. I find the text message from the landlord about the tenant's workplace to be fairly innocuous and that it was not reasonable for the tenant to fear for her safety based on such a text.

Security Deposit

Section 38 of 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.

Both parties agree that the tenant only provided the landlord with her forwarding address on this application for dispute resolution. Residential Tenancy Branch Practice Directive 2015-01 states that a forwarding address only provided by the tenant on the application for dispute resolution form does not meet the requirement of a separate written notice as set out in section 38(1)(b) of the *Act*.

Since the landlord has not yet received the tenant's forwarding address in writing, by a method set out in section 88 of the *Act*, the landlord is not yet required to return the tenant's security deposit. If the tenant wishes to receive her security deposit from the landlord, the tenant must serve the landlord with her forwarding address in accordance with section 88 of the *Act*. The tenant's application for the return of the security deposit is dismissed with leave to reapply.

The landlord is cautioned that if the landlord does not either (a) return the security deposit or (b) file an application for dispute resolution for authorization to retain the deposit, within 15 days of receipt of the tenant's forwarding address in writing, the landlord may be required to pay the tenant double the security deposit pursuant to section 38(6) of the *Act*.

As the tenant was not successful in this application for dispute resolution, I find that the tenant is not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

The tenant's application for a Monetary Order for damage and compensation and recovery of the filing fee is dismissed without leave to reapply.

The tenant's application for the return of the security deposit is dismissed with leave to reapply.

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: February 08, 2022

Residential Tenancy Branch