Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

On August 19, 2021, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the "*Act*"), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

On September 8, 2021, this Application was set down for a Dispute Resolution participatory hearing to be heard on March 7, 2022 at 1:30 PM.

Both Tenants attended the hearing; however, the Landlord did not attend at any point during the 36-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. They acknowledged this term, and they provided a solemn affirmation.

Tenant S.E. advised that the Notice of Hearing and evidence package was served to the Landlord's address noted on the tenancy agreement, on September 10, 2021 by registered mail (the registered mail tracking number is noted on the first page of this Decision). This address was also the Landlord's current business address, as corroborated by screenshots from the internet. As well, included was a screenshot of the Canada Post tracking history which indicated that this package was returned to sender on October 21, 2021. Based on this undisputed evidence, I am satisfied that the Landlord was deemed to have received the Tenants' Notice of Hearing and evidence package five days after it was mailed. Furthermore, as the Tenants' evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of

Procedure, I have accepted their evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a return of double the security deposit?
- Are the Tenants entitled to monetary compensation?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

S.E. advised that the most current tenancy started on February 1, 2020 and that the tenancy ended on November 15, 2020 by way of a mutual agreement to end tenancy. Rent was established at an amount of $4,200.00 per month and was due on the first day of each month. A security deposit in the amount of $2,100.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She testified that they served their forwarding address to the Landlord by registered mail on February 23, 2021, using the Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit form. They included a screenshot of the tracking history which indicated that this package was delivered on March 4, 2021.They stated that the Landlord has neither returned the security deposit nor made an Application to claim against it. Therefore, the Tenants are seeking double the deposit in the amount of **$4,200.00** pursuant to Section 38 of the *Act*. They referred to the documentary evidence submitted to support this position.

In addition, they advised that they are seeking compensation in the amount of **$359.24** because the Landlord was required to pay for 20% of the utilities according to the tenancy agreement. They submitted that in previous years, the Landlord simply paid them this amount at the end of each year. However, the last time he compensated them for utilities was for 2019. They submitted the relevant hydro and gas bills for 2020, as documentary evidence, to support their calculation of utilities owed.

They also advised that they are seeking compensation in the amount of **$145.58** because they installed two light fixtures in the rental unit. They asked the Landlord what they should do with them, and he informed them that they should leave the fixtures in the rental unit and that he would reimburse them. They attached a screenshot of a text message history to support this position. As well, they referenced an invoice submitted of the cost of the light fixtures to corroborate the amount being sought.

They advised that they are seeking compensation in the amount of **$3,187.39** because the Landlord and/or his realtor would schedule showings of the rental unit, but these were mostly during work hours. As they both worked from home, they were required to leave, and lose work hours, during these showings. In addition, the realtor or prospective buyers would leave garbage or PPE behind, and the Tenants were forced to clean this up. They referenced a table submitted as documentary evidence to illustrate all of the work time lost, and time spent cleaning, due to the disturbances from September 17, 2020 to October 20, 2020. This amount of compensation was calculated as 18.5 hours of lost work and cleaning time billed out at $85.80 per hour, and 8 hours of lost work time at $200.00 per hour.

Finally, they advised that they are seeking an additional amount of compensation of **$4,200.00** because of their loss of quiet enjoyment of the rental unit due to the above disturbances from the Landlord and/or his realtor. They stated that it was stressful, challenging, and emotionally draining as Landlord and/or his realtor would not follow COVID protocols. As well, the realtor was disorganized and would often not show up, so prospective buyers would attend the rental unit alone. They submitted that they were contacted by the realtor every day regarding potential showings, that there were showings approximately three times per week, and that the appointment times would change every day. On one occasion, the Tenants were in COVID isolation, and they informed the realtor that an inspector could not enter the rental unit due to potential COVID transmission concerns. They stated that the Landlord called S.E. and berated her in an aggressive and abusive manner. They referenced documentary evidence submitted to demonstrate correspondence between themselves and the Landlord to

support their position. They calculated their loss as $120.00 X the number of days that they were disturbed (35).

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

When reviewing the undisputed evidence before me, I am satisfied that the Tenants provided their forwarding address in writing to the Landlord on February 23, 2021 and that, according to the tracking history, the Landlord received this package on March 4, 2021.

I find it important to note that Section 38 of the *Act* clearly outlines that from the later point of a forwarding address being provided or from when the tenancy ends, the Landlord must either return the deposit in full ***or*** make an Application to claim against the deposit. There is no provision in the *Act* which allows the Landlord to retain a portion of the deposit without the Tenants' written consent.

As the Landlord had received the Tenants' forwarding address in writing on March 4, 2021, he had 15 days from that date to either return the security deposit in full or make an Application through the Residential Tenancy Branch to keep the security deposit. However, it appears as if the Landlord took no action.

Based on the totality of the evidence before me, as the Tenants did not provide written authorization for the Landlord to keep any amount of the security deposit, and as the Landlord did not return the security deposit in full or make an Application to keep this amount within 15 days of March 4, 2021, I find that the Landlord did not comply with the

requirements of Section 38 and he illegally withheld the security deposit contrary to the *Act*. Therefore, the doubling provisions of this Section do apply in this instance.

Consequently, I am satisfied that the Tenants have substantiated a monetary award amounting to double the amount of the security deposit that was paid. Under these provisions, I grant the Tenants a monetary award in the amount of **$4,200.00**.

Section 28 of the *Act* outlines the Tenants' right to quiet enjoyment of the rental unit.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the Tenants' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, 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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

With respect to the Tenants' claim for compensation in the amount of $359.24 for 20% of the utilities owed to them, I am satisfied from the undisputed evidence that the tenancy agreement stipulated that the Landlord was responsible for this amount. Furthermore, I am satisfied from the undisputed testimony that the Landlord failed to pay the Tenants for utilities in 2020. As such, I grant the Tenants a monetary award in the amount of **$359.24** to satisfy this claim.

Regarding the Tenants' claim for compensation in the amount of $145.58 because the Landlord did not reimburse them for two light fixtures despite confirming that he would do so, I am satisfied from the undisputed evidence that the Landlord was responsible for this. Consequently, I grant the Tenants a monetary award in the amount of **$145.58** to remedy this claim.

With respect to the Tenants' claim for compensation in the amount of $3,187.39 due to their loss of work time and cleaning because of disturbances from the Landlord and/or his realtor, I find it important to note that there are no provisions in the *Act* to compensate for lost work hours. Even if this were to be considered, the Tenants did not submit any documentary evidence to substantiate the hourly wages that they were attempting to claim for. There are, however, provisions in the *Act* under Section 28 to request compensation for a loss of quiet enjoyment, which I note the Tenants' have already made a claim for below. As such, I dismiss this in its entirety.

Finally, regarding the Tenants' claim for compensation in the amount of $4,200.00 due to their loss of quiet enjoyment of the rental unit from the aforementioned disturbances by the Landlord and/or his realtor, I am satisfied from the undisputed evidence that the Tenants suffered a loss of quiet enjoyment, that they warned the Landlord on October 1, 2021 about their concerns, and that the issues continued. I am also satisfied that the Tenants corroborated the amount that they were seeking for this loss of quiet enjoyment. As such, I grant the Tenants a monetary award in the amount of **$4,200.00** to satisfy this claim.

As the Tenants were successful in their claims, I find that the Tenants are entitled to recover the $100.00 filing fee paid for this Application.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Doubling of the security deposit	$4,200.00
Utilities owed	$359.24
Cost of two light fixtures	$145.58
Loss of quiet enjoyment	$4,200.00
Recovery of filing fee	$100.00
TOTAL MONETARY AWARD	**$9,004.82**

Conclusion

The Tenants are provided with a Monetary Order in the amount of **$9,004.82** 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: March 9, 2022

Residential Tenancy Branch