



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RP, PSF, OLC, FFT

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The landlords and tenant FT 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.

Preliminary Issue- Service

Both parties agree that the tenant served the landlords with a copy of this application for dispute resolution and evidence, by leaving a copy outside the landlords' door in January of 2022. The tenant testified that the above package was served two days after the tenant's application for dispute resolution was received from the Residential Tenancy Branch. The dispute documents were provided to the tenant on January 19, 2022. The landlords testified that the above documents were received around that time. I find that the landlords were sufficiently served for the purposes of this *Act*, with the above documents because receipt was acknowledged.

Both parties agree that the landlord did not submit or serve evidence on the tenant or the Residential Tenancy Branch.

Preliminary Issue- Dismissed Issues

Both parties agree that the tenants moved out of the subject rental property at the end of March 2022. As this tenancy has ended, I dismiss the following tenant claims because the claims are no longer applicable:

- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32; and
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Are the tenants 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 January 1, 2019 and ended on March 31, 2022. Monthly rent in the amount of \$1,500.00 was payable on the first day of each month. A security deposit of \$750.00 was paid by the tenants to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the subject rental building is a house comprised of an upper and lower suite. The tenants resided in the lower suite, and the upper suite was rented to a different tenant. Both parties agree that the relationship between the upper tenant and the tenants in this dispute (the lower tenants) was acrimonious.

Both parties agree that from the start of this tenancy until sometime in December 2021, the upstairs tenant and the tenants in this dispute (the lower tenants) shared an unlocked mailbox. Mail for both suites was delivered to the same mailbox.

Tenant FT testified that sometime in December 2021, when she went to collect her mail, she noticed that the mailbox had been changed and was locked. Tenant FT testified that she was not notified of the change and was not provided with a key to the mailbox. The landlords testified that the upstairs tenants changed the mailbox without prior authorization and did not tell them that it was locked.

Tenant FT testified that she contacted landlord AA about the locked mailbox in December of 2021 and he refused to either provide her with a key or a separate mailbox. Tenant FT entered into evidence a text exchange between tenant AT and the landlord as follows:

- Tenant AT: Hi [landlord AA], this is [tenant AT] Are you free to talk? The mailbox has been replaced with one with a lock and we haven't been informed of this nor provided with a key. This is a federal offence and the police have advised us to ask you for the key immediately.
- Landlord AA: I'm driving let me find out from [the upstairs tenants] and I can get back to you and we can talk maybe in about an hour
- Tenant AT: So that was [the upstairs tenants'] act? You didn't know?
- Landlord AA: He told us he got a new mailbox but I didn't know it had a lock on it

- Tenant AT: [Landlord AA] this is a violation of our privacy and a serious federal offence. This has been reported to the police already. We need the copy of the key immediately otherwise we'll have to break it open.

Tenant FA entered into evidence a text message exchange between tenant AT and landlord AA dated on or around December 18, 2022 which states:

- Landlord AA: You are not getting a separate mailbox. We never said you were. Your mail is not being withheld nor is there any "theft" regarding your mail. There is no "disturbing violation" occurring. There is no further action need to be taken, you will receive your mail as you always have.

Both parties agreed that the locked mailbox had a mail holder below IT and that there was a sign indicating the basement mail went in the mail holder. The landlords testified that the upstairs tenant confirmed that this was acceptable with Canada Post. Tenant FT testified that their mail was sometimes in the mail holder, sometimes on the ground and sometimes in the locked mailbox and they had to wait for the upstairs tenant to give them their mail but mail went missing during this time.

Tenant FT testified that the upstairs tenant stole her and tenant AT's mail which is why the above arrangement did not work. Tenant FT testified that given the conflict with the upstairs tenant, they were not comfortable with the upstairs tenants going through their mail. Tenant FT testified that since the landlord refused to give the tenants their own locked mailbox or a mail key, in December of 2021 they had their mail forwarded to a family member to ensure its safety. The tenants entered into evidence proof of the mail forwarding in the amount of \$56.39. Tenant FT testified that the mail forwarding was for a span of three months and that after the expiry Canada Post gave them a further two months free mail forwarding. The tenants are seeking the cost of the mail forwarding from the landlordS.

The landlords testified that they did not believe the tenants needed their own mailbox because the upstairs tenant got confirmation from Canada Post that the arrangement with the locked mailbox and the lower mail holder was acceptable. No documentary evidence to establish the correspondence received from Canada Post was entered into evidence, nor was a witness statement from the upstairs tenant. The landlords testified that they did not know exactly how the mail was delivered but that they think the tenants' mail was delivered to the locked mailbox and the upstairs tenant then put it in the mail holder below. The landlords testified that the tenants got mail forwarding almost immediately after the locked mailbox was installed.

Tenant FA testified that the landlords provided them with their own locked mailbox in the beginning of February 2022. The landlords testified that they provided the tenants with their own locked mailbox at the start of January 2022.

Analysis

Section 31 of the *Act* states:

31 (1)A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1)A landlord must not change locks or other means of access to a rental unit unless

(a)the tenant agrees to the change, and

(b)the landlord provides the tenant with new keys or other means of access to the rental unit.

Residential Tenancy Branch Policy Guideline #1 (PG#1) states:

The landlord must give each tenant at least one set of keys for the rental unit, main doors, mail box and any other common areas under the landlord's control, such as recreational or laundry rooms. The tenant must return all keys at the end of the tenancy, including those he or she had cut at his or her own expense.

[Emphasis added]

Based on the testimony of both parties, I find that the upstairs tenant changed the joint mailbox to a locked mailbox and did not provide the tenants with a key. I find that the above change happened at some point in December of 2021 and that shortly afterwards, the tenants arranged for mail forwarding.

I find that at the time the mailbox was changed, the landlords did not know that it had a lock, until informed of such by the tenants. Based on the testimony of the parties and the text messages entered into evidence, I find that the landlords refused to demand a key for the mailbox from the upstairs tenant and that the tenants were denied access to

the mailbox. I find on a balance of probabilities, that at least some of the tenant's mail was delivered to the locked mailbox and that some may also have been delivered to the mail holder below the locked mailbox.

I find that the intent of section 31 of the *Act* is to prevent the locks to any area of the residential property, including common areas such as the mailbox, from being changed without the permission of the tenant and to ensure the tenant has access if locks are changed.

Pursuant to the intent behind section 31 of the *Act*, I find that once the landlords' learned that the tenants were locked out of the joint mailbox, the landlord was required to immediately provide the tenants with access to the mailbox, or to provide them with their own mailbox. As set out in PG#1, the landlord must give each tenant at least one set of keys to the mail box. I find that in supporting the upstairs tenant's change of the mailbox after the fact without demanding a key for the tenants, the landlord effectively changed the locks to the mailbox without agreement from the tenants, contrary to section 31 of the *Act*.

I find that given the tenants' lack of access to the mailbox and the landlord's refusal to grant access in December of 2021, it was reasonable for the tenants to forward their mail to a safe location. I accept the tenant's evidence that the mail forwarding cost \$56.39. I find that this loss resulted from the landlord's failure to comply with section 31 of the *Act* and PG #1. Pursuant to section 67 of the *Act*, I award the tenants the cost of their mail forwarding in the amount of \$56.39.

I acknowledge that the landlords eventually complied with section 31 of the *Act* by providing the tenants with their own locked mailbox; however, the loss suffered from the landlord's breach of section 31 of the *Act* was already incurred by that time and so the landlords are responsible for that loss.

As the tenants were successful in this application for dispute resolution, I find that they are entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

I issue a Monetary Order to the tenants in the amount of \$156.39.

The tenants are provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: April 07, 2022

Residential Tenancy Branch