Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, MNRL-S, FFL**

Introduction
The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act, (the "Act")* and the singular of these words includes the plural.

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the "*Act*") for:

- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38;
- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord attended the hearing and was represented by his wife/agent, RS ("landlord"). The tenant KT also attended the hearing. As both parties were present, service of documents was confirmed.

The tenant did not acknowledge being served with the landlord's Notice of Dispute Resolution Proceedings package. The landlord testified that she personally served the co-tenant, MS with two Notice of Dispute Resolution Proceedings packages at 11:22 a.m. on November 8, 2021: one for himself and the other for KT. It was personally served to the tenant at his place of work. The tenant KT acknowledges she resides with MS. Based on the evidence before me, I find that the tenant MS was served with the Notice of Dispute Resolution Proceedings package in accordance with sections 89 and 90 of the *Act* and that the tenant KT is deemed served with the Notice of Dispute Resolution Proceedings package pursuant to section 71.

The landlord acknowledges receiving the tenant's evidence package and had no issues with timely service of it.

Both parties submitted late evidence the morning of the hearing and acknowledged that they didn't serve the other party with that evidence. I ruled that the late evidence would not be admissible for the hearing as it was not exchanged in accordance with Rule 3 of the Residential Tenancy Branch Rules of Procedure. Both parties indicated they understood.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of compensation against the tenant?
Can the landlord retain the tenant's security deposit?
Can the landlord recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The rental unit is one of two single family homes located on a large property. The tenants lived in "house A", while their friends lived in "house B". The month-to-month tenancy began on August 1, 2022, with rent set at $2,500.00 per month, payable on the first day of the month. The landlord collected a security deposit of $1,250.00 and a pet damage deposit of $1,250.00 which she continues to hold. The landlord did not do a condition inspection report with the tenants at the commencement of the tenancy.

The landlord testified that the tenant "O" living in house B required a new fridge. She found one on sale and the landlord approved replacing the fridge in that house. "O" asked if the fridge in house A could also be replaced and the landlord agreed to it, with a maximum value of $700.00.

The landlord testified that rent for both houses was usually paid for in cash, with "O" making the payments. On August 31st, the landlord KS attended the property to collect rent and "O" gave KS the rent for both houses. KS provided a receipt for house A in the amount of $2,500.00 and the receipt was provided as evidence.

The landlord testified that during the same transaction on August 31st, KS then removed $800.00 cash from the rent money and gave it back to "O" for purchasing the fridge for house A. The landlord testified that no receipts for the return of the cash was sought or provided, however in the landlord's evidence package there is a note dated August 9, 2021 stating, *"Received from [landlord, RS] $700.00 (seven hundred dollars) to be put towards a new fridge".* The name of the recipient is not printed and the signature on the note does not appear to match either of these tenants' signatures as depicted on the tenancy agreement. The landlord testified that when the tenancy ended, the tenant had removed the newly purchased refrigerator.

The landlord testified that on October 29th, she called the tenant to find out when they were paying their November rent and got no reply. Her husband went to the property the following day. "O" came out to the husband's car and provided receipts for all the rent payments made up to that day, (August, September and October) as well as a receipt for November, although the tenant never paid November's rent. The landlord had pre-drafted the November rent receipt on the assumption that the tenant would pay rent and the landlord's husband mistakenly provided the receipt to the tenant. The November rent payment never came, according to the landlord.

Later that day, October 30th, the tenant and "O" from house B dropped off two one-month notices to end the tenancy for both sets of tenants in houses A and B. The one signed by the tenants in house A was not supplied as evidence but the one from "O" was, and the parties agree that the tenants in this dispute signed and delivered an identical one relating to the tenants in this dispute. The notice to end tenancy is dated November 26, 2021, rather than October 26, 2021, and states that the tenants will be moving out on October 29-30. In the notice, the tenants write, "*Please consider this letter to be my official 30-day notice and note that this exceeds the required amount of notice stated in my agreement as we provided you with rent for November in cash."*

The landlord argues that the tenants gave notice at the end of October and ended their tenancy in October without paying November's rent. The landlord seeks to recover one month's rent for failure to provide a full month's notice.

The tenant gave the following testimony. The transaction regarding the refrigerator had nothing to do with her. "O" bought the fridge, and the landlord approved the purchase of the fridge to go into house A. The tenant acknowledges that "O" took the fridges from both house A and house B when she left, but "O" felt entitled to do so, as she paid for them. Either way, it has nothing to do with her. She paid full rent for each of the months throughout the tenancy and provided the receipts given to her by the landlord. There is no deduction on the August rent as stated by the landlord. On August 31st, she gave the landlord September's rent in an envelope containing cash and got a receipt from the landlord KS in the amount of $2,500.00.

Regarding the landlord's claim for November's rent, the tenant testified that she paid rent for November and got a receipt for the payment. She and "O" ended the tenancy early due to deficiencies noted on their notice to end tenancy and paid rent for the month of November, even though they decided to vacate early. There is nothing owing to the landlord.

Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C:

In order to determine whether compensation is due, the arbitrator may determine whether:

1. a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;

3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

- [the 4-point test]

- Refrigerator claim

As stated above, the landlord bears the onus to prove their case as they are the applicant. The parties agree that the arrangements to purchase and replace the fridge was all done through "O", the occupant of house B, not any of the tenants in house A. The landlord clearly testified that the KS, the co-landlord, gave "O", the occupant of house B, either $700.00 or $800.00 cash, the landlord gave contradictory testimony as to how much was given. Clearly, the tenants in house A were never given any cash, based on the landlord's own testimony.

Further, the tenant in house A denies receiving any kind of reimbursement or recovery of a $700.00 credit and the receipt dated August 7th stating *"Received from [landlord, RS] $700.00 (seven hundred dollars) to be put towards a new fridge"* does not appear to bear the signature of either of the tenants in house A. Curiously, the receipt dated August 7th apparently contradicts the landlord's testimony that it was on August 31st, that the $700.00 cash was removed from the September rent payment and then returned to "O". Lastly, the tenant was provided with a receipt for rent for each of the months of the tenancy, including September's which indicates full payment of rent.

On a balance of probabilities, I find the landlord has failed to provide sufficient evidence to establish that the tenants in house A were ever given $700.00 cash or that they had anything to do with the purchase of the fridge. Nor has the landlord provided sufficient evidence to show that the tenant appearing before me took the fridge at the end of the tenancy. I do not find the tenants in house A responsible for the fridge removal and I do not find they were given any kind of reimbursement of $700.00. Consequently, this portion of the landlord's claim is dismissed.

- Claim for one month's rent

The landlord testified that the receipt for November's rent was given to the tenants in error and that I should base my decision solely on her testimony that she drafted and signed the rent receipt and gave it to the co-landlord who mistakenly handed it over without receiving payment. Meanwhile, the tenant gave diametrically opposing testimony saying that rent was paid in cash and that she was provided with the receipt upon payment. I find there is a lack of evidence from the landlord to corroborate their version of events and I find myself questioning why the co-landlord would supply a

receipt when rent wasn't actually paid for November or why the landlord drafted and signed a receipt not knowing if rent was going to be paid. On a balance of probabilities, where the onus is on the landlord/applicant to satisfy me their version of the events is the most likely to be accurate, I find I must rule in favour of the tenants. I find the tenants provided a full month's notice to end their tenancy and paid rent for the last month of their tenancy (November). The landlord is not entitled to be compensated and I dismiss this portion of the landlord's application.

- Return of security deposit

At the commencement of the tenancy, the landlord did not pursue a condition inspection of the suite with the tenant, as required by section 23 of the *Act*. Pursuant to section 24, the landlord's right to claim against the security deposit is extinguished if the landlord does not offer the tenant at least two opportunities for inspection at the start of a new tenancy.

Section 38 of the *Act* addresses the return of security deposits.

> ***38 Return of security deposit and pet damage deposit***
> *(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*
> *…*
>
> *(5)The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].…*

(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.

The landlord acknowledges the tenancy ended on October 30th and that she got the tenant's forwarding address on the same day. Although the landlord filed her application for dispute resolution seeking to retain the security deposit within 15 days, her right to claim against it had already been extinguished by her failure to conduct a condition inspection report with the tenants at the commencement of the hearing. Consequently, the landlord must pay the tenant double the amount of the security deposit or pet damage deposit, or both, as applicable in accordance with section 38. As this is a statutory award, I have no discretion in determining whether the deposits should be doubled.

This is further clarified in Residential Tenancy Branch Policy Guideline PG-17 which says, in part C-3:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

In this case, section 38(6) requires that the tenant's security deposit of $1,250.00 and pet damage deposit in the amount of $1,250.00 be doubled to $2,500.00 each respectively. The tenants are entitled to a monetary order in the amount of $5,000.00.

As the landlord's application was not successful, the landlord is not entitled to recover the $100.00 filing fee for the cost of this application.

Conclusion

I award the tenants a monetary order in the amount of $5,000.00.

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: May 31, 2022

Residential Tenancy Branch