Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File #210067746: MNDCL-S, MNDL-S, FFL
File #210049594: MNDCT, MNSD, MNRT, FFT

Introduction

The Landlords seek the following relief under the *Residential Tenancy Act* (the "*Act*"):

- Compensation for monetary loss or other money owed pursuant to s. 67;
- Compensation for damages caused by the Tenants, their pets, or their guests pursuant to s. 67; and
- Return of their filing fee pursuant to s. 72.

The Landlord advances its monetary claims against a security deposit and pet damage deposit.

The Tenants seek the following relief under the *Act*:

- Compensation for monetary loss or other money owed pursuant to s. 67;
- Compensation for the cost of emergency repairs made by the Tenants during the tenancy pursuant to ss. 33 and 67;
- Return of the Tenants' security deposit and pet damage deposit pursuant to s. 38; and
- Return of their filing fee pursuant to s. 72.

B.L. appeared as the Landlord. She was represented by counsel, P.O. B.F. and R.N. appeared as Tenants.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Landlord's counsel advised that the Tenants were served with their Notice of Dispute Resolution and evidence by way of registered mail sent on March 30, 2022. The Tenants acknowledge receipt of the Landlord's application materials. I find that pursuant to s. 71(2) of the *Act* that the Tenants were sufficiently served with their application materials based on their acknowledged receipt.

Preliminary Issue – Dismissal of the Tenants' Claim

The Tenants advise that they served Landlord's counsel with their Notice of Dispute Resolution and evidence by way of registered mail, which was received on April 25, 2022. Landlord's counsel acknowledges receipt of the Notice of Dispute Resolution but denies receipt of the Tenants evidence. Landlord's counsel objected to late service of the application.

Upon review of the Tenants' application, it was filed with the Residential Tenancy Branch on September 26, 2021 and the Notice of Dispute Resolution was provided to the Tenants on October 4, 2021. The Tenants explained that they had initially attempted service via email in the fall of 2021. Landlord's counsel objected to service via email. When I asked whether email is an approved form of service as contemplated by s. 43 of the Regulations, the Tenants admitted that the parties had not provided email addresses for service.

The Tenants argued that the application was served via registered mail, an approved form of service under s. 89 of the *Act*, within 7-days of the hearing. The Tenants say they were advised by information services with the Residential Tenancy Branch that this timeframe was permitted given there were cross-applications.

With respect to the Tenant's argument, I emphasized at the hearing that there is a clear distinction between the Notice of Dispute Resolution, which sets out the claim, and the evidence. Rule 3.1 of the Rules of Procedure is quite clear that an applicant must serve the Notice of Dispute Resolution within three days of its receipt by the applicant from the Residential Tenancy Branch. The three-day time-limit for serving the Notice of Dispute Resolution need not be applied strictly provided the respondent has an opportunity to provide a fulsome response to the claim. Under the circumstances, service of the claim a mere 8-days before the hearing is insufficient time for the respondent Landlords to respond to the Tenant's claim.

I find that the Tenants failed to serve the Notice of Dispute Resolution within the proscribed timeframe set out under Rule 3.1 of the Rules of Procedure and that to permit it to proceed would be unduly prejudicial to the Landlord's ability to respond. I further find that the Tenants failed to demonstrate service of their evidence, which Landlord's counsel denies receiving.

In the face of the above-mentioned issues of service and in consideration of Policy Guideline #12, I dismiss the Tenants' application with leave to reapply. However, the Tenants' claim for return of their filing fee under s. 72 is dismissed without leave to reapply. They shall bear the cost of their own application. I further do not include the Tenants' evidence as they have failed to demonstrate that it was served at all. The evidence the Tenants provided to the Residential Tenancy Branch will not be considered.

The hearing proceeded strictly on the Landlords' application.

Issue(s) to be Decided

1) Is the Landlord entitled to compensation for damages caused by the Tenants?
2) Is the Landlord entitled to compensation for monetary loss?
3) Is the Landlord entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on August 1, 2020.
- The Landlords received vacant possession of the rental unit on August 29, 2021.
- Rent of $1,200.00 was payable on the first day of each month of the tenancy.
- The Landlords hold a security deposit of $600.00 and a pet damage deposit of $400.00 in trust for the Tenants.

A written copy of the tenancy agreement was put into evidence by the Landlords. The tenancy agreement sets out that the Tenants are to pay utilities, which was confirmed by the Tenants at the hearing.

The parties described their interpersonal conflict, with the Tenants referring me to a text message sent to them by the Landlord J.L.. The interpersonal conflict is not relevant to the present claim. However, I provide this context as the Tenants admit that they have not provided the Landlords with their forwarding address due to alleged safety concerns flowing from the conflict. They advise that they did not want the Landlords to know where they currently reside and that the pet damage deposit and security deposit could have been returned to them electronically via email address.

The Landlord admits that no move-in inspection was conducted nor move-out inspection. Landlord's counsel advised of an informal walkthrough whereby the parties inspected the state of the rental unit. However, no written condition report was ever completed.

The Landlords claim for damages that they say were caused by the Tenants. These include the following as set out in the Landlords' monetary order worksheet and in written submissions:

- Rekeying locks: $233.10
- Window Repair: $189.00
- Screen Replacement: $22.80
- Vent Register Cover: $12.08
- Fridge Crisper Drawer: $101.82
- Natural Gas Bill: $366.93

Total: $925.73

The Landlords submit a series of receipts in support of these amounts and a utility bill. The invoice for the screen replacement is listed as being $44.80, though the Landlord and her counsel only advised with respect to the claim for $22.80 during the hearing. The other amounts are supported by the receipts and invoices.

At the hearing, the Tenants admit that they caused the damage resulting in the repairs claimed above by the Landlords. The Tenants further admit that they did not pay the natural gas bill as required under the tenancy agreement and that the bill provided corresponds to the period in which the occupied the rental unit.

The Landlords indicate that the Tenants lost the keys for the rental unit, which necessitated the rekeying of the locks. The Tenants admit that they lost the keys for the rental unit and could not return them. The Landlord mentioned that the Tenants had argued that new keys could have been cut from the keys held by the Landlords. The

Landlord argued this was not done due to security concerns following the loss of the keys.

The Landlords further seek compensation for their personal labour cost to clean the backyard. The Landlord and her counsel advise that the backyard was covered in dog feces from the Tenants' pet, which included the burying of feces throughout the backyard. The Landlords seeks $1,000.00 for the cost of cleaning the backyard, which they described as non-pecuniary damages.

The Tenants indicate that the backyard had been torn up after a leak for the water to the residential property had been repaired. They confirm burying dog feces in the holes that were left behind and advise that they covered the dog feces filled holes with dirt.

The Landlord argued that the backyard was not torn-up except for some wheel track ruts left behind by work vehicles. The Landlord further advised that the dog feces was spread about the yard and was not all buried below ground as alleged. The Landlords provide photographs of what appears to be dog feces in a hole.

The Landlords also seek compensation for a damaged mattress. The tenancy agreement indicates that certain items were part of the tenancy, though the Landlord advised that the rental suite was not furnished except for the items listed. The other named Landlord, J.L., stored certain personal items in the basement of the residential property. The Landlord confirmed the basement formed part of the rental unit. The Landlord advised that a mattress that had been stored in the basement by J.L. was destroyed by the Tenants' dog. They estimate the cost of the destroyed mattress at $500.00.

The Tenants do not deny that the mattress had been destroyed by their dog. However, they draw my attention to a text message exchange in the Landlords' evidence whereby they notify J.L. of the mattress damage. The text message exchange is dated August 16, 2021. J.L. is show replying "Just clean it up and take it to the dump and we'll call it even." The Tenants indicate they did just that.

The Landlord argued that the text message of August 16, 2021 is indicative of J.L.'s understanding nature and should not be taken as a waiver of their ability to claim for the damage to the mattress.

The Landlords provide photographs of other damage to the items within the rental unit but do not claim for these amounts

Analysis

The Landlords seek compensation for damages to the rental unit and for other monetary loss.

I take note that the doubling provision of the security deposit and pet damage deposit under s. 38(6) of the *Act* does not apply under the circumstances. The Tenants freely admit that they did not provide the Landlords with their forwarding address. They argue that the Landlords have their email address and could have returned their security deposit and pet damage deposit electronically. The Tenants' argument must fail as s. 38(1) of the *Act* is quite clear that the 15-day return/claim window is triggered by the later of either the tenancy ending or the forwarding address being provided. The *Act* places no consideration to alleged safety concerns with respect to forwarding addresses.

As a result of the Tenants failure to provide a forwarding address, questions of extinguishment resulting from the Landlords' failure to complete a move-in condition inspection report as required of them under s. 23 of the *Act* are not relevant. As set out under s. 38(1) of the *Act*, the Landlords' obligation to return the security deposit or claim against it would have been triggered once the Tenants provided their forwarding address. This did not occur. As the Landlords did not have the Tenants forwarding address, they were under no obligation to return the security deposit or pet damage deposit as required by s. 38 of the *Act*.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the 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.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

The Landlords advance various claims with respect to damage to the rental unit. I note that the Tenants have an obligation under s. 32(3) of the *Act* to repair damage to the rental unit or common areas cause by their actions or neglect. There is a further obligation under s. 37(2) of the *Act* that a tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

The Tenants admit that they are responsible for the damage as claimed by the Landlord. Given the Tenants' admission, I find that they breached their obligations under ss. 32(3) and 37(2) of the *Act* to repair damage they have caused. I further find that the Landlords have quantified their claim as set out in the receipts and could not have mitigated their damages under the circumstances.

I note that the screen repair receipt is for an amount greater than that claimed by the Landlords at the hearing. Accordingly, I limit the claim for this amount based on the submissions of the Landlord and her counsel.

I find that the Landlords have established their monetary claim for damages caused to the rental unit in the following amounts:

- Window Repair: $189.00
- Screen Replacement: $22.80
- Vent Register Cover: $12.08
- Fridge Crisper Drawer: $101.82

With respect to the keys, s. 37(2) of the *Act* requires a tenant to return all keys to the landlord at the end of the tenancy. The Tenants admit that this did not occur as they lost the keys. I find that the Tenants' breach of s. 37(2) of the *Act* warranted the Landlords' rekeying expense to the rental unit. I find that the Landlords have quantified their claim as supported by the receipt and that this could not have been mitigated under the circumstances. I find that the Landlords have established a monetary claim for damages in the amount of $233.10 for rekeying the locks.

With respect to the natural gas expense, the Landlords claim this as damage to the rental unit. This is not correct as it is properly claimed as other monetary compensation, which had been claimed but for a separate amount. I find that this minor distinction is not relevant as the Tenants had clear notice of the utilities claim within the application and supporting evidence.

The Tenants admit that they had an obligation to pay utilities under the tenancy agreement and that they did not pay the natural gas bill provided by the Landlords. The

Tenants further admit that the amount claimed by the Landlords correspond to the period of time in which they resided at the rental unit. Based on the Tenants admissions, I find that they breached their obligation to pay utilities under the tenancy agreement. I further find that the Landlords have quantified their claim as supported by the natural gas invoice and this could not have been mitigated. The Landlords have established their claim for the natural gas expense in the amount of $366.93.

The Landlords subsequent claim for the mattress is not allowed on two grounds. Firstly, the mattress was not a listed item forming part of the tenancy as set out under the tenancy agreement. The Landlord J.L. stored personal items in the basement of the rental unit which the Tenants had exclusive occupancy. There is no dispute that the Tenants could not use the Landlord's personal items and they were in the basement strictly for storage. I have concerns that this type of arrangement does not fall within the landlord-tenant relationship as it is not governed by the tenancy agreement and thus would fall outside the jurisdiction of the *Act*. The Landlords essentially claim a bailee-bailor arraignment with respect to their personal property left behind at the rental unit. This type of claim, if it is to be pursued, cannot be advanced at the Residential Tenancy Branch.

Secondly, the Landlord J.L. clearly made a compromise with the Tenants, as evidenced in the text message of August 16, 2021, that if they disposed of the mattress then he would "call it even". The Landlord B.L. argued the permissive attitude of J.L. should not limit their ability to claim for this expense. I do not agree with B.L.'s argument. J.L. made a clear agreement with the Tenants respecting the settlement of the expense for the mattress and this settlement prevents the Landlords ability to claim this amount.

Accordingly, the claim for $500.00 for the mattress is not allowed as I do not have jurisdiction to adjudicate the claim and, if I did, I would dismiss it on the grounds that this aspect of the claim has been settled prior to the hearing.

Finally, the Landlords claim $1,000.00 for non-pecuniary damages for cleaning the backyard of dog feces. The Landlords provide no evidence to support the amount of time they spent cleaning the backyard nor the rate of pay levied for their time. Claims under s. 67 require the applicant to quantify their claim with supporting evidence. It is insufficient to assert expense for personally cleaning a rental unit, or the backyard in this case, without an accounting of how the amount claimed was obtained. I find that the Landlords have failed to quantify their claim in the amount of $1,000.00 for cleaning the backyard and dismiss this portion of their claim without leave to reapply.

In total, I grant the Landlords monetary claim in part and grant the following amounts:

Item	**Amount**
Window Repair	$189.00
Screen Replacement	$22.80
Vent Register Cover	$12.08
Fridge Crisper Drawer	$101.82
Rekeying locks	$233.10
Natural Gas Bill	$366.93
TOTAL	**$925.73**

As the Landlords were partially successful in their application, I find that they are entitled to the return of their filing fee. I order pursuant to s. 72(1) of the *Act* that the Tenants pay the Landlord's $100.00 filing fee.

Conclusion

I grant the Landlords monetary claim for damages and compensation in the amount of $925.73.

I do not grant the claim for the mattress in the amount of $500.00 as the damage occurred outside the context of a landlord-tenant relationship, rather arising from a bailor-bailee relationship for which I do not have jurisdiction to determine. Also, the parties appear to have settled this claim as evidenced in the parties' text message exchange.

I further do not grant the Landlords claim in the amount of $1,000.00 for the personal time in cleaning the backyard. The Landlords failed to provide sufficient evidence to quantify this aspect of their claim and this portion of their claim is dismissed without leave to reapply.

As the Landlords were partially successful, I order that the Tenants pay the Landlords $100.00 filing fee pursuant to s. 72(1) of the *Act*.

Pursuant to s. 72(2) of the *Act*, I direct that Landlords retain the security deposit and pet damage deposit in partial satisfaction of the total amount owed by the Tenants.

I make a total monetary order taking the following into account:

Item	**Amount**
Claims for damages/compensation	$925.73
Landlords' filing fee	$100.00
Less security deposit and pet damage deposit to be retained by Landlords pursuant to s. 72(2)	-$1,000.00
Total	$25.73

Pursuant to s. 67, I order that the Tenants pay **$25.73** to the Landlords.

It is the Landlords' obligation to serve the monetary order on the Tenants. If the Tenants do not comply with the monetary order, it may be filed by the Landlords with 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: May 04, 2022

Residential Tenancy Branch