



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNSD, FFT

Introduction

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

- a monetary order for \$775, representing the return of all of the security deposit and pet damage deposit (the "**Deposits**") from landlord BM pursuant to section 38;
- a monetary order for \$16,200 representing 12 times the amount of monthly rent from landlord KM pursuant to sections 51(2) and 62 of the Act; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

All 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.

Landlord BM sold the residential property to landlord KM. Each attended the hearing on their own behalf, representing their own interests.

Preliminary Matter – Request for Adjournment

At the outset of the hearing, landlord KM asked for an adjournment so that he could submit documentary evidence in response to the tenants' application. He testified that he received the tenants' notice of dispute resolution proceeding materials in May 2022 but misplaced them when he moved. He testified he was unaware of the process to submit documentary evidence until an hour before the hearing, when he phoned the Residential Tenancy Branch (the "**RTB**"). He stated that if he could not get an adjournment, he would make an offer to settle the dispute.

The RTB Rules of Procedure require that a respondent serve the applicant with copies of their documentary evidence no later than seven days prior to the hearing. This information was included on the materials which the tenant served KM.

RTB Rule of Procedure 7.9 sets out the criteria for granting an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;

- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party

The reason for the adjournment was due to KM's neglect in adequately preparing for the hearing. Had he retained and read the materials provided to him, he would have known the proper procedure to follow. He could have called the RTB earlier to obtain such information.

An adjournment would have the opposite effect of increasing the likelihood in reaching a resolution: if an adjournment were granted, then KM would dispute the application, but if it were not granted, the parties may come to an agreement to settle the matter.

Furthermore, I find that the tenants would be unduly prejudiced if I granted an adjournment. They made their application in March 2022. They have almost seven months for this hearing. I do not find it appropriate to cause a further delay when they have not contributed to need for such a delay.

Accordingly, I dismissed KM's request for an adjournment.

Settlement Of Tenants' Claim Against KM

Pursuant to section 63 of the Act, an arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute between the tenants and KM and of all future issues between the tenants and KM relating to the tenancy, the circumstances which led to its end, and the residential property:

1. KM will pay tenant DL \$6,000 on or before October 10, 2022
2. KM will pay tenant MD \$6,000 on or before October 10, 2022
3. KM will make these payments via cheque and will send them to the tenants' forwarding address, which is set out on the cover of this decision.

These particulars comprise the full and final settlement of all aspects of this dispute between the tenants and KM and of all future issues between the tenants and KM relating to the tenancy, the circumstances which led to its end, and the residential property. The tenants and KM gave verbal affirmation at the hearing that they understood and agreed to the above terms as legal, final, and binding.

To give effect to the settlement reached between the tenants and KM, and as discussed at the hearing, I issue the attached monetary orders ordering KM to pay tenants DL and MD each \$6,000 by October 10, 2022.

I make no findings of fact relating to the tenants' claim against landlord KM.

After the settlement agreement was reached, landlord KM disconnected from the hearing.

The balance of the hearing dealt with the tenants' application against landlord BM.

Preliminary Issue – Service of landlord BM

The tenants testified, and BM confirmed, that the tenants served BM with the notice of dispute resolution package and supporting documentary evidence. BM testified, and the tenants confirmed, that BM served the tenants with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Are the tenants entitled to:

- 1) an order that BM return the Deposits?
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The tenants and BM entered into a written tenancy agreement starting August 1, 2017. They entered this agreement upon BM acquiring the rental unit from the previous owner (who is not a party to this application), with whom the tenants had a prior tenancy agreement which started in 2015. At the start of the prior tenancy, the tenants paid a security deposit of \$625 and a pet damage deposit of \$150 to the previous owner. The tenants testified they and the prior owner conducted a move-in condition inspection.

BM testified that the previous owner did not transfer the Deposits to him when he purchased the rental unit. However, he testified that, in principle, he did not dispute that he was responsible for returning the Deposits to the tenants at the end of the tenancy. However, he argued that, in practice, he did not have to return the Deposits due to the condition of the rental unit at the end of the tenancy (more on this below). I note that the

tenancy agreement between the tenants and BM indicates that both a security deposit and a pet damage deposit was required to be paid to BM by the tenants and indicates that both were “paid out from previous landlord”.

By the end of the tenancy, the tenants’ monthly rent was \$1,350.

The tenancy ended on December 2, 2022, when tenant MD vacated the rental unit (DL vacated several days prior). The tenants provided their forwarding address to BM via text message on December 1, 2022. BM acknowledged receiving it at the hearing.

The parties did not conduct a move-out condition inspection. BM did not offer the tenants two opportunities to conduct a move out inspection using a Notice of Final Opportunity to Schedule a Condition Inspection (form # RTB-22).

Instead, BM attended the rental unit on December 2, 2022 after MD vacated. He testified that this was after his night shift and that he was tired. He testified that the tenants failed to clean the rental unit prior to vacating. He described the condition of the rental unit in a written statement he submitted with his documentary evidence as follows:

There were bags of soil, plastic and plastic unbroken planters outside. Also a black dirty computer chair and a bicycle. Along with pallets everywhere. This evidence will be supported from my videos as well.

Inside the dwelling, the walls were disgusting, the oven still had orange grime, the window seals had mold, windows were dirty, cupboards still had traces of food, and the fridge had stains as it wasn’t washed. The rooms were barely cleaned alongside mouldy window seals and the tub had to be cleaned multiple times with heavy cleaners as it wasn’t completed either.

He submitted video and photographic evidence supporting this description. The tenants did not dispute the condition of the rental unit was as described by BM.

BM testified that he spent nine hours cleaning the rental unit to get it to a suitable condition. He testified that he due to this condition, he did not return the Deposits to the tenants. He has not made any application to the RTB to retain the Deposits. He stated that making such an application would be a waste of time.

The tenants stated that they only sought the return of the Deposits and that they explicitly waived any entitlement to the return of double the Deposits.

Analysis

I find that BM holds the Deposits in trust for the tenants for the following reasons:

- 1) the tenancy agreement between the tenants and BM indicates that they were required to pay the Deposits
- 2) the tenancy agreement indicated the Deposits were paid out from the previous landlord (which I understand to mean that BM considered them to have been paid by way of a transfer from the prior owner of the rental unit)
- 3) BM stated but for the tenants' failure to adequately clean the rental unit, he would have returned the Deposits.

Section 38(1) of the Act states:

Return of security deposit and pet damage deposit

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.

Based on the testimony of the tenants, I find that the tenancy ended on December 2, 2022, when MD vacated the rental unit and that the tenants provided their forwarding address in writing to the landlord on December 1, 2022, when DL texted it to BM. I find that send the address via text message is sufficient for the purposes of the Act, in light of BM's acknowledgement of receiving it.

I find that BM has not returned the Deposits to the tenants within 15 days of receiving their forwarding address, or at all.

I find that BM has not made an application for dispute resolution claiming against the Deposits within 15 days of receiving the forwarding address from the tenants, or at all.

It is not enough for BM to allege the tenants caused damage or failed to clean to the rental unit. The Act requires that that he actually apply for dispute resolution, claiming against the Deposit, within 15 days from receiving the tenants' forwarding address.

BM did not do this. Accordingly, I find that he has failed to comply with his obligations under section 38(1) of the Act.

Additionally, by not offering the tenants two opportunities to conduct a move-out condition inspection (using form #RTB-22 for the second opportunity), I find that BM has

breached his obligations under section 35 of the Act, and his right to retain the Deposits has been extinguished pursuant to section 36(2) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim against a deposit within the specified timeframe:

- (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 language of section 38(6)(b) is mandatory. In ordinary circumstances, this would mean that the tenants are entitled to an amount equal to double the Deposits. However, the tenants have explicitly waived any entitlement to the doubling of the Deposits. Accordingly, I order BM pay the tenants \$775, representing the return of the Deposits.

It is clear from BM's testimony and written submissions that he believes he is entitled to compensation due to the condition of the rental unit at the end of the tenancy. This may be the case and I explicitly make no finding one way or the other (as this issue is not before me).

It is equally clear that BM is unaware of the responsibilities and obligations that the Act imposes on him as landlord and that he believes is entitled to unilaterally keep the Deposits due to the condition the rental unit was in at the end of the tenancy. This belief is incorrect. Instead of following the path for compensation for damages set out in the Act (which may have led to him being permitted to retain the Deposits), BM ignored the provisions and acted as he thought appropriate.

I did not make the monetary order above because I have found that the tenants are not responsible for compensating the landlord for any damage they may have caused to the rental unit. Rather, I make the monetary order because BM failed to comply with his obligations under the Act.

I must note that nothing in this decision prevents BM from making an application against the tenants for damage he incurred as a result of the tenants alleged failure to adequately clean the rental unit at the end of the tenancy.

The tenant's application was partially brought against landlord KM and partially against landlord BM. As the tenants have been successful in the portion of their application against BM, I find it appropriate to order that he reimburse them half their filing fee (\$50).

Conclusion

The tenants are successful in their application against landlord BM.

Pursuant to sections 62 and 72 of the Act, I order that the landlord BM pay the tenants \$825, representing the return of the Deposits and half the filing fee.

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: October 5, 2022

Residential Tenancy Branch