



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDCT

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for May 16, 2022.

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

VS appeared for the tenants, while SG and RM appeared as agents for the landlord. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. Both parties confirmed that they understood.

As the parties were in attendance, I confirmed that there were no issues with service of the tenants' application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord duly served with the tenants' application and evidence.

In my Interim Decision I had noted that the landlord had agreed to submit a request for the tenants to be mailed a copy of the Form K, move-in inspection report, and tenancy agreement as soon as possible. At the reconvened hearing, the landlord testified that they were unable to obtain these documents as the previous employee had possession of these documents, and now they are missing. I am satisfied that the landlord provided a credible explanation for why they were unable to produce these documents. The

landlords confirmed in the hearing that they would be relying on their sworn testimony, and not any written evidence. Accordingly, the hearing proceeded.

Issues(s) to be Decided

Are the tenants entitled to the return of their security deposit and related compensation under the *Act*?

Are the tenants entitled to a monetary order for compensation for monetary loss under the *Act*, regulation, or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy began on May 30, 2021, and ended on July 31, 2021. Monthly rent was set at \$2,450.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$1,225.00. Both parties confirmed that the landlord retained \$150.00 for cleaning, and returned the remainder to the tenants.

The tenants filed this application requesting the following monetary orders:

Item	Amount
Return of Security Deposit Withheld by Landlord	\$150.00
Compensation for Failing to Comply with Section 38 (double deposit)	2,450.00
Unclean premises	150.00
Failure to provide dishes, cutlery	325.00
Unusable dishwasher	250.00
Violation by taking rent early	125.00
Total Monetary Order Requested	\$3,450.00

The tenants testified that the landlord had with withheld \$150.00 of their security deposit without their permission or an order allowing them to do so. The tenants provided their forwarding address to the landlord on July 31, 2022 by email. The landlord confirmed that they withheld this amount for cleaning fees.

The tenants are also seeking compensation related to various issues in the tenancy. The tenants testified that the rental unit was not clean upon move-in, and that they had to spend 2.5 hours cleaning the rental unit, which included cleaning food particles. The tenants requested \$150.00 as compensation. The landlord responded that the cleaners do a “decent clean” of the premises before the move-in.

The tenants also felt that the rental unit was not “furnished” as promised by the landlord. The tenants submitted email correspondence sent to the landlord about the various issues, which the tenants felt were not addressed in a timely manner. The tenants submit that many items were missing or broken. The tenants testified that the landlord took 11 days to replace the broken items. The landlord responded that the rental unit was furnished, but that the tenants were responsible for their own pots and pans. The landlord testified that a few dishes and cutlery were provided as a courtesy, but that these items were not included in the monthly rent.

The tenants are also requesting compensation for the dishwasher that was not working. The tenants testified that they were without a dishwasher from May 30, 2021 to June 4, 2021, and requested \$50.00 for each day that they did not have use of the dishwasher. The landlord responded that they were unaware of the fact that the dishwasher was broken as the previous tenant did not report the problem to the landlord. The landlord testified that after the tenants informed the landlord of the problem, they immediately contacted an appliance repair person, but due to turnaround times the dishwasher could not be repaired for 5 days. The landlord felt that they had responded in a timely manner to provide repairs.

The tenants also felt that the landlord violated the rental agreement by requesting the rent early. The tenants testified that although rent was not due until the first day of each month, the landlord wanted the July 2021 rent on June 30, 2021. The landlord responded that they were not aware of this incident, and that rent was due on the first.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant’s forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. Pursuant to section 38(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. With respect

to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

The tenancy agreement must not provide that the landlord automatically keeps all or part of the security deposit at the end of the tenancy.

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 not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing; ...*
- *whether or not the landlord may have a valid monetary claim.*

Example A in Policy Guideline 17 explains how monetary compensation is calculated:

The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- *Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.*

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

In accordance with section 38 of the Act and the example above, I find that the tenants are therefore entitled to a monetary order amounting to double the original security deposit (\$2,450.00), less the \$1,075.00 returned to the tenants for a total monetary order of \$1,375.00.

I will now consider the remaining claims.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) 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.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bear the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address

I have reviewed and considered all relevant evidence presented by the parties. On preponderance of all evidence and balance of probabilities I find as follows.

The tenants are seeking compensation in the amount of \$150.00 for the failure of the landlord to properly clean the rental unit at the beginning of the tenancy. The landlord disputes that this was the case, and argued that the rental unit was cleaned by cleaners. As noted above, the onus is on the tenants to not only support that the landlord failed to fulfill their obligations, but the tenants must also support the value of their loss. In this case, I find that the evidence falls short. The tenants did not provide sufficient evidence to support the actual condition of the rental unit upon move in,

whether this is supported by photos, videos, witness testimony, or invoices. Furthermore, although the tenants claim that they had spent 2.5 hours cleaning the rental unit, and how this would equate to a loss of \$150.00, I am not satisfied that the value of this loss is supported in evidence. Accordingly, I dismiss this portion of the tenants' application without leave to reapply.

The tenants are also seeking a monetary order in the amount of \$325.00 for the failure of the landlord to provide the full range of utensils, serve ware, and cookware that were clean and unbroken. The tenants testified that the suite was rented to them furnished, and these items should be included. The landlord testified that the rental unit was rented with furniture, as noted in the tenancy agreement, and that the cutlery, cookware, and serve ware were provided as a courtesy in addition to the furniture. In review of the evidence and testimony before me, I note that although the additional items were not noted on the tenancy agreement, upon request of the tenants, the landlord did provide new items. On a balance of probabilities, despite the landlord's insistence that these items were provided as a "courtesy", I am satisfied that both parties understood that these items were to be included as part of the monthly rent. I find that the provision of these items after the tenants' requests imply that this was the case. I must now consider whether the amount requested is justified.

Although I acknowledge that the inconvenience the tenants faced while awaiting the provision of these items, I am not satisfied that the tenants had provided sufficient evidence to support that she did truly suffer a monetary loss due to fact that these items were provided at a later date.

Residential Tenancy Branch ("RTB") Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the tenants nominal damages of \$50.00 for having to wait for replacement or new items.

The tenants are also seeking compensation of a dishwasher that was not functioning. It is undisputed that the dishwasher was eventually repaired after 5 days. The landlord testified that they had responded immediately, but due to delays beyond their control, the issue took 5 days to repair. The landlord denies knowledge of the fact that the dishwasher was not functioning properly. The tenants requested \$50.00 per day for a total of \$250.00 for the loss of the dishwasher for these 5 days.

Section 65(1)(c) and (f) of the *Act* allows me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

In this matter the tenant bears the burden to prove that it is likely, on balance of probabilities, that facilities listed in the tenant’s application were to be provided as part of the payable rent from which its value is to be reduced. While I am satisfied that the tenants did not have use of the dishwasher for 5 days, I must still assess whether the tenants suffered a reduction in the value of their tenancy agreement due to this loss.

Based on the evidence before me, the loss of the dishwasher added to their inconvenience as the tenants had to wait for clean and new kitchen items. Although I acknowledge the fact that the tenants still had the option of handwashing these items, I find that the tenants rented the rental unit with the understanding that a functioning dishwasher would be included. I note that the landlord did respond in a timely manner by repairing the dishwasher as soon as possible, given the delays that were beyond their control. Despite the landlord’s efforts, the tenants still suffered a reduction in the value of their tenancy agreement. I am not satisfied that the requested \$50.00 per day was sufficiently supported in evidence. I find that \$10.00 per day to be a reasonable amount for the inconvenience, and accordingly, I order that the landlord compensate the tenants \$50.00 for the loss of use of the dishwasher.

Lastly, the tenants requested \$125.00 for a “violation” which involved the request of their rent earlier than the first day of the month. In this case, I find that the amount and issue referenced appears to be penalty that the tenants feel should be applied for the landlord’s non-compliance with the *Act* and legislation. Under section 87.3 of the *Act*, “Subject to the regulations, the director may order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that the person has

- (a) contravened a provision of this Act or the regulations,
- (b) failed to comply with a decision or order of the director, or a demand issued by the director for production of records, or

(c) given false or misleading information in a dispute resolution proceeding or an investigation.

I note that the Director has not delegated to me the authority to impose administrative penalties under section 87.3. That authority has been delegated to a separate unit of the Residential Tenancy Branch. The administrative process is separate from dispute resolution and if an administrative penalty is levied against a landlord. The Compliance and Enforcement Unit (CEU) is a team within the Residential Tenancy Branch, and the tenant may pursue the appropriate remedied through this process if they wish. As I do not have the delegated authority to administer any penalties under section 87.3 of the *Act*, I decline to make any orders under this section.

In consideration of any additional monetary claims for compensation for losses associated with the landlord's contravention of the *Act*, tenancy agreement, and legislation, I am not satisfied that the allegations of harassment or similar behaviour are sufficiently supported in evidence, and definitely not to the extent that justifies the monetary claim made by the tenants. As noted above, the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. I find that the tenant failed to support how they had calculated the amount claimed, either referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or written or oral testimony to support the losses the tenant is seeking in this application for the "violation". Furthermore, I find that the tenant failed to establish how their suffering was due to the deliberate or negligent act or omission of the landlord or their agents. On this basis I dismiss this claim without leave to reapply.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,475.00 as set out in the table below.

The tenants are provided with this Order in the above terms and the landlord must be served with a copy of 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.

Item	Amount
Compensation for Failing to Comply with Section 38 (double deposit)	\$2,450.00
Less portion of deposit already returned	-1,075.00
Failure to provide clean dishes, cutlery	50.00
Unusable dishwasher	50.00
Total Monetary Order	\$1,475.00

The remaining portions of the tenants' application are dismissed without leave to reapply.

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 19, 2022

Residential Tenancy Branch