Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX CITY REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the landlord: MNDL-S
For the tenants: MNSDS-DR, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The landlord applied for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67; and
- an authorization to retain the security deposit (the deposit), under section 38.

The tenants applied for:

- an order for the landlord to return the deposit, pursuant to section 38; and
- an authorization to recover the filing fee, under section 72.

Landlord Remax City Realty was represented by agent LT (the landlord). Tenants SB and GR (the tenant) and the landlord attended the hearing. The tenant represented tenant ML. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00.”

Preliminary Issue – Named parties

The landlord's application lists landlord "Remax City Realty LT" and respondents tenants SB and GR. The tenants' application lists tenants GR and ML and landlord LT.

The parties agreed the original tenants were the tenant and ML. In December 2021 ML moved out and a new tenancy started with the tenant and SB and the landlord. The landlord is Remax City Realty, which is represented by agent LT. The tenancy at issue is the one between the tenant and SB and the landlord.

Pursuant to section 64(3)(c) of the Act, I amend both applications to list landlord Remax City Realty and tenants SB and GR.

Preliminary Issue – Service of the landlord's application

Both parties agreed they attended the move out inspection on February 25, 2022 and the tenant wrote the forwarding address in the move out inspection report (the report).

The report indicates the forwarding address without the rental unit's number.

The tenant affirmed that he learned that his forwarding address had a rental unit's number on February 28, 2022 and he did not inform the landlord of the complete forwarding address because the landlord did not ask for the complete forwarding address. The tenants' complete forwarding address is recorded on the cover page of this decision.

The landlord served the notice of hearing and the materials (the landlord's materials) to the tenants via registered mail sent to the tenants' forwarding address recorded in the report on March 22, 2022. The tracking numbers are recorded on the cover page of this decision.

The tenant affirmed he did not receive the landlord's materials. The tenant called the Residential Tenancy Branch (RTB) and learned about the landlord's application.

Section 89(1) of the Act states:

> (1)An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

> (a)by leaving a copy with the person;
> (b)if the person is a landlord, by leaving a copy with an agent of the landlord;
> (c)by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
> (d)if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
> (e)as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
> (f)by any other means of service provided for in the regulations.

RTB Policy Guideline 12 states:

> The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.
> […]
> The respondent's address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an application for dispute resolution.

Based on the report and the testimony offered by both parties, I find the tenant provided an incomplete forwarding address in writing on February 25, 2022 and learned three days later that the address provided was incomplete. The tenant should have immediately informed the landlord of the correct forwarding address. As the tenants knew they provided an incomplete forwarding address and did not correct the address, I find the tenants' incomplete forwarding address is the tenants' address for service and the forwarding address.

I accept the landlord's testimony that the tenants were served with the landlord's materials by registered mail on March 22, 2022, in accordance with section 89(1)(d) of the Act.

Preliminary Issue – service of the tenants' application

The landlord confirmed receipt of the tenant's notice of hearing and evidence (the tenants' materials) on July 08, 2022.

Based on the landlord's testimony, I find the tenant served the tenants' materials in accordance with section 89(1) of the Act.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain the deposit?

Are the tenants entitled to:

1. an order for the landlord to return the deposit?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's and tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the applicants' obligation to present the evidence to substantiate their application.

Both parties agreed the tenancy started on December 02, 2021 and ended on February 25, 2022. Monthly rent in the amount of $1,900.00 was due on the first day of the month. The landlord collected and hods a deposit in the amount of $1,400.00. The tenancy agreement was submitted into evidence.

The tenants did not authorize the landlord to retain the deposit.

The landlord submitted his application on March 11, 2022.

The landlord confirmed receipt of the tenants' email dated May 15, 2022 with the tenants' new forwarding address, which is recorded on the cover page of this decision.

The landlord is claiming $1,400.00, as the tenants damaged the window. The landlord did not amend the application.

The landlord affirmed the tenants damaged the bedroom window. The landlord submitted a photo showing the damaged window. The report indicates: "balcony window broken". The landlord received a quotation on September 27, 2022: "The price to supply and install a new glass unit to replace failed unit is $4,585.00."

The tenant affirmed there was a storm and a chair on the balcony damaged the window during the tenancy.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> (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.

RTB Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Damaged window

Section 32(3) of the Act states: “A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant”.

Based on the undisputed testimony, the photograph, the quotation and the invoice, I find the tenants breached section 32(3) of the Act by damaging the balcony window during the tenancy and the landlord suffered a loss of $4,585.00. Tenants are responsible for damages to the rental unit even when there is a storm.

As the landlord claimed for $1,400.00 and did not amend the application, I award the landlord $1,400.00.

Deposit

Section 38(1) of the Act requires the landlord to either return the tenant’s deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant’s forwarding address in writing.

As stated in the topic “Preliminary Issue – Service of the landlord’s application”, the tenants provided their forwarding address in writing on February 25, 2022. I accept the uncontested testimony that the tenancy ended on February 25, 2022.

The landlord submitted his application on March 11, 2022, within the timeframe of section 38(1) of the Act.

Section 72(2)(b) of the Act states:

> If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted (b)in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

I order the landlord to retain the $1,400.00 deposit in full satisfaction of the award requested and dismiss the tenants’ application for an order for the landlord to return the deposit, as the landlord applied within the timeframe of section 38(1) of the Act.

The tenants are not entitled to recover the filing fee, as the tenants were not successful.

For the purpose of educating the landlord, I note that under section 19(1) of the Act, a landlord is not permitted to accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. The value of the security deposit accepted by the landlord was unlawful.

Conclusion

Pursuant to section 67 and 72 of the Act, I authorize the landlord to retain the $1,400.00 deposit in full satisfaction of the monetary award.

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: November 10, 2022

Residential Tenancy Branch