Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNSD, FFT**

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 tenant pursuant the *Residential Tenancy Act* (the "*Act*") for:

- A monetary order for damages or compensation pursuant section 67;
- An order for the return of a security deposit or pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenants attended the hearing and were represented by counsel, RW. The landlord attended the hearing and was represented by her agent/spouse, JZ ("landlord"). As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package although testified it was received late. It was sent to a former address where he no longer resides. He acknowledges receiving a second copy of the package via email from tenant's counsel on October 21st and was able to put together a response package in time for this hearing. Counsel acknowledges receipt of the landlord's evidence. I find the landlord was sufficiently served with the Notice of Dispute Resolution Proceedings package in accordance with section 89 of the *Act*.

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.

Preliminary Issue

Tenant's counsel called the person who translated a series of non-English text messages into English as a witness. The landlord testified that he reads both English and the non-English language and confirmed that the translation accurately reflects what was texted. As a result, I dismissed the tenant's witness at the commencement of the hearing.

Likewise, the landlord provided additional text messages from the same text message exchange and provided his own translation into the English language, not done by a certified translator. The tenants acknowledged that the additional texts were exchanged between the parties and that the landlord's translation into English is accurate.

Issue(s) to be Decided

Is the tenant entitled to compensation?
Is the tenant entitled to a return of the security deposit, doubled?
Can the tenant 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.

A copy of the tenancy agreement was provided as evidence. The fixed one-year tenancy began on May 1, 2019, with rent set at $3,300.00 per month, payable on the first day of each month. A security deposit of $1,650.00 was collected by the landlord which the landlord continues to hold.

Landlord's counsel points out clause #10 of the tenancy agreement addendum which reads:

The Landlord may claim a reasonable amount from the security deposit to repair damages, wear and tear, cleaning and reparations to the rental unit as necessary. The Tenants agree to take good care

of the appliances, hardwood floor, and walls. The Tenants are responsble for repairing any damage to the appliances, floor, walls. All repairs or replacement or restoration must be completed before the Tenants move out of the rental unit. The repair or replacing standard shall be the same as when the Tenants moved in the rental unit.

Tenant's counsel gave the following submissions. At the commencement of the tenancy, the landlord a tenancy agreement was conducted with the tenants by a friend of the landlord, however a copy was not provided to the tenants. The tenants point out that in the landlord's evidence, no copy of the condition inspection report done at the commencement of the tenancy was provided.

At the end of the tenancy on July 31, 2021, a move-out condition inspection report was conducted. The tenant signed the condition inspection report and provided an email address for service which tenant's counsel submits is an acceptable means to communicate under the regulations. Using the email address provided, the landlord sent to the tenant a "deposit deduction statement" together with invoices from contractors to notify the tenant that he was keeping the tenant's security deposit.

On or about May 23rd, during the first month of the tenancy, the tenants notified the landlord that there was an issue with the balcony door. In the email exchange provided by the tenants, the balcony door was not properly installed when the place was built. It cannot be locked. The tenants submit that the landlord ignored their request to fix the balcony door. The tenants seek a reduction of $100.00 for each month they door was not properly functioning, a total of $2,700.00.

On or about March 12, 2020, the tenants submit that half of the exterior door fell off the dishwasher. The tenants submit that they told the landlord that the locking mechanism was in the lock position and that it had come loose. On March 13th, they asked the landlord to find someone to do the repair ASAP as it's inconvenient when there's no dishwasher. The landlord responded on March 19th, advising that during the pandemic, he was finding it difficult to find a carpenter willing to do this small job. During this exchange, the tenant expresses her concern that it could be dangerous as she has a small child at home. The tenants seek compensation from the landlord in the amount of $100.00 for each of the 16 months they didn't have a working dishwasher.

On January 29, 2021, the tenants sent another text to the landlord telling him there is a problem with the dishwasher. In this exchange, the tenant acknowledges the landlord said he couldn't find anyone to fix the first problem and she said to "*wait a bit first with the pandemic".* In response, the landlord reminds the tenant that clause #10 of the addendum states that the tenants need to repair the appliances when damaged and that the tenant is to contact the manufacturer's repairman to fix it. The tenant provided

a $282.45 invoice from an appliance repair service dated February 17, 2021, which indicates the control panel is broken and there is no power to the diverter. The tenants testified that the dishwasher remained broken until the end of the tenancy. When I asked the tenants whether they continued to use the dishwasher between the time they told the landlord about the door panel and the error code, the tenants acknowledged they continued to use it. It continued to not lock properly.

Lastly, the tenants seek $30.00 per month for the 25 months they had a broken window blind. In early May 2021, the tenants sent a text to the landlord advising the curtains are not in working condition. The same day, the landlord says he'll get someone to look into it. On May 8th, the window coverings are repaired.

The landlord gave the following testimony. A copy of the condition inspection report on move-in was provided to the tenants by his friend who did the condition inspection report with the tenant. His friend cannot locate the landlord's copy, however the tenant should still have his own copy. The condition of the unit was like-new, as the unit was only two years old when the tenants moved in.

When the tenants moved out, the landlord shared a copy of the move-out condition inspection report signed by the tenants via Dropbox to the email address provided by the tenant KL. The landlord notes KL's email address is specified in the screenshot of the Dropbox evidence provided. The landlord testified that he never received the tenants' forwarding address and to this day, the tenants have not provided it to him.

Regarding the balcony door, the landlord submits that the text messages provided by the tenant are incomplete, misleading and inaccurate. He submits that the balcony door opened and closed but an alignment issue caused when the door was initially installed by the developer caused the door to not lock properly. In evidence, the landlord provided more of the May 24, 2019 conversation with the tenant where the tenant states, in regard to the balcony door, *"OK. It is not a big deal. Do not worry".* The landlord testified that as far as he knew, the tenant did not take any issue with the balcony door not locking.

With respect to the dishwasher, the landlord submits that there are two issues with the dishwasher. The first is the wooden panel door on the dishwasher. On March 12th, the tenant told the landlord that the problem was "not very serious" and that the panel was loose and could be put back on. The landlord testified that in March 2020, due to the concerns about the pandemic, the landlord was having difficulty finding a tradesman willing to enter people's houses to do a small repair to a dishwasher panel door. When

he found a tradesman willing to do the work by March 19th, the tenant told him to hold off on sending the repairman because she was worried about the pandemic, her child's health and safety. The landlord provided the following translation of the exchange:

A: I haven't got a confirmation yet from the person. I am concerned that he wouldn't want to go over there as soon as I've sent over the photo.

B: Then forget it now
B: wait until it gets better
B: I'm afraid to let other people come to home now.

A: ok, then wait first. I will make appointment when things are better.

B: ok.

A: you stay safe.
B: ok thank you. You, too.

The second issue with the dishwasher was that the motor going out. The landlord submits that the tenants didn't provide the full text exchange in their evidence. After being notified of the issue with the dishwasher, the landlord tells the tenants on January 30th to "*contact someone to give us a quote for the repairment, we will discuss it later".* The tenant responds with "*I will find on Monday".* The landlord testified that he was never provided with the invoice produced by the tenants for this hearing and he was never asked to approve the charge beforehand.

With respect to the window coverings, the landlord testified that as soon as he was notified that there was an issue with them, he had them repaired. The first text message was in early May 2021 and they were fixed by May 8th.

Analysis

Section 23 of the Residential Tenancy *Act* requires the landlord to conduct a condition inspection report with the tenant at the commencement of a tenancy. Pursuant to section 18 of the Residential Tenancy Regulations and section 23(5) of the *Act*, the landlord must give a copy of the signed condition inspection promptly and in any event, within 7 days after the condition inspection is completed. Pursuant to section 24(2)(c), the right of the landlord to claim against the security deposit is extinguished if the landlord does not give the tenant a copy of the report in accordance with the regulations.

Pursuant to section 38(5) and (6) of the *Act*, when a landlord's right to claim against the security deposit has been extinguished under section 24 and the landlord has not

returned the tenant's security deposit within 15 days of the end of the tenancy and the date the landlord receives the tenant's forwarding address, the landlord must pay the tenant **double** the amount of the security deposit.

Sections 43 and 44 of the Residential Tenancy Regulations state that documents may be given or served on a person by emailing a copy to an email address provided as an address for service by the person; the document served by email is deemed to be received on the third day after it is emailed.

In the case before me, the tenants testified that at the commencement of the tenancy, the landlord's friend who conducted the move-in condition inspection report with them did not provide a copy of the condition inspection report to them. The landlord, who was not present at the move-in condition inspection report, relies on his friend's assurance that a copy was given to the tenants. Whereas the tenants provided testimony that they were not given a copy of the condition inspection report, the landlord did not call the friend to testify or provide a written statement from the friend to corroborate his version of events. On a balance of probabilities, I prefer the first-hand testimony of the tenants. I find the landlord did not provide a copy of the move-in condition inspection report to the tenants within 7 days as required by section 23(5) of the *Act*. Consequently, the landlord's right to claim against the security deposit was extinguished 7 days after the start of the tenancy.

Instead of providing a forwarding address, the tenants provided their email address for service in Part 5 of the move-out condition inspection report. I find that this sufficiently complies with section 43 of the Regulations as the evidence shows that after the tenancy ended, the landlord sent the move-out condition inspection report to the tenants via email, using a shared Dropbox account. The testimony of the parties shows that the landlord did not return the tenants' security deposit within 15 days of the tenancy ending and the landlord receiving the tenants' forwarding address. Nor did the landlord make an application to retain the security deposit, (even though the right to do so was extinguished for not providing a copy of the move-in condition inspection report to the tenants at the beginning of the tenancy). Consequently, I find the landlord to be in violation of sections 38(5) and (6) of the *Act*. The landlord must pay the tenants double their security deposit of $1,650.00, a total of **$3,300.00.**

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:

- 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 4-point test]

The tenants seek $2,700.00 as 27 months without a “functioning rear door” which the tenants clarified as a balcony door that didn’t properly lock. The tenants provided excerpts from text messages between themselves and the landlord as evidence of them notifying the landlord then the landlord not addressing their concerns. The tenants submit that the landlord advised them he would contact the developer and that nothing happened after that. I find the evidence provided by the tenants did not provide the entirety of the conversation between the parties. In the landlord’s evidence, the landlord provided a more fulsome copy of the text exchanges between the parties, whereby the tenant tells the landlord the door repair company will apply to the developer and order the parts to fix later. The tenants end the series of texts regarding the balcony door with, “OK, it is not a big deal. Do not worry”.

The tenants testified that the texts were sent and that the landlord’s translation of them were accurate. Based on this, I find the tenants led the landlord to believe that they didn’t consider the non-locking balcony door to be a “big deal” and that that the door repair company and the developer were working on it. The tenants did not send any further communications to the landlord regarding this issue. In minimizing the perceived fault in their tenancy and telling the landlord that others were working on the issue, the tenants failed to mitigate their claim. It would be patently unreasonable to tell their landlord that the non-locking door is “not a big deal” then seek damages of $100.00 per

month for the duration of the tenancy after the tenancy ended. I dismiss this portion of the tenants' claim without leave to reapply.

The tenants seek to recover the $282.45 they spent to have a dishwasher repairman look at the error code and determine the issue. The landlord provided evidence that he texted the tenants asking them to contact someone to give the landlord a quote for the repair and it would be discussed later.

A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant, pursuant to section 32 of the *Act*. Residential Tenancy Policy Guideline PG-1 states:

The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

I find the landlord gave the tenants the authorization to find a technician to give a quote for the repair, which is what the invoice in the amount of $282.45 represents. It would be unreasonable for a technician to attend to investigate the non-working dishwasher and provide an estimate of the cost to fix it, free of charge. I am satisfied the tenants paid the technician for the invoice, which I determine to be the landlord's responsibility under section 32 of the *Act*, and I award the tenants a further **$282.45.**

The tenants submit that they didn't have a working dishwasher for 16 months and seek $1,600.00 as compensation. When I asked the tenants whether the dishwasher was operative with the wooden panel coming off, the tenants testified that it was useable on and off. It didn't become completely unusable until the error message showed up. In evidence, the landlord provided a text exchange from the tenants which indicates they were hesitant to have a technician attend inside the rental unit. The tenants told the landlord to hold off on sending the repairman because they were worried about the pandemic and their child's health and safety. The landlord provided evidence that he was ready and willing to send somebody to repair the dishwasher however the tenants told him to "*forget it now, wait until it gets better as they are afraid to let other people come to the home now."* In a further text dated January 29, 2021, the tenants acknowledge that with respect to the dishwasher they told the landlord to *"wait a bit first with the pandemic".*

I dismiss this portion of the tenants' claim as I find the landlord did not breach section 32 of the *Act*. The landlord's offer to send a technician to repair the dishwasher panel

was refused by the tenant. I also find the tenants failed to mitigate the loss by denying the landlord the earliest opportunity to repair the dishwasher during the pandemic when he was ready and willing to do so. I have considered whether to grant the tenants compensation from when the dishwasher motor stopped working to the end of the tenancy, however I find insufficient evidence to satisfy me the tenants followed through with advising the landlords of what the technician found. The landlord asked the tenant on March 12, 2021, whether they found anyone who can fix the dishwasher and this text appears to be unanswered. I am not satisfied the tenants acted reasonably to minimize the damage or loss and consequently, this portion of the tenants' claim is dismissed without leave to reapply.

Lastly, the tenants state they advised the landlord that the window coverings were broken via text message on or about the beginning of May, 2021 and the landlord provided evidence they were repaired by May 8th. The landlord was unaware of any issue with the window coverings and immediately repaired them when he was notified by the tenants. Once again, I find the tenants did not act reasonably to minimize the damage or loss (point 4 of the 4-point test) and for this reason, this portion of the tenants' claim is dismissed without leave to reapply.

The tenants were successful in approximately half the application. As such, I find it reasonable that half the filing fee should be recovered. In accordance with section 72 of the *Act*, the tenants are to recover **$50.00** of the filing fee.

Item	**amount**
Security deposit (doubled)	$3,300.00
Dishwasher technician's invoice	$282.45
Filing fee	$50.00
Total	**$3,632.45**

Conclusion

I award the tenants a monetary order in the amount of **$3,632.45.**

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 07, 2022

Residential Tenancy Branch