



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, LRE, OLC, FFT

Introduction

This hearing was convened as a result of the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order of \$3,500.00 for the Tenants' monetary loss or money owed by the Landlord pursuant to section 67;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit pursuant to section 70(1);
- an order that the Landlord comply with the Act, the regulations, or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

One of the Tenants, JF, and the Landlord's mother MSW attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. MSW testified that she is the power of attorney for the Landlord.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

JF testified that the notice of dispute resolution proceeding package (the "NDRP Package") and the Tenants' documentary evidence were sent to the Landlord via email as per a substituted service order granted by the Residential Tenancy Branch (the "RTB").

MSW stated that the Landlord was hospitalized between August and November 2022 and could not retrieve the information from the Tenants. MSW confirmed that she received a courtesy copy of the NDRP Package from the RTB. MSW stated that she had asked for a copy of the Tenants' evidence via email, but the Tenants had refused to send her a copy. During the hearing, JF forwarded the Tenants' documentary evidence to MSW for reference. MSW indicated that she did not need an adjournment to review the Tenants' documentary evidence. Based on the foregoing, I find the Landlord was sufficiently served with the NDRP Package and the Tenants' documentary evidence pursuant to section 71(2)(c) of the Act.

JF acknowledged receipt of the Landlord's evidence sent via email. I find the Tenants were sufficiently served with the Landlord's evidence pursuant to section 71(2)(c) of the Act.

Preliminary Matter – Tenancy Has Ended

The parties agree that the tenancy is ended. According to MSW, the Tenants abandoned the rental unit on or around September 15, 2022. Records of the Residential Tenancy Branch indicate that an Order of Possession for the rental unit was granted on October 21, 2022 via direct request (file number referenced on the cover page of this decision).

Under these circumstances, I find the Tenants' claims to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act and for the Landlord to comply with the Act, regulation, or tenancy agreement under section 62 of the Act to be moot. Therefore, I dismiss those claims without leave to re-apply.

Issues to be Decided

1. Are the Tenants entitled to compensation in the amount of \$3,500.00 for monetary loss or other money owed?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments

relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on March 1, 2020 and ended on September 15, 2022. The Tenants paid a \$725.00 security deposit which has not been returned by the Landlord.

JF testified that after the tenancy agreement was signed, the Tenants found out the Landlord was moving abroad. JF stated that MSW would come around the property unannounced and move things in the yard. JF stated that MSW threw out and damaged her plants.

JF stated that MSW removed and dumped all of the Tenants' belongings without informing them. JF stated that MSW threw away a \$1,500.00 painting and that the Tenants have submitted the artist's contact information.

JF stated that MSW destroyed the Tenants' personal property, did not adhere to quiet enjoyment, did not give notice for keeping the deposit, did not keep the Tenants' items in storage, locked the Tenants out, and prevented the Tenants from cleaning. During the hearing, JF acknowledged that the Tenants did not request any definitive date to clean up the rental unit or pick up remaining items.

The Tenants submitted additional evidence including:

- Photographs of the Tenants' planter, trellises, kayak, and toys in the yard
- Facebook messenger correspondence with the Landlord

According to the Tenants' written statement, the Landlord had threatened the Tenants, and that MSW disregarded the Tenants' quiet enjoyment on a regular basis.

The Tenants seek compensation for the following items which they say were lost due to the "illegal lock out and throwing belongings away without notice":

Item	Amount
Bunk Bed	\$90.00
Toddler Bed	\$50.00
Cat Tree	\$30.00
Owl Painting	\$1,500.00
Painted Desk	\$300.00
Shelving Units	\$40.00

Clothing	\$100.00
Total	\$2,110.00

In response, MSW stated that the Tenants moved out on September 15, 2022 with no written notice and did not return the keys. MSW stated that tenants in a neighbouring suite on the property informed her that the Tenants had moved out during the night.

MSW stated that on September 19, 2022, she went to clean out the front yard. MSW testified that on September 20, 2022, she texted one of the Tenants, DS, asking him to return the keys and informing him if the Tenants items are not wanted, she will remove the items tomorrow.

MSW testified that she entered the rental unit on September 22, 2022 and changed the locks. MSW said she was shocked by the state of the rental unit. MSW testified that there was garbage on the bunk bed, food left in cupboards, and drawings on the walls. MSW testified that there was feces on the walls and carpets, as well as in the yard. MSW stated she had to do twelve garbage dumps to get rid of the furniture and items, which could not be re-used. In her written submissions, MSW stated that the garbage she removed from the rental unit was deemed to be hazardous waste by the local transfer station due to two months of toxic used diapers contained in the waste.

MSW testified that on October 1, 2022, she texted DS again to see if he wanted to pick up the Tenants' boats and bikes. MSW stated that she would have put some items outside in the carport on October 1, 2022, including a painting. MSW stated that the Tenants collected some items, including the larger boat, but did not take others, such as their bikes. MSW testified that she sent more messages asking if the Tenants would come back to pick up other items, but the Tenants did not reply. MSW stated that there were no further attempts by the Tenants to retrieve their belongings. MSW denied that the Tenants had asked to take any beds.

In her written statement, MSW denied that she or the Landlord would show up at any time. MSW stated that the Landlord has been abroad, and she would always text the Tenants to inform them that she was coming out to do yard work or remove their garbage. MSW explained that the Landlord has a mental illness which is related to his hospitalization. MSW stated she had asked the Tenants to not communicate with the Landlord.

MSW testified that she was successful in a separate dispute regarding the Tenants' unpaid August and September 2022 rent (file number referenced on the cover page of this decision). MSW stated she had been unable to follow through because she does not know where the Tenants live, and the Tenants never provided a forwarding address.

The parties agreed that the Tenants' kayak is still at the rental property and is available for pickup by the Tenants.

Analysis

1. Are the Tenants entitled to compensation in the amount of \$3,500.00 for monetary loss or other money owed?

Section 7 of the Act 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.

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In addition, Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss ("Policy Guideline 16") states as follows:

C. COMPENSATION

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.

I find the Tenants are in essence claiming compensation for loss of their personal belongings, the return of their security deposit, and have referred to a loss of quiet enjoyment. I will consider each of these topics in turn.

a. Personal Belongings

Based on the evidence presented, I find the Tenants abandoned the rental unit on September 15, 2022.

Regarding a landlord's obligation for personal property left behind by a tenant, sections 25(1) and (2) of the regulations state:

Landlord's obligations

25(1) The landlord must

- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
- (b) keep a written inventory of the property,
- (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and
- (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

- (a) the property has a total market value of less than \$500,
- (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or

(c) the storage of the property would be unsanitary or unsafe.

In this case, the parties have agreed for the Tenants to retrieve the kayak from the rental property. Therefore, I do not find the Tenants to have suffered any loss with respect to this item.

I find the photographs of the rental unit submitted by the Landlord show the furniture and items left behind to be in a poor state and missing parts. I find the photographs show that the rental unit was filthy and had garbage inside. I accept the Landlord's testimony that the furniture was not re-usable and that there was feces in the rental unit. Under these circumstances, I am satisfied that the Landlord was entitled to dispose of the furniture and other personal items under section 25(2)(c) of the regulations, as I find the Landlord had reason to believe that the storage of the property would be unsanitary. Therefore, I do not find the Tenants to be entitled to compensation for their abandoned furniture (beds, cat tree, desk, shelving unit) or clothing.

Regarding the owl painting, I find this item was likely lost after being left in the carport for the Tenants to pick up on October 1, 2022. I find it is unclear whether it was lost before or after DS came to pick up some of the Tenants' belongings that day. However, regardless of how the painting was lost, I find the Tenants have not submitted any photographs, receipts, proof of payment, or witness statements to support the \$1,500.00 claimed for this painting. I find the Tenants could have called the artist to testify as a witness under oath or to provide a written statement or receipt, but the Tenants did not do so. As stated in Policy Guideline 16, it is up to the person claiming compensation to provide evidence to establish that compensation is due. I find the Tenants have not proven the amount of or value of the damage or loss, and therefore I decline to award the Tenants compensation for this item under section 67 of the Act.

b. Return of Security Deposit

I find the Tenants did not specifically seek a return of their security deposit on their application, though it was explained during the hearing that the \$3,500.00 claimed includes \$750.00 for the security deposit. To the extent that the Tenants argue they have suffered loss under section 67 due to the Landlord's failure to return their security deposit contrary to the requirements of the Act, I find it is worthwhile to address this issue.

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.

I find it is not disputed that the Tenants have not provided a forwarding address in writing to the Landlord. Since the Tenants have not provided a forwarding address, the Landlord's obligation to return the security deposit or apply for dispute resolution has not been triggered.

I also find the evidence suggests that the Tenants owe unpaid August and September 2022 rent for which the director has granted a Monetary Order. Section 38(3) of the Act states that a landlord may retain from a security deposit or a pet damage deposit an amount that (a) the director has previously ordered the tenant to pay to the landlord, and (b) at the end of the tenancy remains unpaid.

Based on the foregoing, I conclude the Tenants are not entitled to the return of their security deposit.

c. Loss of Quiet Enjoyment

In response to "Provide a complete list of the items you are requesting compensation for", the Tenants stated on their application as follows:

I need a new place to live and really quickly. I am afraid for my safety and he is threatening to just have us thrown out of the suite by someone and we haven't even spoken with him. He came after us because we didn't open the door (we have no key) to the other unit. We do not rent that unit it is another couple.

I find the Tenants have not clearly indicated on their application whether they seek monetary compensation for loss of quiet enjoyment, and if so, the amount sought under this part.

However, it is worth mentioning I do not find the Tenants to have provided sufficient evidence to show that their right to quiet enjoyment was breached during the tenancy.

Section 28 of the Act states:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

In this case, I find the Tenants' allegations about MSW showing up in the yard and damaging plants to be vague. I also find it is undisputed that the Landlord or MSW never went inside the rental unit. While the Act restricts a landlord's right to enter the rental unit, the Act does not require a landlord to give notice for entry onto the residential property. I find the Tenants have not provided sufficient details, such as dates, times, and descriptions of MSW's entry onto the property to show that those visits would have been excessive or unreasonable. I accept MSW's testimony that she texted the Tenants about going to the property to do yard work or clean up garbage.

I find the Landlord had sent a series of angry messages with profanities to the Tenants during an argument over Facebook messenger. However, I also accept MSW's evidence that the Landlord has a mental illness and that she had asked the Tenants to communicate with her instead of with the Landlord.

According to Residential Tenancy Policy Guideline 6. Entitlement to Quiet Enjoyment:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or

unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment. (emphasis added)

I conclude the Tenants have not provided sufficient evidence to show “frequent and ongoing interference or unreasonable disturbances” which entitle them to compensation in the circumstances. Therefore, I do not award the Tenants any compensation under this part.

d. Summary

I conclude the Tenants are not entitled to any compensation with respect to loss of personal items, the security deposit, or loss of quiet enjoyment under section 67 of the Act.

2. Are the Tenants entitled to recover the filing fee?

The Tenants have not been successful in this application. I decline the Tenants recovery of their filing fee under section 72(1) of the Act.

Conclusion

The Tenants’ application is dismissed in its entirety without leave to re-apply.

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: February 01, 2023

Residential Tenancy Branch