



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was reconvened from a hearing on January 12, 2023 regarding the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order of \$2,524.21 for the Tenant's monetary loss or money owed by the Landlord pursuant to section 67;
- return of the Tenant's \$750.00 security deposit and/or pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee from the Landlord pursuant to section 72.

The Landlord and the Tenant attended this reconvened hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Matter – Service of Documents

The Landlord acknowledged receipt of the Tenant's evidence via email. I find the Landlord was sufficiently served with the Tenant's evidence pursuant to section 71 of the Act.

Issues to be Decided

1. Is the Tenant entitled to \$2,524.21 for monetary loss or money owed?
2. Is the Tenant entitled to return of the security deposit?
3. Is the Tenant 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 June 15, 2020 and ended on June 23, 2021. At the time that the tenancy ended, rent was \$1,500.00 per month. The Tenant paid a security deposit of \$750.00.

The Tenant testified that on April 13, 2021, the Landlord informed the Tenant that she will sell the rental unit and wanted the Tenant out by July 1, 2021.

The Tenant testified that she secured a new home to move into. The Tenant stated she was told that the rental unit had sold and the new owners would be moving in. The Tenant testified at some point she learned the Landlord needed to give the Tenant notice and that the Tenant was entitled to the last month's rent. The Tenant referred to an email dated May 29, 2021 in which she had asked the Landlord to not deposit the last month's rent. This email also includes the Tenant's forwarding address and a request for the return of the Tenant's security deposit with interest.

The Tenant also submitted her letter dated May 31, 2021 to the Landlord, in which the Tenant accepted the Landlord's "verbal notice to vacate" the rental unit and confirmed the Tenant will be out on or before July 1, 2021. This letter includes the Tenant's forwarding address as well.

The Tenant stated that Landlord texted her and asked her to fill out a mutual agreement to end tenancy. The Tenant stated that the Landlord had cut off the top part of the form which mentions the tenant foregoing compensation. The Tenant testified she told the Landlord that it wasn't a mutual agreement since the Landlord had asked the Tenant to leave. The Tenant confirmed that she did not sign this document.

The Tenant testified that she had to pay for a lawn maintenance company to mow the lawn twice (\$50.00 each), although it was the Landlord's responsibility. The Tenant stated that she paid cash and there were no receipts.

The Tenant testified that she moved out on June 23, 2021 and left the rental unit “spotless”. The Tenant testified that there was no move-in condition inspection report. The Tenant testified that she did not feel comfortable attending a move-out inspection.

The Tenant testified that at the start of the tenancy, she had been told the Landlord would be selling the rental unit in three or four years, not one year later. The Tenant submitted an invoice for moving expenses, which according to the Tenant had caused unforeseen financial hardship due to the tenancy ending early.

The Tenant submitted that on July 15, 2021, she received a letter from the Landlord dated July 13, 2021 at her forwarding address, stating that the Landlord was keeping the security deposit due to damage to trees, cutting the lawn, and the Landlord’s travel expenses to the rental unit and cleaning the rental unit. Copies of this letter have been submitted into evidence.

The Tenant seeks compensation for the following:

Item	Amount
Last Month’s Rent	\$1,500.00
Unforeseen Moving Expenses	\$824.51
Lawn Maintenance	\$100.00
Security Deposit	\$750.00
Filing Fee	\$100.00
Total	\$3,274.51

The Landlord testified that she did not give the Tenant a written notice to end the tenancy. The Landlord stated she phoned the Tenant on April 13, 2021 to give the Tenant a heads up regarding the Landlord’s plans to sell the property. According to the Landlord, the Tenant asked when she would have to move, and the Landlord said maybe around July 1, 2021. The Landlord stated that she also messaged the Tenant to say maybe August 1, 2021.

The Landlord denied that she had told the Tenant about being able to stay for three years. The Landlord testified that the tenancy agreement was month-to-month.

The Landlord stated that she did a walkthrough with the Tenant at the start of the tenancy. The Landlord stated that she called the Tenant twice to do a move-out inspection and the Tenant did not answer.

The Landlord testified that the rental unit was not left clean and plants in the yard were dead. The Landlord referred to photographs that she had submitted into evidence.

The Landlord testified that the Tenant was responsible for lawn maintenance. The Landlord referred to handwritten notes on the back page of the parties' tenancy agreement, which mentions "lawns cut" and "shrubs + trees watered", along with other notes such as "no pets" and "no smoking".

According to the Landlord's written submissions, the Landlord found the rental unit vacated on June 24, 2021.

The Tenant denied that she was aware of any handwritten notes on the back page of the tenancy agreement.

Analysis

1. Is the Tenant entitled to \$2,524.21 for monetary loss or money owed?

The Tenant claims compensation for (a) last month's rent, (b) unforeseen moving expenses, and (c) lawn maintenance. I will discuss each of these items in turn.

a. Last Month's Rent

Although the Tenant did not cite any specific authority under the Act regarding her claim for compensation of one month's rent, I infer the Tenant is referring to section 51(1) of the Act, which states:

Tenant's compensation: section 49 notice

51(1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 51(1) refers to receipt of a “notice to end a tenancy under section 49” of the Act as the condition under which a tenant would be entitled to compensation from the landlord.

Under section 49(5) of the Act, a landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Section 49(7) of the Act further states that a notice under this section must comply with section 52 of the Act and, in the case of a notice under section 49(5), must contain the name and address of the purchaser who asked the landlord to give the notice.

Section 52 of the Act states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

In this case, I find the Tenant believed that she had to move out of the rental unit after receiving the Landlord's phone call on April 13, 2021. However, I find it is undisputed that the Landlord did not issue any written notice to end tenancy in the approved Residential Tenancy Branch form. I find the Landlord's phone call on April 13, 2021 did not constitute legal notice to end tenancy under section 49 of the Act, as it did not

comply with the requirements of sections 49(7) and 52 of the Act. In order for a notice to end tenancy under section 49 to be effective, the notice must be, among other requirements in sections 49(7) and 52, given in writing and in the approved form.

I find the Landlord did not issue a notice to end tenancy under section 49 of the Act. Therefore, I conclude the Tenant is not entitled to compensation of one month's rent under section 51(1) of the Act. The Tenant's claim under this part is dismissed without leave to re-apply.

b. Unforeseen Moving Expenses

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:

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.

The Tenant argued that the moving expenses she had incurred were unforeseen as she had expected to stay at the rental unit for three or four years based on the Landlord's verbal representations.

However, I find clause 2 of the parties' tenancy agreement states that the tenancy was month-to-month. I find the Tenant could have negotiated a fixed-term tenancy in writing but did not do so. I further note that the parol evidence rule precludes admission of evidence outside the words of the written contract that would add to, subtract from, vary, or contradict a contract that has been wholly reduced to writing (see *Sattva Capital Corp. v. Creston Moly Corp* (2014 SCC 253) at para. 59). Therefore, I find the tenancy was month-to-month with no guarantee of a longer term.

In addition, I have determined above that the Landlord's phone call to the Tenant on April 13, 2021 was not a legal notice to end the tenancy under section 49 of the Act. I find the Tenant was not required to move out of the rental unit based on that phone call, even if the Landlord had told the Tenant that she wanted the Tenant to move out by July 1, 2021.

Based on the evidence presented, I do not find the moving expenses incurred by the Tenant to have been caused by any failure on the part of the Landlord to comply with the Act, the regulations, or the parties' tenancy agreement. I conclude the Tenant is not entitled to compensation for moving expenses under section 67 of the Act. The Tenant's claim under this part is dismissed without leave to re-apply.

c. Lawn Maintenance

The Tenant claims \$100.00 for two incidents of lawn maintenance at \$50.00 each. I find the tenancy agreement does not clearly set out which party is responsible for lawn maintenance. I note the parties disagree as to whether there were handwritten notes about lawn maintenance on the back of the tenancy agreement. As stated in Policy Guideline 16, it is up to the person claiming compensation to prove that compensation is due. I find the Tenant has not provided sufficient evidence to prove on a balance of probabilities that the Landlord was responsible for maintaining the lawn and that the Landlord had failed to properly do so. Furthermore, I find the Tenant has not submitted any evidence to prove the amount claimed, such as any receipts or invoices. Therefore, I conclude the Tenant is not entitled to compensation for lawn maintenance under section 67 of the Act. The Tenant's claim under this part is dismissed without leave to re-apply.

2. Is the Tenant entitled to return of the security deposit?

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.

Section 38(6) of the Act states that if a landlord does not comply with section 38(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.

According to Residential Tenancy Policy Guideline 17. Security Deposit and Set Off:

In cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. For example, if the landlord failed to give the tenant a copy of the inspection done at the beginning of the tenancy, then even though the tenant may not have taken part in the move out inspection, the landlord will be precluded from claiming against the deposit because the landlord's breach occurred first.

I find the parties did a walkthrough at the start of the tenancy, but the Landlord did not complete a condition inspection report and provide a signed copy to the Tenant as required under section 23 of the Act and section 18 of the regulations. Therefore, I find

the Landlord's right to the security deposit was extinguished first, even though I also find the Tenant to not have attended the move-out inspection.

Pursuant to section 71(2)(c) of the Act, I find the Landlord was sufficiently served with the Tenant's forwarding address in writing via email on May 29, 2021. I find the Landlord had sent a letter dated July 13, 2021 to the Tenant's forwarding address explaining why the Landlord did not agree to return the security deposit, but did not make an application for dispute resolution.

As such, I find the Landlord did not comply with section 38(1) of the Act, since the Landlord did not repay the security deposit to the Tenant or make an application for dispute resolution within 15 days after the later of the date the tenancy ended (June 23, 2021) or the date the Landlord received the Tenant's forwarding address in writing (May 29, 2021), that is, by July 8, 2021. I also find the Landlord did not obtain the Tenant's consent in writing to keep the security deposit.

Therefore, I find that pursuant to section 38(6) of the Act, the Landlord must pay the Tenant double the security deposit and may not make a claim against the security deposit. I find the Tenant did not specifically waive her right to doubling of the security deposit.

Policy Guideline 17 further explains as follows:

The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit. Where the landlord has to pay double the security deposit to the tenant, interest is calculated only on the original security deposit amount before any deductions and is not doubled.

(emphasis added)

The interest rate on deposits from 2020 to 2022 has been 0% per annum, and 1.95% per annum in 2023. Using the Residential Tenancy Branch Deposit Interest Calculator online tool, I find the Tenant is entitled to \$1.84 of interest on the security deposit from the date the security deposit was paid to the date of this decision, calculated as follows:

2020 \$750.00: \$0.00 interest owing (0% rate for 54.65% of year)
 2021 \$750.00: \$0.00 interest owing (0% rate for 100.00% of year)
 2022 \$750.00: \$0.00 interest owing (0% rate for 100.00% of year)
 2023 \$750.00: \$1.84 interest owing (1.95% rate for 12.60% of year)

Pursuant to section 38 of the Act, I order the Landlord to pay the Tenant \$1,501.84 (2 × \$750.00 + \$1.84) for the return of double the security deposit plus interest.

3. Is the Tenant entitled to recover the filing fee?

The Tenant has been partially successful in this application. I award the Tenant reimbursement of her filing fee under section 72(1) of the Act.

The Monetary Order granted to the Tenant is calculated as follows:

Item	Amount
Return of Double the Security Deposit (2 × \$750.00) Plus Interest (\$1.84)	\$1,501.84
Filing Fee	\$100.00
Total	\$1,601.84

Conclusion

The Tenant's claims for return of the security deposit and recovery of the filing fee are granted. Pursuant to sections 38 and 72 of the Act, I grant the Tenant a Monetary Order in the amount of **\$1,601.84**. This Order may be served on the Landlord, filed in the Small Claims Division of the Provincial Court, and enforced as an Order of that Court.

The remaining claims made by the Tenant on this application are dismissed 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 15, 2023

Residential Tenancy Branch