Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDL-S, FFL / MNSD, FFT**

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the "Act"). The landlords' application for:

- authorization to retain all or a portion of the security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit in amount of $444.25 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And the tenants' application for:

- monetary order for $1,795 representing two times the amount of the security deposit pursuant to sections 38 and 62 of the Act; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

All parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlords confirmed that they received the landlords' notice of dispute resolution package and supporting documentary evidence. The landlords testified they provided their notice of dispute resolution package and supporting documentary evidence by registered mail. The tenants testified that they received the landlords' registered mail, but that it did not contain any documentary evidence. I advised the parties that, in the absence of evidence confirming either party's testimony, I might adjourn the hearing.

The tenants indicated that, despite not having received the landlords' evidence, they were able to prepare for the hearing and wanted the hearing to proceed. After I described the landlords' evidence to them, they also confirmed that they had received all of the landlords' documentary evidence throughout the course of the tenancy or attached to correspondence after the tenancy ended.

As such, I deem the tenants have been served with the landlords' documentary evidence in accordance with the Act.

Issues to be Decided

Are the landlords entitled to:

1) a monetary order for $444.25;
2) recover the filing fee;
3) retain a portion of the security deposit in satisfaction of the monetary orders made?

Are the tenants entitled to:

1) a monetary order of $1,795;
2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting September 1, 2020. The monthly rent was $1,795 and was payable on the first of each month. The tenants paid the landlords a security deposit of $897.50, which the landlords continue to hold in trust for the tenants.

1. Tenants' Claim

The tenants moved out of the rental unit on May 20, 2022. The tenants argue that the tenancy ended on that day. The landlords argue that the tenancy ended on May 31, as the tenants paid a full month's rent for May and as they gave their notice to end tenancy to the landlords on April 24 via an email which stated:

> This is our formal notice to end tenancy, with our last day being May 31st.

The tenants later emailed the landlords on April 26 stating:

> We're still firming up details, but we may be leaving the suite on May 20th. Ideally we do the final walk through the suite with [redacted] the day prior or on the 20th[.]

The parties conducted a move out condition inspection on May 20. During the inspection, the tenants advised the landlords' agent that the oven had stopped working when they set it to "self-cleaning" mode when they were cleaning the rental unit in anticipation of moving out.

The tenants testified that the landlord never provided them with a copy of the move-out inspection report (the "**Report**") and that they took a photo of the unsigned copy of the move-out report at the end of the inspection.

The landlords testified that they sent a signed copy of the report to the forwarding address provided by the tenants in June. They did not provide any documentary evidence supporting this testimony.

The tenants provided their forwarding address to the landlords via email on May 27 and that the address was for one of their parents, as the tenants relocated out of the country.

The landlords made their application on June 15.

The tenants argued that the tenancy ended on the date they moved out (May 20) of the rental unit pursuant to section 44(1)(d) of the Act and that the landlords therefore made their application late, which means they are entitled to an amount equal to double the security deposit.

The landlords argued the tenancy ended on the day the tenant's indicated it would in their initial email (May 31) and that they made this application in time.

Additionally, the tenants argued that the landlords' right to claim against the security deposit is extinguished due to their failure to provide them with a signed copy of the report. The landlords denied that they failed to provide them with a signed copy of the report, so their right to claim against it was not extinguished.

2. Landlords' Claim

The landlords testified that the oven stopped working due to its fuses being blown. They argued that it is the tenants' responsibility to replace the blown fuses in the oven. They testified that these fuses were "high limit thermal fuses" and cost $444.25 to replace. In support of this amount the landlord provided a copy of an invoice from repair technician for the supply and installation of these fuses.

The landlords testified that the technician told them that these fuses were "standard" to this model of oven, and that the oven did not have any other type of fuses. The landlord argued that Residential Tenancy Branch (the "**RTB**") Policy Guideline 1 as the responsibility for the replacement cost to the tenants. It states:

> The tenant is responsible for:
> […]
> • Replacing standard fuses in their unit (e.g. stove), unless caused by a problem with the stove or electrical system, and

- Making sure all fuses are working when he or she moves out, except when there is a problem with the electrical system.

Additionally, the landlords speculated that the reason the fuses were blown was due to the tenants' misuse of the oven either throughout the tenancy or when they put it in self-cleaning mode. They did not provide any evidence to support this assertion. They merely argued that the oven was four years old and in good working order at the start of the tenancy.

The tenants denied that they misused the stove during the tenancy or that they improperly put it in self-cleaning mode. Additionally, they argued that the "high limit thermal fuses" or not "standard" as specified in Policy Guideline 1. Rather, they took the position that these fuses were a special kind of fuse, which is significantly more costly than a "standard" fuse.

They argued that they should not be responsible for the replacement cost of these fuses.

Analysis

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**
>
> 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 their case is on the person making the claim. In most circumstances this is the person making the application.

So, each side must prove that the facts necessary to support their respective applications are true.

1. Tenants' Claim

    a. Was the landlords' application late?

Section 38 of the Act requires a landlord to return a security deposit within 15 days of the later of either the tenancy ending or the landlord receiving a tenant's forwarding address. If a landlord does not do this, they are required to pay the tenant double the security deposit.

The parties agree that the landlords received the tenants' forwarding address on May 27, 2022 and that the landlords made its application on June 15. As such, in order for

the landlords to avoid paying double the deposit, the tenancy must have ended on May 31.

Section 45 of the Act allows tenants to end a tenancy by giving at least one month's notice. The end date of the tenancy must be the day before rent is due under the tenancy agreement. As rent is due on due on the first of the month, and as the tenants gave notice on April 24, the earliest date the tenants could have ended the tenancy in accordance with the Act is May 31.

I do not accept the tenants' argument that the tenancy ended when they vacated the rental unit. The tenants paid rent on May 1, which entitled them to possession of the rental unit for the entire month. They were free to move out before the end of the month, but this does not mean that they were not entitled to use the rental unit for the duration of the month.

Furthermore, as the only permissible way a tenant can end the tenancy is by giving one month's written notice, the tenants would have breached the Act if they ended the tenancy prior to May 31. As such, I do not think it consistent with the objectives of the Act to provide the tenants with a benefit (an acceleration of the date by which their deposit must be returned) if they breached the Act.

Section 44(1)(d) of the Act is designed to provide a mechanism to end a tenancy where no notice to end tenancy is given by a tenant. It is not designed to provide tenants with the ability to "move up" an end date of a tenancy after they have given a valid notice to end tenancy.

For these reasons, I find that the tenancy ended on May 31 and that the landlord made its application within 15 days.

b. Is the landlords' right to claim against the security deposit extinguished?

The tenants testified that they did not receive a signed copy of the Report. The landlords testified that they mailed a signed copy of it to the tenants' forwarding address in June 2022. I accept that the tenants did not reside at this address and that it was occupied by one of their parents. This parent was not called as a witness at the hearing, nor did they provide any written statement relating to what documents they received from the landlords. I do not find that the tenants are in a position to give first-hand testimony as to what documents were or were not received at their forwarding address.

The landlords, on the other hand, are able to give first-hand evidence as to whether the report was sent. They have done so, and I find that, being first-hand, it is more reliable than the tenants' second-hand testimony. Accordingly, I prefer the landlords' evidence over that of the tenants and I find that the landlords did provide a copy of the Report to the tenants in accordance with the Act.

I dismiss the tenants' application, in its entirety, as they have not demonstrated the right to the return of double the security deposit.

2. Landlords' Application

Both parties agree that Policy Guideline 1 is determinative on the issue of whether the tenants are responsible for paying for the replacement of the fuses. The main point of disagreement is whether the fuses are "standard" or not.

The landlords' position is that a fuse's "standard-ness" ought to be determined based on the individual oven's requirements. They argue that if an oven only uses one type of fuse, then that type of fuse is "standard" to the oven, and it is the tenants' responsibility to replace.

The tenants' position is that a "standard" fuse refers to fuses that are of a "standard" type across all ovens.

Of these two interpretations, I find the tenants' more persuasive. If I were to accept the landlords' interpretation, I would essentially deprive the word "standard" of any meaning in Policy Guideline 1, as the effect of his interpretation would be, essentially, that a tenant is responsible for replacing all oven fuses, no matter what time of fuse they were.

Additionally, Policy Guideline 1 is not written to address oven fuses specifically. Rather, it addresses "standard fuses in their unit" and gives a stove fuse as an example of a standard fuse. As such, I understand "standard fuses" to refer to fuses that can be found in a variety of devices in a rental unit, not just stoves. I do not find that "high limit thermal fuses" are standard across all such devices. I also note that Policy Guideline 1 was written in 2004, and it is likely that technology in kitchen appliances has changed a great deal in the intervening 19 years, and that a stove may no longer be an accurate example of something that contains a "standard" fuse.

I find that a "standard" fuse refers to fuses commonly used throughout the rental unit. I do not find that "high limit thermal fuses" meet this definition.

I do not understand Policy Guideline 1 to create an obligation for a tenant to make sure that all fuses of every type are working prior when they move out. Rather, I understand it to require that a tenant make sure that all *standard* fuses are working when the move out. I would not make sense for the Policy Guideline to hold that during a tenancy, the tenant is not responsible for replacing non-standard fuses (thus implying that a landlord is responsible for their replacement) only to thrust this obligation upon a tenant at the end of the tenancy.

I also do not find that the oven's fuses "blew" as a result of the tenants' misuse of the oven. The landlord presented no evidence to support this claim beyond his speculative testimony. I cannot say if the fuses failed due to a defect of the oven or due to ordinary

wear or tear. The landlord has failed to discharge his evidentiary burden to show it is more likely than not that the tenants breached the Act by failing to repair or replace the fuses.

As such, I dismiss the landlord's application to recover the cost of the fuses from the tenants.

3. Filing Fees and Security Deposit

As both parties have been unsuccessful in their applications, I decline to order that either reimburse the other the cost of the filing fee.

As the landlord's application to retain a portion of the security deposit was unsuccessful, I order that he return the full balance of the security deposit, plus all accrued interest to the tenants.

The RTB Deposit Interest Calculator sets out the interest payable on $897.50 as $4.22 from the start of the tenancy to the date of this decision.

Conclusion

I dismiss both parties' applications, without leave to reapply.

I order that the landlord pay the tenants $901.72, representing the return of their security deposit plus interest.

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: March 29, 2023

Residential Tenancy Branch