



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNSD

Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- compensation of \$1,755.00 for monetary loss or money owed by the Landlord pursuant to section 67; and
- return of the security deposit and/or pet damage deposit in the amount of \$400.00 pursuant to section 38.

The Landlord and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The Landlord was represented by his son and legal counsel, DC.

The parties acknowledged receipt of each other's dispute resolution documents.

Preliminary Matter – Clarification of the Tenant's Claims

The Tenant submitted a monetary worksheet seeking the following amounts as compensation:

Item	Amount
Doubling of Claim (Return of \$400.00 Deposit + \$450.00 Damage to Tools) × 2	\$1,700.00
Gas	\$30.00
Registered Mail	\$25.00
Filing Fee	\$100.00
Total	\$1,855.00

The Tenant seeks compensation for double his claim under section 38(6) of the Act. However, the doubling provision in section 38(6) only applies to the return of security and/or pet damage deposits. It does not apply to a claim for compensation under section 67 of the Act, such as one for damage to tools. As such, I will consider the Tenant's request for compensation of \$450.00 for damage to tools only and return of double the security deposit in the amount of \$800.00.

In addition, the Tenant received a fee waiver when making this application and did not pay a \$100.00 filing fee. Therefore, I do not consider the Tenant's request for reimbursement of the filing fee.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss?
2. Is the Tenant entitled to the return of double the security deposit?

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, 2016 for a fixed term ending on June 30, 2017, and continued thereafter on a month-to-month basis. Rent was \$800.00 due on the first day of each month. The Tenant paid a security deposit of \$400.00. The parties did not complete any move-in inspection or condition inspection report.

According to the Landlord's affidavit, he and his spouse listed the property for sale due to the Landlord's ailing health and for financial reasons. In March 2021, they accepted an offer to purchase the property, which was scheduled to complete on August 2, 2021.

In April 2021, the purchaser, LHZ, gave the Landlord and his spouse a written notice for vacant possession of the property dated April 20, 2021 (the "Purchaser's Notice"). On or around April 24, 2021, the Landlord, DC, and the Landlord's son-in-law PH met with the Tenant at the rental unit. During this meeting, DC served the Tenant with a two month

notice to end tenancy dated April 24, 2021 (the "Two Month Notice") together with a copy of the Purchaser's Notice. The Two Month Notice states that all conditions for the sale of the rental unit has been satisfied, and the purchaser has asked the landlord to give this notice because the purchaser or a close family member intends in good faith to occupy the rental unit. The effective date of the Two Month Notice was August 2, 2021.

According to the Tenant, when he received the Two Month Notice, he made DC aware that his tools were badly rusted due to the water coming up from the floor. The Tenant stated that he insisted DC to come take a look at the damage, but DC declined, saying that he didn't need to see it and would pay \$450.00 for the damage. The Tenant indicated he had probably discovered the tools damaged around a year prior, or even less, but could not recall. The Tenant was unable to say during which month the damage had occurred. The Tenant stated that he was unaware of any problem until he opened the boxes and found the damage tools. The Tenant stated that he saw the state of the floor, which was moist and had palpable, discernable dampness. The Tenant stated that the water had come up and receded, leaving the tools damaged. According to the Tenant, he informed the Landlord about this problem during the first in person or face-to-face opportunity, which was in April 2021. Later in the hearing, the Tenant suggested that he had discovered the tools damaged in late 2020. The Tenant stated water came up through the floor or maybe the baseboard. The Tenant stated that there was no opportunity for himself or another person to mitigate the damages. The Tenant argued that his opportunity to demonstrate the damage was to show DC on the spot, but DC refused to look. The Tenant stated that after the water or moisture came up, it did not repeat itself again. The Tenant stated that he then cleared the area and marked it by placing a bucket there. The Tenant argued that there was no opportunity lost by the Landlord to fix anything. The Tenant argued that the water was due to faulty or substandard construction, poor insulation, or other defect, which is the Landlord's fault.

The Tenant submitted that DC had promised to pay the Tenant \$450.00 for the damage to his tools and the security deposit on August 1, 2021. The Tenant submitted a screenshot of a text message exchange between the Tenant and DC as follows:

Tenant: (9:12 AM) okay
(9:14 AM) Can you bring the \$450 please. Thanks

DC: (9:15 AM) Did you find a place?
(9:16 AM) I can bring monies on the day you are moving out.
I'm here now. I will be over shortly

The Tenant submitted that later in front of DC's family members on August 1, 2021, DC again promised to pay the \$450.00 and \$400.00 to the Tenant. The Tenant argued that it was not fair for DC to refuse to see the tools and then later question the Tenant's claim. The Tenant argued that DC had agreed to pay and denied that the offer was conditional.

In response, the Landlord deposed that he recalled the Tenant asking for money during the April 24, 2021 meeting and claimed that some of the Tenant's tools were rusted due to a moisture problem or water leak in the rental unit. The Landlord deposed that during the tenancy, the Tenant had never made the Landlord aware of any issues relating to moisture problems or water leaks in the rental unit that could have possibly caused the rusting of tools. The Landlord deposed that the Tenant claimed to have discovered the tools were damaged a long time ago but had not brought it up because the Tenant was getting cheap rent. According to the Landlord's affidavit, the Tenant claimed he wanted the compensation now that he was given the Two Month Notice. The Landlord deposed that he agreed to pay the amount asked by the Tenant on the condition that the Tenant move out of the rental unit in accordance with the Two Month Notice.

DC submitted that the Landlord had agreed to pay the Tenant as a move-out incentive, not as compensation for tools. DC submitted that the payment was conditional on the Tenant moving out of the rental unit, but the Tenant did not move out, so the amount was not paid.

In July 2021, the completion date for the sale of the property was changed from August 2 to August 3, 2021, since August 2, 2021 was a statutory holiday. The Landlord did not collect July or August 2021 rent from the Tenant.

The evidence also suggests that sometime prior to the completion of the sale, LHZ, the purchaser who signed the Purchaser's Notice, assigned the purchase contract for the property to another member of their family, JT.

The Tenant did not move out of the rental unit on August 3, 2021.

According to the Landlord's affidavit, on the day of the completion and under threat from JT that they would not complete the purchase transaction, the Landlord's lawyer negotiated a settlement with JT's lawyer. The Landlord agreed to pay \$10,000.00 for the JT to inherit the Tenant and continue any dispute resolution process with the

Residential Tenancy Branch. The Landlord also credited JT with \$400.00 for the security deposit. The Landlord submitted a statement of adjustments which show that \$10,000.00 was credited to JT and a \$400.00 deposit was transferred to JT.

According to the Tenant, he did not enter into a new tenancy agreement with the new owners JT or LHZ, and did not pay any rent to them.

The Tenant stated that there was a language barrier so he communicated to the new owners through their agent, AG. The Tenant stated that there was a hearing in mid-December 2021 with the new owner in which AG committed fraud, and in that hearing the new owner's application was dismissed with leave to re-apply.

According to the Tenant, he later discussed the matter with AG and came to an agreement, which was that the Tenant would not need to pay the new owners anything and that he would move out of the rental unit by January 31, 2022 at 1:00 pm. The Tenant confirmed that he moved out of the rental unit by January 31, 2022, after signing a mutual agreement to end tenancy in the Residential Tenancy Branch form with the new owner. The Tenant stated that AG told him they would not be returning the security deposit to him.

The Tenant argued that he had an agreement with the Landlord for the security deposit, not the new owners, and seeks to recover double the security deposit from the Landlord. The Tenant submitted that he gave a forwarding address to DC at DC's law office on December 20, 2021 and to the Landlord via registered mail sent on June 27, 2022, which was delivered July 4, 2022.

The Tenant seeks compensation of \$450.00 for damage to his tools. The Tenant's evidence includes two photos of rusted clamps. The Tenant explained that \$30.00 is for the cost of his gas to deliver his forwarding address to the Landlord, and the \$25.00 registered mail fee is for delivering his forwarding address a second time.

Analysis

1. Is the Tenant entitled to compensation of \$450.00 for damage to tools?

Section 67 of the Act states that 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.

According to Residential Tenancy Branch Policy Guideline 16. Compensation for Damage or Loss, 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 will address the items claimed by the Tenant as follows: (a) damage to tools, and (b) gas and registered mail.

a. Damage to Tools

I find the Tenant has not provided sufficient evidence to prove that the damage to his tools was caused by water coming up through the floor or baseboards of the rental unit. I find that aside from two photos of the rusted tools themselves, the Tenant has not submitted evidence to support his claim regarding how the damage is alleged to have occurred. I find the Tenant has not provided evidence to show that there was defective construction or renovation which could have caused a water leak or moisture in the rental unit. I find the Tenant was unclear about when the damage had occurred. Based on the foregoing, I am unable to conclude on a balance of probabilities that the Landlord had breached the Act, the regulations, or the tenancy agreement. I am unable to conclude that the damage to the Tenant's tools was caused by any breach or negligence of the Landlord. I also find the Tenant did not submit evidence to demonstrate that the tools would have been worth \$450.00.

Moreover, I accept the Landlord's evidence that he had agreed to pay the Tenant on the condition that the Tenant move out of the rental unit in accordance with the Two Month Notice, which the Tenant did not do. I find this evidence to be consistent with DC's text message as shown in the screenshot submitted by the Tenant.

Based on the foregoing, I conclude that the Tenant is not entitled to compensation for damage to tools under section 67 of the Act. The Tenant's claim under this part is dismissed without leave to re-apply.

b. Gas and Registered Mail

The cost of gas and registered mail fee incurred by the Tenant for delivering a forwarding address are not recoverable expenses under section 67 of the Act. Unless otherwise agreed upon by the parties, the Tenant is responsible for such costs. I find there is no breach of the Act, the regulations, or the parties' tenancy agreement by the Landlord under these circumstances. The Tenant's claims for gas and registered mail are dismissed without leave to re-apply.

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

Section 93 of the Act states that the obligations of a landlord with respect to a security deposit or pet damage deposit run with the land or reversion. This means that if a tenanted property is sold or assigned, the new owner assumes the obligations of the former landlord with respect to the deposits, even though the new owner was not the person to whom the deposits were originally paid.

I find that although the Two Month Notice was issued and the Tenant did not make an application to dispute it, the Tenant did not move out in accordance with the Two Month Notice at all. I find the Tenant continued to reside in the rental unit for approximately six more months until the end of January 2022.

The Tenant's evidence is that he did not pay any rent to the new owner between August 2021 and January 2022. Therefore, I do not find the Tenant to have entered into a new tenancy agreement, whether verbal or implied, with the new owner.

I find the Tenant nevertheless signed a mutual agreement to end tenancy with the new owner and agreed to move out of the rental unit by January 31, 2022 in accordance with that agreement. As such, I find the parties behaved as if the original tenancy continued until it was ended by mutual agreement between the Tenant and the new owner in January 2022.

According to Residential Tenancy Branch Policy Guideline 11. Amendment and Withdrawal of a Notice to End Tenancy, a notice to end tenancy may be waived with the express or implied consent of the landlord or tenant. Implied waiver occurs when there is no clear and unequivocal expression of intent, but the waiver is implied through the actions or behaviour of the landlord or tenant.

In this case, I find the Two Month Notice was implicitly waived by the conduct of Landlord, who had accepted that the Tenant was not leaving and adjusted the security deposit with the purchaser. I find the new owner accepted the security deposit from the Landlord and accepted the tenancy. I find the new owner also waived or abandoned the Two Month Notice by not continuing to seek an order of possession under that notice. I find the Two Month Notice was waived with the implied consent of the Tenant, since the Tenant did not move out in accordance with the Two Month Notice and only moved out after signing a mutual agreement to end tenancy with the new owner that had different terms. I find that by this point, the Landlord would not have been in a position to perform a landlord's obligations such as conducting a move-out inspection or negotiate with the Tenant regarding what to do about the security deposit.

I also note that during the hearing, the Tenant had questioned the original purchaser's good faith intentions in issuing the Purchaser's Notice. However, I do not find this to have anything to do with the Landlord. I also note the original purchaser or a close family member would not have been able to move into the rental unit for approximately six months after the ownership change since the Tenant had not left.

Moreover, I find the Tenant acknowledged it was agreed that he would not need to pay the new owner anything by signing the mutual agreement to end tenancy, but at the same time the Tenant was also not getting his security deposit back. I find this was likely because the Tenant had not paid any rent to the new owner while he continued to occupy the rental unit for approximately six months.

Under these circumstances, I am not satisfied that the Tenant may now seek a return of double the security deposit from the Landlord. I find the Landlord's obligations with respect to the security deposit had passed to the new owner in accordance with section 93 of the Act. Accordingly, I dismiss the Tenant's claim for return of the security deposit as against the Landlord, whether doubled or otherwise, without leave to re-apply.

Conclusion

This 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: May 24, 2023

Residential Tenancy Branch