



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDCT, MNSD, MNETC, FFT**

Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (Act) for:

1. An Order for compensation for a monetary loss or other money owed under Section 67 of the Act;
2. An Order for the return of part or all of the security deposit and/or pet damage deposit under Section 38 of the Act;
3. An Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property under Section 51 of the Act; and,
4. Recovery of the application filing fee under Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord and one Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Tenants served the Landlord with a letter dated July 12, 2022 containing their forwarding address by Canada Post registered mail on July 15, 2022. The Tenants referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt but noted that it did not say it was the Tenants' forwarding

address. I find that the Tenants' forwarding address was deemed served on the Landlord on July 20, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

The Tenants testified that they served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on September 15, 2022 by Canada Post registered mail (NoDRP package). The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt. I find that the Landlord was deemed served with the NoDRP package five days after mailing them, on September 20, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issues to be Decided

1. Are the Tenants entitled to an Order for compensation for a monetary loss or other money owed?
2. Are the Tenants entitled to an Order for the return of part or all of the security deposit and/or pet damage deposit?
3. Are the Tenants entitled to an Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property?
4. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on July 1, 2022. The Tenants signed the tenancy agreement on May 15, 2022. The Tenants stated the Landlord had not signed the tenancy agreement. Monthly rent was \$3,000.00 payable on the first day of each month. A security deposit of \$1,500.00 was collected on May 15, 2022 and confirmed by a text message from the Landlord to the Tenant. The Landlord still holds the security deposit, she said, according to Section 39 of the Act.

The Landlord stated she did not serve her evidence on the Tenants, although she did upload her evidence on the RTB website on May 11, 2023.

One day before July 1, 2022, the Tenants went to the rental unit and noted that there was still a lot of work needed to be done to ready the rental unit for them to start living in it. The Tenants testified they met the Landlord at 1 p.m. on July 1, 2022, and said their moving truck was scheduled for this day. The Tenants pointed out the uncleanness of the rental unit to the Landlord, and they said she got very upset but told them they could move in at 7:00 p.m. The Tenants testified that the Landlord said she would leave the key under the mat at the front door. The Tenants rescheduled their moving truck to July 3, 2022 as July 2 was not available. The Tenants did not participate in a move-in condition inspection, nor was one offered by the Landlord.

The Tenants returned around 8:00 p.m. on July 1, 2022, and the lock in the door was removed and there was no key under the mat. The Tenants left at 9:20 p.m., the Landlord had not returned.

On July 2, 2022, the Tenants emailed the Landlord explaining their situation waiting for the rental unit to be ready, then explaining they did not think the Landlord would react the way she did when they expressed their concern about the cleanliness of the rental unit. The email ended with, *"I am certainly sorry it didn't work out"*.

The Tenants uploaded form #RTB-37-Monetary Worksheet which contains the following claims:

Items	Amount
Security deposit	\$1,500.00
Double security deposit	\$1,500.00
10 hrs learning & filling forms	\$700.00
Unneeded discomfort of living in a 300 sq space	\$3,500.00
Storage costs	\$5,250.00
Total monetary claims	\$12,450.00

On July 12, 2022, the Tenants wrote the Landlord a letter headed with "Failure to Comply with a Material Term." The Tenant's forwarding or return address is noted on this letter. The letter started with:

This letter serves as written notice of your failure to comply with a material term of our tenancy agreement. The material breach that occurred is the following:

On July 1st, after 8PM:

- *Holes in the walls were not yet been covered*
- *The Oven had a pan with food and kitchen drawers needed to be cleaned*
- *Walls in the kitchen and near to the kitchen needed cleaning*
- *The front door lock had been removed when we were going to move in*
- *[the remaining items were handwritten on the letter] There where there belongings still*
- *In the mater bedroom the Headboard was not removed*
- *Garbage bags in the laundry room*
- *General cleaning*

The Tenants stated they felt a reasonable amount of time to correct this breach was one day; however, they said they have the right to end the tenancy if the matter is not corrected by July 14, 2022. The Tenants sent this letter by registered mail to the Landlord on July 15, 2022. The Tenants testified that they never returned to the rental unit after July 1, 2022.

Prior to the planned move-in to the rental unit, the Tenants stayed in a 300 square foot place, they claim \$3,500.00 compensation for this living expense prior to the start of the tenancy.

The Tenants said they needed to place their furniture items in storage when they could not move into the rental unit. They said, if the rental unit was ready for them on July 1, 2022, they would not have incurred this expense. They claim \$5,250.00 compensation for this storage expense.

In the Tenants evidence package of which the Landlord confirmed receipt, the Tenants included form #RTB-41 Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit.

The Tenants did not give evidence that they agreed in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. The Tenants are claiming the return of double the security deposit in this matter.

The Landlord stated that she and the Tenants talked about them getting their own lock for the front door. She pointed to a text message on Friday night (July 1, 2022) where the Tenant wrote:

We came to the house but be better we come back tomorrow to give you time to finish 2 things.

- We still need the front door lock (I wont have my lock available for a week- or more)*
- to lock the front window I have to push from outside or pull hard? (I don't want to brake it)*

The Landlord said she installed a front door lock in the evening on July 1, 2022. At this time, the Landlord stated the Tenants were already gone.

The Landlord sent messages to the Tenants asking for payment of the rent. She said she would not sign the tenancy agreement until after the Tenants paid their first rental payment.

The Landlord did not give evidence that she had an outstanding monetary order against the Tenants at the end of the tenancy.

The Landlord did not give evidence that she applied to the RTB to keep the security deposit.

Analysis

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.

The Landlord did not serve her evidence on the Tenants, so I decline to review any of the Landlord's evidence due to this lack of service to the Tenants.

On the first day of tenancy, the Tenants came to the rental unit; however, the Landlord was not done preparing the unit for their possession. She asked them to come back later in the day, and she told the Tenants she would put a key under the front door mat. The Tenants returned at 8:00 p.m., and there was no lock in the door and no key under the mat. The Tenants stayed until 9:20 p.m., and the Landlord never showed up. The Tenants left. The Landlord said she returned after picking up a front door lock from a hardware store, but she said the Tenants were already gone.

I find, although the Tenants paid the security deposit, the Tenants never gained exclusive possession of the rental unit and the tenancy ended due to frustration on July 1, 2022 pursuant to Section 44(1)(e) of the Act.

The Tenants provided their forwarding address to the Landlord in the July 12, 2022 Failure to Comply with a Material Term letter which they sent to the Landlord by registered mail and it was deemed served on July 20, 2022. The Landlord said that letter did not tell her that that was the Tenants' forwarding address.

The Tenants also served form #RTB-41 Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit in their evidence package, and it was deemed served on September 20, 2022. I find the Landlord was served with the Tenants' forwarding address twice and for the purposes of Section 38(1)(b) of the Act, the Landlord receive the Tenants' forwarding address in writing on September 20, 2022.

Section 38 of the Act sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or file a claim with the RTB against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing.

Based on the testimonies of both parties, as well as the documentary evidence submitted, I find the following:

- The tenancy ended on July 1, 2022.
- The Tenant's forwarding address was provided to the Landlord in writing and the Landlord received this on September 20, 2022.

September 20, 2022 is the relevant date for the purposes of Section 38(1) of the Act. The Landlord had 15 days from September 20, 2022 to repay the security deposit in full or file a claim with the RTB against the security deposit.

The Landlord did not repay the security deposit or file a claim with the RTB against the security deposit within 15 days of September 20, 2022. Therefore, the Landlord failed to comply with Section 38(1) of the Act.

Sections 38(2) to 38(4) of the Act state:

- (2) *Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].*
- (3) *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.*
- (4) *A landlord may retain an amount from a security deposit or a pet damage deposit if,*
 - (a) *at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...*

The Landlord did not organize move-in and move-out condition inspections with the Tenants and therefore I find the Tenants did not extinguish their rights in relation to the security deposit. Section 38(2) of the Act does not apply.

The Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy. Section 38(3) of the Act does not apply.

The Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all the security deposit. Section 38(4) of the Act does not apply.

Given the above, I find the Landlord failed to comply with Section 38(1) of the Act in relation to the security deposit and that none of the exceptions outlined in Sections 38(2) to 38(4) of the Act apply. Therefore, the Landlord is not permitted to claim against the security deposit and must return double the security deposit to the Tenants pursuant to Section 38(6) of the Act.

The Landlord must return \$3,000.00 to the Tenants. The amount of interest owed on the security deposit calculated up to the hearing date is \$11.63, and this amount must be added to the security deposit amount. I calculated the interest amount using:

<http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>. The total monetary award granted to the Tenants is \$3,011.63.

The Tenants claimed for hours learning and filling out RTB forms, unneeded comfort living in 300 square feet space, and storage costs, but I find these are all expenses the Tenants must bear. I do not grant compensation to the Tenants for these claims.

The Tenants claimed for compensation from the Landlord related to a notice to end tenancy for landlord's use of property. The Landlord never issued a notice to end tenancy for landlord's use of property on the Tenants. I dismiss this claim.

As the Tenants are successful in their Application, I award the Tenant reimbursement for the \$100.00 application filing fee pursuant to Section 72(1) of the Act.

In total, the Tenants are entitled to \$3,111.63 (\$3,011.63 + \$100.00) and I issue the Tenants a Monetary Order for this amount.

Conclusion

The Tenants are issued a Monetary Order for \$3,111.63. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with the Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that court.

The Tenants' claim for compensation for a monetary loss is dismissed.

The Tenants' claim for compensation from the Landlord related to a notice to end tenancy for landlord's use of property is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 14, 2023

Residential Tenancy Branch