



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes For the tenants: MNDCT, MNSD, FFT
For the landlord: MNDL-S, MNDCL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The tenants' application pursuant to the Act is for:

- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67;
- an order for the landlord to return the security deposit (the deposit), pursuant to section 38; and
- an authorization to recover the filing fee for this application, under section 72.

The landlord's application pursuant to the Act is for:

- a monetary order for compensation for damage or loss under the Act, Regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the deposit, under section 38; and
- an authorization to recover the filing fee, under section 72.

Tenants LT (the tenant) and SC and the landlord's representative RZ (the landlord) attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89(1) of the Act.

Preliminary Issue – Correction of the parties' names

The tenants' application lists tenants LT and RC and respondent landlord RZ. The landlord's application lists landlord YW and respondents tenants LT and SC.

All the parties agreed the landlord is YW, represented by agent RC, and that SC is also known as RC.

Pursuant to section 64(3)(a) of the Act, I have amended the tenants' application to list tenants applicants LT and SC and respondent landlord YW.

Issues to be Decided

Are the tenants entitled to:

1. a monetary order for loss?
2. an order for the landlord to return the deposit?
3. an authorization to recover the filing fee?

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain the deposit?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's and tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the applicants' obligation to present the evidence to substantiate their application.

Both parties agreed that monthly rent was \$1,800.00 and that the landlord collected a \$900.00 deposit and a \$300.00 fob deposit.

The parties submitted the tenancy agreement into evidence. It states the tenancy started on June 16, 2021, monthly rent was due on the first day of the month, and the tenant must pay the move in and out strata fees:

15. If the rental is a strata unit, Tenant(s) must comply with all the by-laws, regulations and rules set out by the strata. All move-in and/or move-out fees, if any, shall be

charged to the Tenant(s)'s account. Any penalty or fines from the strata during the lease term shall be on the Tenant(s) account, and should be paid fully in time. If in any case, the penalties or fines are not paid fully in time, the Tenant(s) herein consents that the Landlord can pay those outstanding penalties or fines, and instead, the outstanding will be regarded as the same amount of unpaid rent owing to the Landlord.

The tenant affirmed the tenancy started in July 2021 and ended on August 25 or 26, 2022. The landlord stated the tenancy started on June 16, 2021 and ended on August 25, 2022.

Both parties agreed the landlord conducted the move out inspection alone, as the parties did not schedule a move out inspection. The landlord did not serve the notice of final opportunity to schedule a move out inspection.

The landlord testified that he returned \$147.50 on October 26, 2022 and currently holds in trust the balance of the deposits in the amount of \$1,052.50.

The tenant confirmed receipt of \$147.50 on February 28, 2023. The tenant did not authorize the landlord to retain the deposit.

The tenant registered mailed the forwarding address to the landlord on October 21, 2022. The landlord confirmed receipt of the forwarding address. The landlord applied for dispute resolution on December 1, 2022.

Both parties agreed the tenants gave notice to end tenancy in writing and the landlord received it on July 26, 2022. The notice to end tenancy was effective on August 25, 2022.

The tenant is seeking \$290.30, as he paid rent in full for August 2022 and moved out on August 25 or 26, 2022.

The landlord is seeking \$577.50, as the tenants damaged the rental unit's sink. The landlord submitted an invoice for the sink replacement: "Description: replace Kohler undermount bathroom sink. Rate: \$550.00. GST: \$27.50. Total: \$577.50." The tenant agreed that he damaged the sink. The tenant does not agree to pay the amount claimed, as he does not know if the amount claimed is correct or if the invoice is forged.

The landlord is seeking \$75.00, as the tenants did not clean the rental unit. The tenant agreed to pay the amount claimed.

The landlord is seeking \$100.00 for the move out fee and \$100.00 for a strata fine (hereinafter, the strata charges). The landlord submitted a letter issued by the strata management company on October 21, 2022:

The Strata Council met and considered the complaint concerning a contravention of a Strata Bylaw/Rule by a Resident residing in your unit. The details of the complaint, which were sent in our earlier letter dated August 30, 2022, are as follows:

Date: August 25, 2022

Time: 9:58 am to 11:04 am

Place: Elevator

Details of Infraction: Resident of above Unit was Moving Furniture without moving fee.
[...]

Having considered the complaint, along with any responses and other pertinent matters, the Strata Council has decided to:

Issue a \$100 fine and \$100 move in fee.

The tenant said he paid the move in fee and the letter indicates that he did not pay it. The landlord affirmed the October 21, 2022 letter wrongly mentioned move in fee instead of move out fee. The tenant claims he did not pay a move out fee because he did not know that he needed to pay this fee.

The landlord is seeking \$940.00, as the tenants damaged the rental unit's walls. The landlord stated the tenants repainted some of the walls and are responsible for several patches. The landlord received a verbal quote from a contractor of \$800.00 to paint the 550 square fee rental unit and \$140.00 to remove glue residues. The tenant testified that he did not damage the walls, the amount claimed by the landlord is not fair and there is no documentary evidence regarding this amount.

The monetary order worksheet submitted by the landlord indicates: "damage recovery estimate: \$940.00".

Analysis

Section 7 of the Act states that if a party does not comply with the Act, the Regulations or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results and that the who claims compensation must minimize the losses.

Residential Tenancy Branch (RTB) Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act or the tenancy agreement is due. It states the applicant has to prove the respondent failed to comply with the Act or the agreement, the applicant suffered a loss resulting from the respondent's non-compliance, and the applicant proves the amount of the loss and reasonably minimized the loss suffered.

Pursuant to Rule of Procedure 6.6, 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 the case is on the person making the claim.

Based on the tenancy agreement and the parties' testimony, I find that monthly rent was \$1,800.00, due on the first day of the month. I accept the uncontested testimony that the landlord collected a \$900.00 deposit and a \$300.00 fob deposit, returned the amount of \$147.50 and retained the balance of \$1,052.50.

I find the tenant's testimony about the end of the tenancy was vague. Based on the landlord's convincing testimony and the letter dated October 21, 2022, I find the tenant moved out and the tenancy ended on August 25, 2022.

Deposit

Section 38(1) of the Act requires the landlord to either return the deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

Based on the tenant's convincing testimony, I find the tenant registered mailed the forwarding address in writing on October 21, 2022. I deem the landlord received it on October 26, 2022, per section 90 (a) of the Act.

The landlord returned \$147.50, retained the balance of the deposit of \$1,052.50 and submitted his application on December 1, 2022.

As I deemed the landlord received the forwarding address on October 26, 2022, the landlord had to apply for an authorization to retain the deposit until November 10, 2022. The landlord applied on December 1, 2022.

In accordance with section 38(6)(b) of the Act, as the landlord applied for dispute resolution after the timeframe of section 38(1) of the Act, the landlord must pay the tenants double the amount of the deposit retained.

Residential Tenancy Branch (RTB) Policy Guideline 17 is clear that the arbitrator will double the value of the deposit when the landlord has not complied with the 15 day deadline. It states:

The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenants are entitled to \$2,252.50 (double the deposits of \$1,200.00 minus the \$147.50 returned).

As such, I order the landlord to pay the tenants \$2,252.50.

August rent

I accept the uncontested testimony that the tenant served notice to end tenancy and the landlord received it on July 26, 2022.

Per section 26(1) of the Act, rent is due on the due date.

Per section 45(1) of the Act, the tenant may terminate a periodic tenancy by serving a

notice to end tenancy not earlier than one month before the day in the month that rent is payable.

As rent was payable on the first and the tenant only served notice to end tenancy on July 26, 2022, the tenant must pay rent due on August 1, 2022 in full.

As such, I dismiss the tenant's claim for the return of part of August 2022 rent.

Sink repair

Section 32(3) of the Act states: "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant."

I accept the uncontested testimony that the tenant damaged the sink.

The detailed invoice submitted by the landlord indicates the amount of the loss suffered by the landlord. I find the tenant's testimony about the invoice was vague. The tenant did not explain why the invoice could be forged. As such, I find the landlord proved a loss of \$577.50.

I award the landlord compensation of \$577.50.

Cleaning

The tenant agreed to pay the amount claimed.

I award the landlord compensation of \$75.00.

Strata charges

Based on the clause 15 of the tenancy agreement, I find the tenant agreed to pay move in and out fees and to comply with strata bylaws.

I accept the tenant's testimony that he did not pay the strata move out fee.

Based on the letter dated October 21, 2022 and considering that the tenancy ended on August 25, 2022, I find the letter mistakenly referenced move in fee instead of move out fee.

Considering the above, I find the landlord proved, on a balance of probabilities, that the tenant breached section 15 of the tenancy agreement by not paying the move out fee and the landlord suffered a loss of \$200.00.

As such, I award the landlord \$200.00.

Wall repair

Per section 7 of the Act, and considering RTB Policy Guideline 16, the landlord must prove the amount of the loss suffered.

The landlord did not submit an estimate for the wall repair expenses. The tenant disputed the amount claimed by the landlord.

As the landlord did not submit documentary evidence and considering that the tenant disputed the amount claimed by the landlord, I find the landlord failed to prove, on a balance of probabilities, the amount of the loss suffered.

As such, I dismiss the landlord's claim.

Filing fee and summary

As both parties were partially successful with their applications, each party will bear their own filing fee.

In summary, the landlord is awarded:

Item	Amount \$
Sink repair	577.50
Cleaning	75.00
Strata charges	200.00
Total:	852.50

The tenant is awarded \$2,252.50. The landlord is awarded \$852.50.

RTB Policy Guideline 17 states that when an arbitrator awards both parties a monetary award, the arbitrator will set-off the amounts awarded.

Thus, the tenants are entitled to \$1,400.00.

Conclusion

Pursuant to section 38 of the Act, I grant the tenants a monetary order in the amount of \$1,400.00.

The tenants are provided with this order in the above terms and the landlord must be served with **this order**. Should the landlord fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: July 10, 2023

Residential Tenancy Branch