



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes

MNDL-S, FFL

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

- a Monetary Order for damages, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The tenant and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue- Service

The tenant testified that she served the landlord with her application for dispute resolution via registered mail shortly after she filed for dispute resolution. The tenant was unable to confirm the date of the mailing or to provide a tracking number in the hearing. No proof of service documents were entered into evidence. The landlord testified that he did not receive the tenant's application for dispute resolution. I find that the tenant has not proved, on a balance of probabilities, that the landlord was served with her application for dispute resolution. The tenant's application is therefore dismissed with leave to reapply. The tenant's application to recover the filing fee is dismissed without leave to reapply.

I note that while the tenant's application has been dismissed, the disposition of the security deposit and the tenant's potential entitlement to double her security deposit will

still be decided in this decision. This is because the landlord filed for authorization to retain the tenant's security deposit and these issues must be addressed to determine the landlord's eligibility to retain the security deposit.

Both parties agree that the landlord served the tenant with his application for dispute resolution via registered mail; however, neither party could remember the dates the package was mailed or received. Based on the testimony of both parties I find that the tenant was served with the landlord's application for dispute resolution.

The landlord testified that he was not sure what evidence was included in the application for dispute resolution but that he thought he provided what he was supposed to. The evidence uploaded to the Residential Tenancy Branch on or around the date of filing was page 1 of the tenancy agreement. The landlord uploaded additional evidence on September 11, 2023, the day before this hearing. The landlord testified that this additional evidence was a repetition and was provided "before". The tenant testified that the landlord did not serve her with any evidence. I find that the landlord has not proved, on a balance of probabilities, that any evidence was served on the tenant. I note that the evidence uploaded to the Residential Tenancy Branch on September 11, 2023 was not previously uploaded to the Residential Tenancy Branch and I am not satisfied that it was served on the tenant. The landlord's evidence is therefore excluded from consideration.

The tenant testified that she served the landlord with her evidence via registered mail which was delivered to the landlord on August 2, 2023. The tenant provided the tracking number for the above mailing which is located on the cover page of this decision. The Canada Post website states that the package was mailed on July 27, 2023 and was delivered on August 2, 2023.

The landlord testified that he did not receive any evidence from the tenant. The landlord later testified that the tenant only served him with page one of the tenancy agreement and not the remaining pages. The landlord implied that the tenant had malintent in not serving the entire tenancy agreement.

I find that the landlord's changing testimony regarding the service of evidence is not credible. Based on the tenant's testimony and the Canada Post registered mail tracking information provided in the hearing, I find that the landlord was served with the tenant's evidence on August 2, 2023 in accordance with section 88 of the Act. The tenant's evidence is accepted for consideration.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damages, pursuant to section 67 of the Act?
2. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the Act?
3. Is the landlord entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the Act?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts:

- This tenancy began on July 28, 2022
- Monthly rent in the amount of \$1,350.00 was payable on the first day of each month

Both parties agree that they completed a move in condition inspection at the start of this tenancy. The landlord testified that this occurred on August 1, 2022. This was not disputed by the tenant. The tenant testified that the landlord did not provide her with a copy of the move in condition inspection report after it was completed. The landlord testified that the tenant took photos of the move in condition inspection report with her phone the day it was completed. The tenant denied this. The landlord then testified that he did not deprive the tenant of the opportunity to take photographs. The landlord did not provide any documentary proof that he served the tenant with a copy of the move in condition inspection report within seven days of its completion.

The tenant testified that she verbally provided the landlord with 30 days' notice to end tenancy effective at the end of January 2023 and that the landlord accepted this notice to end tenancy. The tenant testified that she moved out of the subject rental property on January 28, 2023 and attended at the property with the landlord on January 30, 2023 to complete a move out condition inspection and report. The tenant testified that after completing the move out inspection the landlord verbally told her that he would return her full security deposit of \$675.00. The tenant testified that the landlord did not provide

her with a copy of the move out condition inspection report after the move out condition inspection was completed.

The landlord testified that the tenant verbally asked if she could sublet the subject rental property for an undetermined time and that the tenant never gave him notice to end tenancy. The landlord testified that the tenant subleased the subject rental property to another person but he does not know when that person moved in. The landlord testified that the new person pays him the same rent as that paid by the tenant. The landlord testified that he does not know when the new subtenant started paying him rent. The landlord testified that he does not know if the tenancy with the tenant has ended.

The landlord testified that he spoke with an information officer about verbal notices to end tenancy and that he was advised that they are not valid. The landlord's application for dispute resolution states that the tenancy ended on February 1, 2023.

The tenant testified that she never sub-leased the subject rental property and that after she gave her verbal notice to end tenancy the landlord asked her to help find a new tenant and she did, and the landlord agreed for the new tenant to move in.

The tenant testified that she provided the landlord with a copy of her forwarding address in writing on January 30, 2023 when she attended at the subject rental property for the move out condition inspection. The landlord testified that they did not complete a move out condition inspection or report because he thought the tenant was subletting. The landlord denied receiving the tenant's forwarding address in writing on January 30, 2023.

The tenant testified that when she asked for the return of her security deposit after she moved out, the landlord denied receiving her forwarding address on January 30, 2023. The tenant testified that she then re-sent her forwarding address via registered mail on February 25, 2023. The tenant testified that the landlord did not pick up the registered mail and it was returned to sender. The tenant entered into evidence RTB Form 27 containing her forwarding address and a screenshot of the Canada Post tracking information pertaining to the February 25, 2023 mailing. The landlord testified that he did not receive the February 25, 2023 registered mail.

The landlord testified that he eventually received the tenant's forwarding address which is how he was able to serve the tenant with his application for dispute resolution. The landlord filed this application for dispute resolution on February 15, 2023. The landlord did not specify how or when he received the tenant's forwarding address.

The tenant testified that she paid the landlord a security deposit of \$675.00. The tenant entered into evidence a security deposit receipt signed by the landlord stating that the tenant paid a security deposit of \$675.00 to the landlord. The landlord testified that he does not know if the tenant paid a security deposit and only signed the above document because the tenant asked him to, not because it was correct. The landlord's application for dispute resolution states that the tenant paid a security deposit of \$675.00 and seeks authorization to retain it.

The landlord's application for dispute resolution claims \$675.00 for the following:

Walls are olive color, there are white painted spots approximately ten or twelve of them. Needs to be painted all same color. Plumbing kitchen faucet needs to be repaired, kitchen sink drainage repaired stone and oven needs to be cleaned. Balcony (fire sundeck) needs things removed and fully cleaned

The landlord testified that the tenant left white patches on the olive-coloured walls at the end of the tenancy and the walls require painting. The landlord testified that the walls have not been painted. The tenant testified that the walls had the white patches when she moved in. Condition inspection reports were not accepted for consideration.

The landlord testified that after the tenant left the faucet was leaking and he had to call a plumber to fix this. No receipts or estimates were entered into evidence. The tenant testified that the faucet was the same condition on move in as move out. The tenant testified that during the move out condition inspection the landlord verbally told her that the faucet was fine, the stove was fine and he never mentioned items left of the patio, which were a table and chairs that the new tenant accepted.

The landlord did not provide testimony as to how he arrived at the sum of \$675.00. No receipts or estimates were entered into evidence.

Analysis

I find that the landlord has not proved, on a balance of probabilities that the tenant sub-leased the subject rental property. I find on a balance of probabilities that the tenant gave the landlord verbal notice to end tenancy. If the tenant had not, I find it unlikely that the landlord would have asked the information officer about the effectiveness of a verbal notice to end tenancy.

Based on the tenant's testimony I find that this tenancy ended on January 30, 2023. As the landlord stated on his application for dispute resolution that this tenancy ended on February 1, 2023, I find his submissions that he did not know when the tenant moved out or if the tenancy had ended to be unbelievable.

Based on the landlord's application for dispute resolution and the signed security deposit receipt entered into evidence, I find that the tenant paid the landlord a security deposit of \$675.00.

The tenant testified that she provided the landlord with her forwarding address in writing in person on January 30, 2023 and again via registered mail on February 25, 2023; however the registered mail was not picked up. The landlord denied being personally served with the tenant's forwarding address on January 30, 2023 but testified that he "eventually" received the tenant's forwarding address in time to enable him to file his application for dispute resolution.

The landlord did not testify how or when he "eventually" received the forwarding address. I do not find the landlord's evidence on this point credible. As the February 25, 2023 mailing of the tenant's forwarding address was returned to sender and the tenant filed this application on February 15, 2023, the most plausible conclusion is that the landlord did in fact receive the tenant's forwarding address prior to February 15, 2023. I accept the tenant's testimony that the only other time she provided the landlord with her forwarding address was when the parties met to complete the move out condition inspection on January 30, 2023. I find that the landlord was served with the tenant's forwarding address on January 30, 2023.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants.

Section 24(2)(c) of the *Act* states:

The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

[Emphasis added]

Section 18 of the Regulation states that the landlord must give the tenant a copy of the signed condition inspection report within 7 days after the condition inspection is completed. I accept the undisputed testimony of the landlord that the move in condition inspection report was completed on August 1, 2022.

I find that the landlord has not proved, on a balance of probabilities, that he gave the tenant a copy of the move in condition inspection report within 7 days of its completion as no proof of service documents were entered into evidence. I note that even if the tenant had taken photos of the condition inspection report on her phone, which I do not find, the landlord would still not have fulfilled his obligations under the Act to provide the tenant with a copy.

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-in inspection report, I find that the landlords' eligibility to claim against the security deposit for damage arising out of the tenancy is extinguished.

Section 38 of the Act requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

Section C(3) of Policy Guideline 17 states that unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlords' right to make such a claim has been extinguished under the Act.

I find that while the landlord made an application to retain the tenants' security deposit within 15 days of the end of this tenancy and the receipt of the tenant's forwarding address in writing, the landlord is not entitled to claim against it due to the extinguishment provisions in section 24 of the *Act*. Therefore, the tenant is entitled to receive double her security deposit totalling \$1,350.00.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the tenant's claim fails.

The landlord did not enter into evidence receipts, invoices or estimates proving the value of the loss or damage the landlord is alleging. The landlord has failed to prove point 3 of the above test. I therefore dismiss the landlord's monetary claim without leave to reapply. As I have determined that the landlord failed to meet point 3, I decline to consider the other points of the test.

As the landlord was not successful in this application for dispute resolution, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

The tenant's application is dismissed with leave to reapply.

The landlord's application is dismissed without leave to reapply.

I issue a Monetary Order to the tenant totalling \$1,350.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. 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: September 13, 2023

Residential Tenancy Branch