



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDCT, RPP, FFT**
 MNSDS-DR, FFT

Introduction

This hearing dealt with the Tenants' applications 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 Landlords to return the Tenants' personal property under sections 65 and 67 of the Act;
3. An Order for the return of part or all of the security deposit and/or pet damage deposit that the Landlords are holding without cause under section 38 of the Act; and,
4. Recovery of the application filing fee under section 72 of the Act.

The hearing was conducted via teleconference. One Landlord, H.C., and support M.C., and both Tenants, S.A. and S.S., 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.

Service

The Tenants testified that they served the Landlords with the Proceeding Package and evidence for this hearing on May 24, 2023 and June 2, 2023 by Canada Post registered mail. The Landlords confirmed receipt of both packages. I find that the Landlords were

deemed served with the Proceeding Package five days after mailing them, on May 29, 2023 and June 7, 2023 respectively 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 Landlords to return the Tenants' personal property?
3. Are the Tenants entitled to an Order for the return of part or all of the security deposit that the Landlords are holding without cause?
4. Are the Tenants entitled to recovery of two application filing fees?

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 June 1, 2022. Monthly rent was \$1,800.00 payable on the first day of each month. A security deposit of \$800.00 was collected at the start of the tenancy and is still held by the Landlords. The Tenants confirmed that this tenancy ended on February 28, 2023.

Return of Personal Property

The Tenants testified that this tenancy ended because of a One Month Notice issued by the Landlords. Both Tenants had overseas trips planned before they received the One Month Notice. Tenant S.S. planned to be away from January 31, 2023 to March 1, 2023, and Tenant S.A. planned to be away from February 10, 2023 to April 22, 2023.

The Tenants had sublet their rental unit from February 1, 2023 to 12:00 p.m. on May 31, 2023 although this was not permitted by the tenancy agreement without the Landlords' consent. On February 4, 2023, support M.C. stated that two guys came to their front door claiming they lived in the basement suite. Support M.C. said they filed a police report about this. She said the police told them they should change the locks.

The Tenants sent an apology letter and the last five keys held by the Tenants to the Landlords on February 8, 2023. Support M.C. said they received this apology letter at the end of April 2023.

The Tenants made arrangements with support M.C. for their movers to come and pick up their personal property on March 2, 2023 at 7:30 p.m. On that date, Landlord H.C. denied entrance to the movers to the rental unit. The Tenants made a subsequent entry date arrangement for the movers for March 4, 2023 at 4:30 p.m. On that date, again Landlord H.C. denied entry to the movers.

The Tenants uploaded copies of text messages with support M.C. and their movers about instructions for the movers gaining access to the rental unit. They wrote:

March 2, 2023:

Support M.C.: My parents will be there. The person can knock on the door as long as they are coming in the times we have provided. They will gain access to have stuff moved

March 3, 2023:

Movers: Old guy

Tenant S.A.: Old and short?

Movers: Yes

Tenant S.A.: No lady was there?

Movers: Yes a lady too

Tenant S.A.: [uploaded a picture of Landlord H.C.] Her?

Movers: Yes

Tenant S.A.: And they said what ? Please share

(Sent the \$\$)

...

Movers: They told me they can't access your unit.

The Tenants testified that they paid the movers \$40.00 for each arranged pick-up dates.

Support M.C. testified that Landlord H.C. agreed that the movers could come to the rental unit and pick up the Tenants' personal property. Support M.C. stated that the two boys who were subletting the rental unit denied entry to the movers to the Tenants' suite, and the Landlords had no control over this. She stated, "*they were claiming they were [Tenant S.A.]'s friends, and that they do not want to give him the property until [Tenant S.A.] resolves all this money, like increasing the rent etc. in the fake sublease*

with them which was out of our control." The two boys who sublet the rental unit left the suite by May 28, 2023.

At the end of May, support M.C. stated that they called Tenant S.A. to come and pick up the remainder of their belongings and do an inspection with the Landlords.

The Landlords still have the Tenants' property but did not want to return it because the Tenants had made this claim for dispute resolution, and they are waiting to see what happened in the process.

Tenant S.A. said they have replaced all their personal property. The Tenants seek compensation for the property the Landlords held from them. These items included:

Items	Amount
Study chair-wood	\$50.00
Study chair-metal	\$250.00
Custom headboard	\$150.00
Custom footboard	\$150.00
2 mattresses * \$800.00	\$1,600.00
2 mattress pallet frames * \$350.00	\$700.00
Foam camping mattress	\$60.00
Portable BBQ	\$60.00
Woodworking tools:	\$180.00
Hammer	
Saw	
Nails	
DeWalt sander	
Sandpaper	
DeWalt screw power tool	
LED lights	\$30.00
Mover charges (2 * \$40.00)	\$80.00

Tenant S.A. said the amount they are seeking is sometimes less than what is posted in the online purchases as they acquired these items when there were discounts or sales.

Return of Security Deposit

Tenant S.A. testified that at the start of the tenancy no formal move-in condition inspection was completed with the Landlords. Instead, the parties did a rough walk

through the rental unit on April 11, 2022. The Landlords did not provide the Tenants with a copy of any move-in condition inspection report.

Landlord H.C. arranged the move-out condition inspection for March 1, 2023 at 8:00 p.m.; however, Tenant S.S. landed midday on March 1, 2023 and was so jetlagged from her trip, she was unable to attend the move-out condition inspection. Support M.C. stated the Landlords made an offer for a second opportunity to do the move-out condition inspection on the phone.

The Tenants claim the Landlords did not offer a second opportunity in writing or by phone for the Tenants to do the move-out condition inspection. The Landlords offered to return \$500.00 of the security deposit, but the Tenants did not agree to this. The Landlords did not send a copy of any move-out condition inspection report to the Tenants. Support M.C. sent the Tenants a text message of the damages they allegedly found.

The Tenants provided their forwarding address to the Landlords by Canada Post registered mail on May 24, 2023. The Tenants uploaded a proof of service form #RTB-41 attesting to this service. The Landlords confirmed receipt.

The Tenants testified that they did not agree in writing that the Landlords could keep all or a portion of their security deposit.

Support M.C. claims the Landlords took the Tenants' letter as confirming that the Landlords could keep the Tenants' security deposit. The words in the letter the Landlords rely on were:

*If you do decide to give us our stuff from the basement and/or the deposit
please reach out to me on WhatsApp.
If not, I totally understand.*

The Landlords confirmed that they did not apply to retain all or a portion of the Tenants' security deposit.

The Landlords confirmed that they did not have an outstanding monetary order against the Tenants at the end of the tenancy.

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.

Return of Personal Property

Under section 65(1)(e) of the Act, if the director finds that a landlord has not complied with the Act, the regulations or a tenancy agreement, the director may order that personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned.

I accept the Tenants' testimony and documentary evidence that they made two attempts for movers to pick up their belongings, but that both attempts were denied by the Landlords. I do not believe the Landlords' support's testimony that the subletters were the bodies that did not allow the movers to pick up the Tenants' personal property. I find the Tenants' text message from the movers tells a different story which I believe.

The Landlords state that the Tenants' property remains in their garage, and they would like the Tenants to pick it up. I heard the Tenants say that they have replaced most of these items, but their items still exist, and I order the Tenants to retrieve their belongings from the Landlords. I order the Landlords must make good efforts to work with the Tenants so they can retrieve their property peacefully. Email addresses are on the cover sheet of this decision which will allow the parties to make arrangements for this final pick-up.

The Tenants made two separate arrangements with their movers to pick up their belongings at the rental unit. The Tenants testified that the cost for each pick-up day was \$40.00. Under section 67 of the Act, I determine that the Tenants are entitled to **\$80.00** for this loss, and I grant the Tenants this compensation amount.

As the Tenants were successful in the return of their personal property Application, I award the Tenants reimbursement for the **\$100.00** application filing fee pursuant to section 72(1) of the Act.

Return of Security Deposit

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. There are exceptions to this outlined in Sections 38(2) to 38(4) of the Act.

I accept the testimonies of the parties, and I find the following:

- The tenancy ended February 28, 2023.
- The Tenants' forwarding address was deemed served to the Landlords in writing on May 29, 2023.

May 29, 2023 is the relevant date for the purposes of section 38(1) of the Act. The Landlord had 15 days from May 29, 2023 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 May 29, 2023. Therefore, the Landlord failed to comply with section 38(1) of the Act.

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

38 ...

- (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...*

Tenant S.A. stated that no formal move-in condition inspection was conducted, rather it was just a walk through of the rental unit at the start of the tenancy. The Landlords did not deny this was the case.

At the end of the tenancy, a move-out condition inspection was planned, but due to overseas travel, Tenant S.S. was unable to participate on March 1, 2023. Support M.C. stated that a second move-out condition inspection was offered by telephone. The Tenants denied that a second move-out condition inspection was offered by telephone.

I find that the Landlords neither complied with section 23(3) of the Act by offering the Tenants at least two opportunities to do the move-in condition inspection, nor complied with section 35(2) of the Act by offering the Tenants at least two opportunities to do the move-out condition inspection. Therefore, section 38(2) of the Act does not apply.

The Landlords 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 Landlords rely on an apology letter sent by the Tenants that that was their agreement in writing at the end of the tenancy for the Landlords to keep some or all of the security deposit. The Tenants submit that they did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. I find the Tenants have not agreed in writing at the end of the tenancy that the Landlords could keep some or all of 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 Landlords are 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 Landlords must return **\$1,600.00** to the Tenants. Using the RTB Deposit Interest Calculator, there is **\$11.06** of interest owed on the security deposit.

As the Tenants were successful in the return of their security deposit Application, I award the Tenants reimbursement for the **\$100.00** application filing fee pursuant to section 72(1) of the Act.

In total, the Tenants are entitled to \$1,891.06 (\$80.00+\$100.00+ \$1,600.00+\$11.06 +\$100.00) and I issue the Tenants a Monetary Order for this amount.

Conclusion

The Tenants are issued a Monetary Order for \$1,891.06. This Order must be served on the Landlords as soon as possible. If the Landlords fail 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.

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: October 11, 2023

Residential Tenancy Branch