



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNDL-S, FFL
Tenant: MNSDS-DR

Introduction

This was a cross application hearing that dealt with tenant R.U.'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.

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; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Both parties 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 landlord testified that tenant R.E. was served with the landlord's application for dispute resolution and first evidence package via e-mail on March 23, 2023 in accordance with a substituted service decision from the Residential Tenancy Branch. The substituted service decision states that the landlord is permitted to serve tenant R.E. via email. Tenant R.E. testified that he received the above documents via email. I find that tenant R.E. was served with the landlord's application for dispute resolution and first evidence package in accordance with the substituted service decision. No issues with the timing of service were raised in the hearing.

The landlord testified that tenant R.U. was served with the landlord's application for dispute resolution and first evidence package via registered mail on March 23, 2023. Tenant R.U. testified that he received the above documents. I find that tenant R.U. was

served with the landlord's application for dispute resolution and first evidence package in accordance with section 89 of the Act. No issues with the timing of service were raised in the hearing.

The agent testified that the landlord's second evidence package was served on tenant R.E. via email on November 8, 2023. Tenant R.E. testified that he received the landlord's additional evidence on November 8, 2023 but did not have enough time to review and respond to it.

The agent testified that the landlord's second evidence package was served on tenant R.U. via registered mail on November 8, 2023. Tenant R.U. testified that he received the landlord's second evidence package on November 11, 2023. Tenant R.U. testified that he did not have enough time to review and respond to the landlord's second evidence package.

Section 3.14 of the Residential Tenancy Branch Rules of Procedure (the "*Rules*") state that evidence must be received by the respondents and the Residential Tenancy Branch directly not less than 14 days before the hearing.

I accept the testimony of tenant R.E. that he received the landlord's second evidence package on November 8, 2023. I accept the testimony of tenant R.U. that he received the landlord's second evidence package on November 11, 2023.

I find that tenant R.E. received the landlord's second evidence package 14 clear days before the hearing and tenant R.U. received the landlord's second evidence package 11 clear days before the hearing. As the tenants are joint and severally liable, for evidence to be considered, both tenants were required to be served with the landlord's second evidence package at least 14 clear days before the hearing. I find that serving one of the two tenants on time is not enough to meet Rule 3.14. I find that to accept the landlord's second evidence package would be procedurally unfair to tenant R.U. who did not receive it on time and testified that he did not have enough time to review and respond to that evidence. I therefore exclude the landlord's second evidence package from consideration.

Tenant R.U. testified that he served the landlord with his application for dispute resolution via email but may have served it to a previous building manager and that he was not sure if the landlord received it. No proof of service documents were entered

into evidence. The agent testified that the landlord did not receive tenant R.U.'s application for dispute resolution.

I find that tenant R.U. has not proved, on a balance of probabilities, that the landlord was served with his application for dispute resolution. Tenant R.U.'s application is therefore dismissed with leave to reapply. I note that while tenant R.U.'s application was dismissed, the issue of the landlord's right to retain the security deposit will still be answered in this decision as the landlord applied to retain it.

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 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 and presented 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 tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts:

- This tenancy began on May 1, 2022 and ended on January 21, 2023
- Monthly rent in the amount of \$2,500.00 was payable on the first day of each month,
- a security deposit of \$1,250.00 was paid by the tenants to the landlord on April 7, 2022.

The landlord filed this application for dispute resolution on February 27, 2023.

A written tenancy agreement was signed by both parties and a copy was submitted for this application. Both parties agree that the landlord and tenant R.U. completed a joint move in condition inspection report on April 29, 2022.

Tenant R.U. testified that he provided the landlord with his forwarding address via email on February 14, 2023. The agent confirmed receipt of the above on February 14, 2023. Tenant R.E. testified that he did not provide the landlord with his forwarding address.

The tenants testified that the landlord did not provide them with two opportunities to complete a move out condition inspection report. The agent testified that he does not have any information on the landlord providing opportunities to complete the move out condition inspection report but that the previous property manager would have texted, called or set something up in person. The landlord entered into evidence a move out condition inspection report dated January 31, 2023 completed without the tenants. No documentary evidence asking the tenants to complete the move out condition inspection were presented in the hearing.

The agent testified that the carpet in the subject rental property was clean and in satisfactory condition at the start of the tenancy and was stained and dirty at the end of the tenancy. The agent testified that the landlord is seeking \$115.00 for the cost of carpet cleaning. No receipts were entered into evidence. The agent testified that the landlord attempted to clean the carpets, but they could not be cleaned and had to be replaced.

Tenant R.U. testified that the carpets were not clean on move in and were shampooed on move out. Tenant R.U. testified that any stains were likely there at the start of the tenancy.

The agent testified that the subject rental property was left dirty at the end of the tenancy. The agent testified that the landlord hired a contractor to clean the subject rental property and is seeking \$205.00 for this cleaning. No receipts or invoices were entered into evidence.

Tenant R.U. testified that the stove and counters were wiped down and some stuff was swept to the middle of the floor.

The agent testified that at the start of the tenancy the doors and walls were in good condition and the doors and walls required painting at the end of the tenancy. The agent testified that the landlord is seeking \$3,000.00 for patching and painting the doors and walls. No receipts or invoices were accepted into evidence for consideration. The agent testified that the property was last painted in September of 2021.

Tenant R.U. testified that the property was not freshly painted when they moved in and there were holes in the walls from the previous tenants. Tenant R.U. testified that the holes in the doors resulted from a design flaw as two doors banged into each other when they opened.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], 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.

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 claim fails.

No receipts or invoices were accepted into evidence for consideration for any of the landlord's monetary claims. I therefore find that the landlord has failed to prove that a loss was suffered and has failed to prove the value of the alleged losses. The landlord's claims for carpet cleaning, suite cleaning and painting are therefore dismissed without leave to reapply.

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 tenants.

Security Deposit

Based on the testimony of R.U. and the agent, I find that the landlord received tenant R.U.'s forwarding address on February 14, 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 36(1) of the *Act* states that 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 offer the tenant two opportunities to complete the move out condition inspection. Pursuant to section 17 of the *Residential Tenancy Act Regulations* (the "Regulations"), the second opportunity must be in writing.

The responsibility for completing the move out condition inspection report rests with the landlord. The tenants testified that the landlord did not provide them with an opportunity to complete the move out condition inspection. The agent testified that he did not have information on this but provided testimony on what he thought the previous property manager would have done. I find that the landlord has not proved, on a balance of probabilities that the tenants were provided with two opportunities to complete the move out condition inspection report as no documentary evidence stating same was entered into evidence and the tenants disputed being provided with two opportunities to attend. I therefore find that the landlord's right to retain the deposits has been extinguished under section 36 of the *Act*.

Section 38 of the *Act* requires the landlord to either return the tenants' 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 landlord's right to make such a claim has been extinguished under the *Act*.

In this case, while the landlord made an application to retain the tenants' security deposit within 15 days of receiving tenant R.U.'s forwarding address in writing, the landlord is not entitled to claim against it due to the extinguishment provisions in section 36 of the *Act*. Therefore, the tenants are entitled to receive double their security deposit plus interest accrued on the security deposit.

I accept the agent's testimony that the tenants' security deposit of \$1,250.00 was received by the landlord on April 7, 2022. I find that the interest accrued on the \$1,250.00 deposit as of the date of this hearing amounts to \$21.92. I therefore award the tenants a total of \$2,521.92.

Conclusion

The landlord's application for dispute resolution is dismissed without leave to reapply. Tenant R.U.'s application for dispute resolution is dismissed with leave to reapply.

I issue a Monetary Order to the tenants in the amount of \$2,521.92.

The tenants are 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: November 27, 2023

Residential Tenancy Branch