



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenants' application ending in #433: MNDCT, MNSD, MNETC, FFT
Landlord's application ending in #827: MNDL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear crossed applications.

The Tenants' September 7, 2023 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, pursuant to section 38;
- A Monetary Order in an amount equivalent to twelve times the monthly rent payable under the tenancy agreement under section 51(2);
- An authorization to recover the filing fee for this application, under section 72

The Landlord's December 27, 2023 application pursuant to the Act is for:

- A Monetary Order for loss under the Act, the regulation or tenancy agreement, pursuant to sections 32 and 67;
- An authorization to recover the filing fee for this application, under section 72

Service of Notice of Dispute Resolution Proceedings (Proceeding Packages) and the Evidence

Both parties acknowledge receipt of the other party's Proceeding Packages and Evidence. Thus, I find that both parties are duly served in accordance with the Act.

Preliminary Matters

Severing secondary claim from Tenants' application

The Tenants' application includes a secondary claim regarding 12 months of rent in compensation under section 51(2) of the Act for the Landlord failing to achieve the stated purpose of a notice to end tenancy issued under section 49 of the Act. Pursuant to Rule 2.3 of the Rules of Procedure, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated.

I find that the primary issues in both applications are related to the return of the security deposit and other monetary entitlements due imminently after the end of a tenancy. I find that the Tenant's claim under sections 51(2) is not sufficiently related to the other monetary issues to be heard at the same time.

Issue(s) to be Decided

Are the Tenants entitled to monetary award(s) for loss under the Act?

Are the Tenants entitled to the doubling and/or return of their security deposit?

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?

Is either party authorized to recover their filing fee from the other party?

Facts and Analysis

The original tenancy agreement started in April 2008, with a security deposit in the amount of \$600.00 paid on April 9, 2008. Both parties agree that the new owner and current Landlord, CM, inherited the tenancy after purchasing the property in July 2022.

The Landlord confirms that they are currently holding the full security deposit. Monthly rent at the end of the tenancy was \$1,650.00 per month.

The Landlord issued a Two Month Notice to end tenancy dated November 29, 2022, which was confirmed to have been received by the Tenants on the same day. The Two Month Notice indicated a move-out date of February 28, 2023. The Tenants gave 10 days of notice to the Landlord for ending the tenancy early, as permitted following a Two Month Notice, on January 8, 2023, indicating that the tenancy would end on January 18, 2023. Both parties agree that the Tenants provided vacant possession to the Landlord on January 18, 2023.

Are the Tenants entitled to monetary award(s) for loss under the Act?

This claim is related to one month of compensation as per section 51(1) of the Act, following the issuing of a notice to end tenancy under section 49 (Two Month Notice). The claim also includes compensation for a portion of January 2023's rent pro-rated with reference to the vacancy date.

The Tenants state that they had never received the one month of compensation that they were entitled to following the Two Month Notice. During the hearing, the Landlord confirmed this and stated that this had occurred because of their misunderstanding of the rules.

The Tenants state that they had paid for the full month of January 2023, despite giving 10 days notice and vacating on January 18, 2023 – and the Tenants state that the Landlord never subsequently refunded them for the 13 days of the month for which rent had been paid. The Landlord agreed with this logic at the hearing.

Given the testimony and evidence of the parties, and the mutual understanding of all participants at the hearing, I find that the Tenants are entitled to compensation for the following:

- One month of compensation - \$1,650.00
- 13 days of rent refund for early end of tenancy - \$691.94
 - $(\$1,650 / 31 \text{ days in January}) \times 13$

Therefore, the Tenants are entitled to a total monetary award of \$2,341.94 for loss under section 67 of the Act.

Are the Tenants entitled to the doubling and/or return of their security deposit?

If the landlord does not have the tenant's agreement in writing to retain all or a portion of the security deposit, section 38(1) of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay the security deposit or make an application for dispute resolution claiming against the security deposit.

Section 38(6) of the Act states that if the landlord does not return the security deposit or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the security deposit.

In their application, the Tenants claimed that the Landlord did not return the security deposit following the end of the tenancy, nor after a forwarding address was provided on January 19, 2023, and therefore claim double the security deposit including interest in the sum of \$1,214.30.

The Tenants state that they participated in the move-in condition inspection at the start of the tenancy with the previous Landlord, and both parties confirmed that a move-out condition inspection occurred with all parties participating at the end of the tenancy. However, the Landlord did not use a written condition inspection report for the move-out condition inspection. The Tenants completed a "move-out checklist" on their own initiative to assist the parties during the move-out condition inspection – I note that this checklist does not conform to the standard information that must be included in a condition inspection report as required under Residential Tenancy Regulation 20.

During the hearing, both parties confirmed that the Landlord did not have the Tenants' agreement in writing to keep the security damage deposit, nor had the Landlord applied for dispute resolution within 15 days of receiving the Tenant's forwarding address to retain a portion of the security damage deposit as required under section 38(1).

Under section 38(6) of the Act, I find that the Landlord must pay the Tenant double the security deposit as they have not complied with section 38(1) of the Act.

Therefore, I find the Tenants are entitled to a Monetary Order for the return of double their security deposit under sections 38 and 67 of the Act, in the amount of \$1,238.94 – which includes interest calculated up until the date of this hearing.

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?

Section 35 of the Act establishes that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report.

Section 32(3) of the Act states that a tenant 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.

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

The Landlord claimed a sum of \$12,903.94 in relation to damages and loss. During the hearing, the Landlord made specific references to a leaky garburator, a dysfunctional dishwasher, the stovetop, burnt countertops, overall lack of cleanliness including black marks on some of the soft vinyl, as well as required painting and the removal of wallpaper.

As discussed at the hearing, the Tenants had been occupying the rental unit for over 24 years – which affects the ability of the Landlord to claim damages beyond wear and tear because many of these items have already expired their useful lifetime as described in Policy Guideline #40. Furthermore, as the Landlord only obtained ownership of the property within the final year of the tenancy, the Landlord was unable to prove the age of items with relation to their claims, and thus, the Landlord cannot prove that the damages extended beyond wear and tear. Lastly, since the Landlord did not complete a move-out condition inspection report, I have less information to determine the merits of the Landlord's claims.

I have reviewed the photographs submitted by the Landlord and compared them against the original move-in condition inspection report. I conclude that there is no evidence of aggravated damage or any obvious negligence. Overall, the Landlord's testimony and evidence does not meet the threshold required to prove that they are owed compensation.

For the above reasons, the Landlord's application for a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act is dismissed, without leave to reapply.

Is either party authorized to recover their filing fee from the other party?

As the Tenants were successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant the Tenants a Monetary Order in the amount of \$3,680.88 under the following terms:

Monetary Issue	Granted Amount
One month of rent, as per section 51(1), for ending a tenancy under section 49	\$1,650.00
13 days of rent refund for early end of tenancy	\$691.94
Double the security deposit, including interest	\$1,238.94
Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	\$100.00
Total Amount	\$3,680.88

The Tenants' claim regarding twelve months of compensation under section 51(2) of the Act is severed, with leave to reapply. All parties agreed to communication and service by email for the severed claim in the event of a future hearing, with details noted on the cover page of this decision.

The Landlord's application is dismissed in its entirety, without leave to reapply.

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: February 21, 2024

Residential Tenancy Branch