



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes For the Landlord: MNDCL-S, LRSD, FFL
For the Tenants: MNSDS-DR, FFT

Introduction

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

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

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- an order for the landlord to return the deposit, under section 38 of the Act; and
- an authorization to recover the filing fee, under section 72 of the Act.

Landlord OS (the Landlord) and tenant KP (the Tenant) attended the hearing. The Tenant represented all the named tenants. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The parties each confirmed receipt of the notice of dispute resolution application and evidence (the materials) and that they had enough time to review them.

Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the *Act*.

Issues to be Decided

Is the Landlord entitled to:

1. a monetary award for compensation for damages caused by the Tenants?
2. an authorization to retain the balance of the deposit?
3. an authorization to recover the filing fee?

Are the Tenants entitled to:

1. an order for the Landlord to return the deposit?
2. 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 submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

Both parties agreed the tenancy started in August 2023 and ended in December of that year. Monthly rent when the tenancy ended was \$3,800.00. The Landlord collected a \$1,900.00 deposit, received the forwarding address in writing on December 10, 2023, and returned \$611.25 from the deposit in a cheque mailed to the Tenants' forwarding address on December 18. The Tenant received the cheque on December 22. The Landlord currently holds \$1,288.75 from the deposit.

The parties also agreed they did not complete a move in inspection when the tenancy started, and the Tenants did not authorize the Landlord to retain the balance of the deposit.

The Landlord applied for dispute resolution on September 17, 2024 and the Tenants on October 8.

The parties did not complete a move out inspection. The Landlord affirmed the Tenant did not attend the move out inspection on the verbally agreed time. The Tenant affirmed there was no agreed time for the move out inspection.

The rental unit (the unit) is a 5-bedroom, 4-bathroom single family house located on a one-acre property.

The Landlord is seeking \$600.00, as tenant JM works in construction, he abandoned a pile of wood in the unit's yard and the Landlord paid the amount claimed to remove it. The Landlord submitted a receipt for the amount claimed and a photograph showing a large pile of wood.

The Tenant affirmed JM did not leave the pile of wood in the unit's yard. The pile of wood was not in the yard when the tenancy started and she does not know who put it there.

The Landlord is seeking \$300.00, as the Tenants did not remove their belongings from the unit and the Landlord paid the amount claimed to remove it. The Landlord submitted a photograph showing 4 boxes and affirmed the belongings filled a truck and submitted the receipt for the amount claimed. The receipt says: "large load".

The Tenant affirmed she removed all her belongings when she moved out and that the unit was used as a short-term rental prior to her tenancy.

The Landlord is seeking \$388.75, as the Tenants did not clean the carpet in the upstairs area of the unit and the Landlord paid the amount claimed. The carpets were dirty and with pet urine smell when the tenancy ended. The Landlord submitted a receipt for the amount claimed.

The Tenant affirmed the carpet had stains when the tenancy started and she is not responsible for extra stains during the tenancy. The carpet did not have pet urine smell when the tenancy ended.

The Landlord submitted a letter from the contractor hired by her to repair the unit. It states:

Sometime in September 2023 I noticed for the first time [redacted for privacy] that a significant pile of wood that appeared to be a remnant of construction wood was placed at the bottom part of the rental property close to the highway. I addressed her regarding this issue and was told that she would ask the current tenants [redacted for privacy], regarding this matter.

[...]

On December 10, 2023, the day the current tenants [redacted for privacy] moved out, this pile of wood was still at the same location and had not been removed from the property.

I further witnessed after the tenants moved out that day (December 10, 2023), the amount of garbage left behind at the property was substantial. ALL of this garbage was left by the tenants.

Analysis

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.

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 whoever claims compensation must minimize the losses.

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.

I accept the uncontested testimony that the unit was a 5-bedroom, 4-bathroom single family house located on a one-acre property.

Deposit

I accept the uncontested testimony the parties did not complete a move in inspection, the Landlord received the forwarding address in writing on December 10, 2023, mailed a cheque to the Tenants' forwarding address on December 18 and retained \$1,288.75 from the deposit without the Tenants' consent.

Section 23(4) of the Act requires landlords to complete a condition inspection report in accordance with the Residential Tenancy Regulations when the tenancy starts.

Section 24(2) of the Act states, regarding the start of tenancies:

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

[...]

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

As the Landlord did not complete a condition inspection report when the tenancy started, the Landlord extinguished her right to claim against the deposit, per section 24(2)(c) of the Act.

Section 38(1) of the Act requires landlords to either return the tenant's deposits 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.

The parties did not agree on the tenancy end date. However, they agreed it ended in December 2023 and the Landlord received the forwarding address on December 10.

The tenancy ended and the Landlord had received the forwarding address more than 15 days prior to the dates they submitted their applications.

In accordance with section 38(6)(b) of the Act, as the Landlord extinguished her right to claim against the deposit and did not return the deposit in full within the timeframe of section 38(1) of the Act, the Landlord must pay the Tenants double the amount of the deposit.

Policy Guideline 17 states that "the arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return."

Policy Guideline 17 also states the Tenant is entitled to double the deposit if the Landlord claimed against the deposit when the Landlord's right to do so has been extinguished under the Act:

Unless the tenant has 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;

Policy Guideline 17 also explains that:

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 the Tenants are entitled to $\$3,188.75$ (double the $\$1,900.00$ deposit minus the amount returned of $\$611.25$).

Wood removal

Section 37(2)(a) of the Act states the tenant must reasonably clean the rental unit when the tenancy ends.

I find the Tenant's testimony that the pile of wood was not in the unit when the tenancy started and that she does not know who put it there is not convincing.

Based on the Landlord's convincing testimony, the photograph, the receipt, and the letter, I find the Landlord proved tenant JM works in construction, the Tenants abandoned the pile of wood in the unit's yard and the Landlord paid the amount claimed to remove it.

Thus, I find the Landlord proved the Tenants breached section 37(2)(a) of the Act by not removing the pile of wood and the Landlord suffered the loss claimed.

I award the Landlord $\$600.00$ for this loss.

Belongings removal

I find both parties' testimony about the alleged abandoned belongings is equally convincing.

The photograph submitted shows only 4 boxes. The letter contains a vague testimony about the alleged belongings abandoned in the unit and the receipt also contains a vague description ("large load").,

Thus, I find the Landlord failed to prove why she paid $\$300.00$ to remove the belongings.

As such, I find the Landlord failed to prove that she needed to pay \$300.00 to remove belongings.

I deny the Landlord's claim.

Carpet cleaning

I find both parties' testimony about the carpet's conditions equally convincing.

The parties provided conflicting testimony about the carpet's conditions. The Landlord did not conduct a move in and move out inspection, as required by the legislation, and did not submit photographs showing carpet damage.

Thus, I find the Landlord failed to prove the Tenants are responsible for carpet damage.

I deny the Landlord's claim.

Filing fees and summary

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

In summary, I award the Landlord \$600.00 and the Tenants \$3,188.75.

Policy Guideline 17 sets guidance for a set-off when there are two monetary awards: "Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order."

Thus, I award the Tenants \$2,588.75.

Conclusion

Per section 38 of the Act, I award the Tenants \$2,588.75.

The Tenants are provided with this order in the above terms and the Landlord must be served with this order in accordance with section 88 of the Act. 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 *Act*.

Dated: December 3, 2024

Residential Tenancy Branch