



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF, MND, MNR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent and utilities, for damage to the rental unit, and for money owed or compensation for damages or losses under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security and pet damage deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- a monetary order for compensation for damages or losses under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of their deposits pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenants confirmed that they received copies of the landlord's dispute resolution hearing package sent by the landlord by registered mail on February 4, 2014. The landlord confirmed that in early March 2014, he received a copy of the tenant's dispute resolution hearing package. I am satisfied that the parties served one another with these packages in accordance with the *Act*.

At the hearing, the female tenant testified that the tenants were unaware that they were responsible for sending their written evidence and photographs contained in a digital evidence USB device to the landlord. Although the Residential Tenancy Branch (the RTB) received this evidence, I advised the parties that I could not consider this evidence as it had not been served to the landlord by the tenants.

The landlord testified that he sent the tenants a copy of his written evidence by registered mail on May 11, 2014. In accordance with sections 88 and 90 of the *Act*, this written evidence was deemed served to the tenants on May 16, 2014, the fifth day after its registered mailing. The female tenant (the tenant) testified that the tenants retrieved the landlord's written evidence on May 14, 2014, seven days before this hearing. She testified that the tenants had not had a proper opportunity to respond to the landlord's apparent attempt to include a request to recover unpaid rent that he maintained remained owing from December 2013, as part of his application for a monetary award. In accordance with Rule 6 of the RTB's Rules of Procedure, she requested an adjournment of this hearing to enable the tenants an opportunity to retrieve information to dispute the landlord's attempt to include this request for the recovery of unpaid rent from December 2013 as part of his application.

At the hearing, I noted that the landlord appeared to have submitted conflicting evidence with respect to whether he was seeking a monetary award for unpaid rent owing from December 2013 as part of his application for dispute resolution. After checking his documents, the landlord testified that the tenants did pay their full monthly rent for December 2013. He said that his application for two month's unpaid rent was for January 2014 and February 2014. He said that he must have been mistaken in some of the written evidence he submitted which appeared to have mistakenly included a request for unpaid rent owing from December 2013. As the landlord was not maintaining that rent remained owing from December 2013, there was no longer a reason to consider the female tenant's request for an adjournment of this hearing. I dismissed the tenant's request for an adjournment after giving consideration to the criteria established in Rule 6.4 of the RTB's Rules of Procedure.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, utilities and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Are the tenants entitled to a monetary award for losses and damages arising out of this tenancy? Which of the parties are entitled to the tenants' deposits? Are either of the parties entitled to recover their filing fees for their applications from one another?

Background and Evidence

On September 11, 2013, the landlord and the male tenant signed a one-year and 15 day fixed term Residential Tenancy Agreement (the Agreement) for the lower level of a two unit coach house. According to the terms of the Agreement entered into written evidence by the landlord, this tenancy was to run from September 15, 2013 until September 30, 2014. Monthly rent was set at \$1,200.00, payable in advance on the

first of each month, plus utilities. The parties agreed that the landlord continues to hold the tenants' \$600.00 security deposit and \$300.00 pet damage deposit both paid shortly before this tenancy began.

The landlord denied the tenants' claim that they were not provided with a copy of the Agreement. He said that there were some delays caused by the female tenant's failure to sign the Agreement. He testified that he provided the tenants with a copy of the Agreement signed by the male tenant on September 11, 2013, as entered into written evidence.

The landlord gave undisputed sworn testimony and written evidence that the tenants notified him by email on December 3, 2013 of their intention to end their tenancy by January 1, 2014. As noted above, the parties agreed that the tenants paid their full December 2013 rent. The male tenant testified that the tenants moved all of their belongings out of the rental unit by December 13, 2013, at which time they handed their keys to the upstairs tenant, their witness at this hearing. The landlord testified that he did not receive the tenants' keys, but realized they had vacated the rental unit by December 15, 2013, at which time he took possession of the rental unit.

The landlord entered into written evidence a copy of the September 14, 2013 joint move-in condition inspection report. The landlord entered sworn testimony and written evidence that he attempted a number of times to schedule a joint move-out condition inspection with the tenants. He testified that he posted requests for a joint move-out inspection on the tenants' door.

The landlord's application for a monetary award of \$3,000.00 included the following items listed in a Monetary Order Worksheet he prepared on May 9, 2014, and entered into written evidence:

Item	Amount
Unpaid Rent (December 2013, January 2014 and February 2014)	\$3,600.00
Filing Fee	50.00
Registered Mail Costs	20.66
Cost of Cleaning, Removal of Garbage, Items Left at House, Suite Painting	625.00
Total of Above Items	\$4,295.66

As noted above, the landlord testified at the hearing that he was mistaken in including a request of \$1,200.00 for unpaid rent owing from December 2013 in his Monetary Order

Worksheet. This reduced the amount of the items listed above by \$1,200.00 to \$3,095.66. The landlord provided no evidence with respect to unpaid utilities.

The landlord testified that he began listing the availability of the rental unit on a popular rental website on December 17, 2013, shortly after gaining vacant possession of the rental unit. He observed that it is difficult to find new tenants during the holiday season and for January and February. The landlord entered into written evidence a copy of the new Residential Tenancy Agreement (the new Agreement) he signed with the new tenant on February 26, 2014. According to the terms of this new Agreement, this new one-year fixed tenancy began on March 1, 2014. According to the terms of the new Agreement, the new tenant pays monthly rent of \$1,250.00, on the first of each month. The new Agreement required the new tenant's payment of a security deposit of \$625.00 on the date of the signing of the new Agreement. The landlord testified that the \$50.00 increase in monthly rent shown on the Agreement was introduced as a way of enabling the tenant to pay the security deposit over time. He said that he agreed to waive payment of the security deposit by charging \$50.00 more in rent each month to the new tenant. He maintained that the effective monthly rent remained \$1,200.00, once this arrangement regarding the security deposit was taken into account.

The tenants' application for a monetary award of \$2,400.00 included a request for the return of their \$600.00 security deposit, their \$300.00 pet damage deposit, plus \$1,500.00 to compensate them for their moving costs. They provided no receipts to substantiate their moving costs. The tenant maintained that there were many "hidden problems" that only became apparent once the tenants were residing in this rental unit.

The tenant testified that the tenants discovered that there had been a long-standing and unresolved problem with rodents. The tenants also alleged that there were problems with mould in this rental unit. The landlord admitted that there had been a rodent problem in the past. He said that he was able to remedy this problem after the tenants contacted him about this by obtaining assistance from the professional exterminator who was willing to return to the rental property to conduct follow-up work under the original warranty his company had provided for pest control. He said that there was a small opening in the crawl space which was covered by the exterminator.

The tenants' main issue that they maintained led to their decision to vacate the rental unit before the scheduled end to their tenancy was the lack of heat in this rental unit. The tenants said that they contacted the landlord a number of times about the lack of connected heating ducts and the poor quality of the heat in this rental unit. The tenant said that she was freezing all of the time in this rental unit and that repairs to one of the heating ducts undertaken by the landlord did little to remedy this problem. The tenants

said that the rental unit upstairs was an illegal suite and had to operate on the hydro being provided to the tenants' rental unit. This problem led to frequent disconnections in power resulting from the upstairs tenant's use of electric space heaters to heat that rental unit. The female tenant testified that the rental unit was basically unlivable by the end of this tenancy due to the problems they were facing.

The landlord said that he contacted three companies to try to get the heating problem fixed. He said that he received nothing in writing from the tenants following the repairs undertaken until the tenants announced that they were leaving the rental unit before the end of December 2013. The landlord gave undisputed sworn testimony that he entered into written evidence a full set of emails exchanged between the parties during the course of this tenancy. The landlord denied the tenants' allegations that the upstairs suite was illegal, noting that paperwork was being sent by the municipality to confirm that it was legal. He also testified that the two units in this building are separately metered both for gas and for hydro.

The tenants' witness was the upstairs tenant. He testified that there were separate hydro accounts for the two rental units in this building. He said that he had no gas account as his rental unit is heated by electric space heaters.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the tenant who signed this Agreement (the male tenant) was in breach of the fixed term tenancy agreement because the tenants vacated the rental premises prior to the September 30, 2014 date specified in that agreement. I also find that the tenants have not demonstrated to the extent required that the deficiencies they identified during this tenancy were of such significance that any material term of the Agreement had been breached by the landlord. As such, the landlord is entitled to compensation for losses he incurred as a result of the male tenant's failure to comply with the terms of his Agreement with the landlord and the *Act*.

There is undisputed evidence that the tenants did not pay any rent for January or February 2014. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The tenants did not provide a written notice to end their tenancy as required by section 52 of the *Act*. I find that a notice to end tenancy sent by email does not satisfy the requirements of section of the *Act*. In the absence of proper written notice to end this fixed term tenancy, I find it reasonable and prudent of the landlord to have waited until he was certain of the tenants' intentions before he commenced listing the availability of the rental unit on a popular rental website. Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises as soon as he realized that the tenants had indeed vacated the rental unit. I also find merit in the landlord's observation that the mid-December timing of the end of this tenancy rendered it difficult to attract a new tenant to mitigate his loss of rent. As such, I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the tenants' exposure to rental losses for January and February 2014. I find that the landlord is entitled to a monetary award of \$1,200.00 for each of January and February 2014 for loss of rent that he expected to receive from the male tenant for those months as per the terms of their Agreement.

I have also taken into account the terms of the new Agreement entered into between the landlord and the new tenant. These terms must also be considered in assessing the extent to which the landlord has mitigated his losses and has suffered actual losses arising out of the tenants' premature termination of their Agreement which was to last until September 30, 2014. While I have given careful consideration to the landlord's sworn testimony, I find that the best evidence of the landlord's actual losses are those set out in the new Agreement reached between the landlord and the new tenant. Those terms show that the landlord was to receive a monthly rental payment of \$1,250.00 from March 1, 2014 until September 30, 2014, the final seven months of the tenants' fixed term tenancy. The written terms of that Agreement show that there was also to be a \$625.00 security deposit payment by the new tenant. Whether or not the landlord chose to waive the new tenant's payment of the security deposit in return for an increased monthly rent, the terms of the new Agreement set the monthly rent at \$1,250.00, \$50.00 more than the tenants were paying under their Agreement. The written terms of the new Agreement reveal a different signed set of circumstances than those described by the landlord at the hearing. Under these circumstances, I find that the best evidence available is the signed new Agreement, which shows the monthly rent for the remaining seven months of the former tenancy under the Agreement as \$1,250.00. I find that the landlord's actions in signing a new Agreement that obtained a rent increase of \$50.00 more than was being obtained under the Agreement with the tenants further mitigated the landlord's loss of rent during the final seven months of the Agreement. For these reasons, I find that the landlord's entitlement to a monetary award for loss of rent is reduced by \$50.00 for each of the last seven months of the Agreement.

I have also considered the landlord's claim for a monetary award for utilities, cleaning, damage, the removal of garbage and suite painting. In this regard, I note that section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I first note that the joint move-in condition inspection report describes a rental unit that had many items listed in "fair condition" as opposed to "good condition." The landlord produced no move-out condition inspection report of his own inspection of the rental unit at the end of this tenancy, nor has he provided photographs or any written evidence or sworn oral testimony from anyone (other than himself) attesting to the condition of the rental unit when this tenancy ended.

The landlord did enter into written evidence a signed statement of March 12, 2014 from the new tenant who took occupancy of the rental unit on March 1, 2014 to the effect that he received a one-half month's reduction of his monthly rent for March 2014 (i.e., \$625.00) for the following items:

1. *Thoroughly clean interior of the suite.*
2. *Clean up yard and garage of the previous owner's leftover items.*
3. *Remove them and take to the dump at my cost.*
4. *Re-paint the interior of the house as the previous paint job was far from properly being done.*
5. *Cost of all materials and supplies.*

While I have given the landlord's claim for the recovery of the above costs careful consideration, I am not satisfied that the landlord has met the burden of proof that he is entitled to the recovery of this rental allowance provided to his new tenant. Some of the costs included in the new tenant's list involve items for which receipts could have but were not made available (e.g., dump fees, costs of materials and supplies). Other costs may have arisen from items left behind by the landlord or from previous tenants, as was declared by the tenant(s). The landlord produced little evidence regarding the extent to which the rental unit was ready for a new paint job when this tenancy began. As set out in RTB Policy Guideline 40, the useful life of an interior paint job for a rental property is

estimated at four years. The landlord's failure to provide detailed information regarding the condition of the rental unit at the end of this tenancy also calls into question the landlord's eligibility to a monetary award for such items as cleaning and the removal of debris and garbage. Finally, I note that a straightforward receipt for cleaning and minor repairs to a third party is quite different than the situation before me where the landlord and a new tenant who did not attend this hearing claimed that the landlord allowed a half-month's rent reduction allowance to the new tenant as part off their new Agreement. This mixing of repairs from the old tenancy with the contractual agreement entered into between the landlord and the new tenant is by no means a clear and linear arrangement, nor one that enables the landlord to recover concessions given to a new tenant at the expense of the former tenants. For these reasons, I dismiss the landlord's claim for damage arising out of this tenancy without leave to reapply.

I allow the landlord to retain the tenants' deposits plus applicable interest in partial satisfaction of the monetary award issued in the landlord's favour. No interest is payable over this period. As the landlord was partially successful in this application, I allow him to recover his filing fee from the male tenant. I dismiss the landlord's application to recover his registered mailing costs without leave to reapply as the filing fee is the only fee associated with this hearing which a party is entitled to recover.

As I find that the male tenant breached his Agreement with the landlord without sufficient cause to do so, I dismiss the tenants' application for a monetary award without leave to reapply. As the tenants' request to obtain a return of their deposits was already before me by way of the landlord's application for dispute resolution, and the tenants have not been successful in the remainder of their application, I dismiss the tenants' application to recover their filing fee without leave to reapply.

Conclusion

I issue a monetary Order in the landlord's favour against the male tenant, the sole tenant signatory to the Agreement, under the following terms, which allows the landlord to recover losses in rent arising out of this tenancy and his filing fee, and to retain the tenant's deposits:

Item	Amount
Landlord's Loss of Rent January 2014	\$1,200.00
Landlord's Loss of Rent February 2014	1,200.00
Less Landlord's Additional Rent to be Obtained through the terms of the New Tenancy Agreement for this Rental Unit (7 months @ \$50.00 per month = \$350.00)	-350.00

Less Pet Damage & Security Deposits (\$600.00 + \$300.00 = \$900.00)	-900.00
Plus Landlord's Filing Fee	50.00
Total Monetary Order	\$1,200.00

The landlord is provided with these Orders in the above terms and the male tenant must be served with this Order as soon as possible. Should the male tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the tenants' application 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: May 26, 2014

Residential Tenancy Branch

