



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MND MNDC MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for unpaid rent, damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. All parties confirmed receipt of the other party's materials for this hearing. At the outset of this hearing, the landlord withdrew his claim for Landlord AY and Landlord TB's time in preparing and attending to the Residential Tenancy Branch application to address this tenancy.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and utilities, and for money owed or compensation for damage or loss as a result of this tenancy?

Is the landlord entitled to retain all or a portion of the tenants' security deposit and/or pet damage deposit towards any monetary award?

If not, are the tenants entitled to recover all or any of the security deposit?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began on January 1, 2015 with a rental amount of \$1600.00 payable on the first of each month. The landlord continues to hold a security deposit in the amount of \$800.00 and a pet damage deposit in the amount of \$800.00 both paid on December 18, 2014. The tenants provided notice that they intended to vacate the rental unit on January 24, 2015. The tenants vacated the residence, providing their forwarding address in writing on January 28, 2015.

As a result of a previous dispute resolution hearing with respect to this tenancy, the following findings were made by the arbitrator;

- tenants vacated the residence on January 28, 2015;
- tenants did not pay rent for the month of February 2015;
- both parties mutually agreed to an end to tenancy on February 28, 2015; and
- while the tenants made a claim to recover their security and pet damage deposit at the previous hearing, determining this claim was held over to this hearing in consideration of the landlord's claim against the deposits.

The landlord originally made a claim in the amount of \$22,000.00 as follows;

Item	Amount
Unpaid Rent: February 2015	\$1600.00
Unpaid (Gas) Utilities: January 2015*	140.00
Unpaid (Electricity) Utilities: February 2015 *	140.00
Unpaid (Gas, Electricity, Water) Utilities: March 2015 – August 2015*	840.00
Rental Loss – March 2015: August 2015	9600.00
Landlord (AY) time	5000.00
Landlord (TB) time	3080.00
Landlord to retain Security Deposit	800.00
Landlord to retain Pet Damage Deposit	800.00
Total Monetary Order Claim by Landlord	\$22,000.00

The landlord withdrew his claim for Landlord AY and Landlord TB time in preparing and attending to the Residential Tenancy Branch application to address this tenancy

reducing his monetary order sought to \$13, 920.00. The landlord also sought to recover the \$100.00 filing fee for this application from the tenants.

The landlord claims that the tenants did not pay monthly rent for February 2015. The tenants did not dispute this claim. However, the tenants testified that the police told them not to pay rent because the landlord had retained their security deposit. The tenants also testified that they had been given advice by other parties to not pay the February 2015 rent. Both parties agree that the February 2015 rent remains unpaid.

The landlord testified that he made attempts by online and other advertising as well as word of mouth to re-rent the unit for the month of February. He testified that it became apparent that he and his co-landlord were unable to handle the financial responsibilities of this rental property and they were able to sell the property in a relatively short period of time. He testified that both landlords incurred expenses related to the upkeep of the residence until the property was sold.

The tenants acknowledge that they did not pay utilities at the rental property. However, the tenants disputed that they are obliged to pay this amount. Tenant AC testified that the tenants both really only resided in the rental unit for 11 days. Tenant AC acknowledged that the tenancy agreement indicates the tenants shall pay 40% of heat, hot water and electricity utilities, but submitted that the landlord was aware that the tenants had vacated the rental unit on or before January 28, 2015 and therefore, had no need to maintain the utilities at that time. The landlord testified that he needed to maintain utilities in his efforts to re-rent or sell the property.

The landlord testified, referring to the residential tenancy agreement that the tenants agreed to a fixed term tenancy of one year until December 31, 2015. He testified that, based on this agreement, the tenants are responsible to pay both rent and utilities for the entire term of the tenancy. The tenants testified that the rental property was sold shortly after they vacated the unit (on March 1, 2015) and that therefore the landlord has not incurred a loss for rent or utilities beyond that date. The landlord did not dispute that the property had been sold on March 1, 2015.

The landlord sought to retain the tenants' security deposit and pet damage deposit. While the landlord initially claimed the tenants' security deposit as an additional amount, at the hearing he indicated that he sought to retain the tenants' security deposit and pet damage deposit towards any monetary award for; unpaid rent; unpaid utilities; or loss as a result of the early end to the fixed term tenancy.

The tenants testified that the landlord's behaviour was deplorable – that he would enter their rental unit without any notice and that he failed to make required repairs to make the unit comply with safety standards and fire codes. They also testified that they were not provided with all the facilities and services that were agreed upon at the outset of the tenancy, including laundry. All of the tenants' concerns and claims with respect to this tenancy were comprehensively addressed at the previous dispute resolution hearing and in the associated decision.

Analysis

Section 44 of the *Act* provides the ways in which a tenancy may end,

44 (1) A tenancy ends only if one or more of the following applies:

...

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

...

...

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Neither a tenant nor a landlord can give notice to the other party to unilaterally end a fixed term tenancy earlier than the date specified in the tenancy agreement. The only way to end a fixed term tenancy before its "predetermined expiry date" is by mutual agreement of both parties. Based on the previous RTB decision with respect to this tenancy and the evidence of both parties at this hearing, this tenancy came to an end by agreement of both parties on February 28, 2015.

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to

deduct all or a portion of the rent.” The tenants had no right to reduce or withhold their rent. The tenants had agreed to the terms of a fixed term tenancy and were therefore obligated to meet those terms for the course of the tenancy, or as practicable in all of the circumstances. In these circumstances, the parties mutually agreed to end this tenancy as of February 28, 2015. The tenant is thereby obliged to meet the obligations up to the date that the tenancy ends.

Given the agreement to end the tenancy on February 28, 2015, I find that the landlord is entitled to recover rent for the month of February 2015, prior to the end of this tenancy. After that date, I find that the tenants were no longer obliged to pay rent or utilities. I also note that, after that date the evidence is that the rental property was sold by the landlord. Therefore, the landlord incurred no further costs related to this property or this tenancy after February 28, 2015. I dismiss the landlord’s application for loss of rent or utilities after February 28, 2015.

I also find that the landlord is entitled to recover some costs for utilities for the months of January 2015 and February 2015. The landlord submitted a gas utilities invoice for January 2015 in the amount of \$66.97. However, the landlord did not submit any other invoices to indicate any other actual loss that he incurred for utilities during this tenancy. The amount sought for utilities on the landlord’s application represent estimates and have no evidentiary support. 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.

With respect to the landlord’s claim for unpaid rent, the tenants did not dispute that February 2015 had not been paid. The landlord is entitled to recover \$1600.00 in unpaid rent. With respect to the utilities, the landlord has failed to prove the actual monetary amount of his loss for utilities at the rental unit beyond the provision of one gas utility invoice. The landlord is entitled to recover \$66.47, his proven costs for unpaid utilities during the tenancy.

Both parties agreed that the tenants had vacated the rental unit by January 28, 2015. The landlord confirmed receipt of the tenants’ forwarding address on January 28, 2015. The landlord complied with section 38(1) of the *Act* by filing for Dispute Resolution to retain the tenants’ security and pet damage deposits within 15 days of the end of the

date that the landlord received the tenants' forwarding address in writing. The landlord filed his application on February 6, 2015. Therefore, the provisions of Residential Tenancy Policy Guideline No. 17 (in consideration of extinguishment of rights to the deposit or doubling on return of the deposit) are not applicable in these circumstances.

Section 38(4)(a) of the *Act* also does not apply to the tenants' security or pet damage deposit in these circumstances as the tenants have both testified that they did not agree to any retention of their deposits. At the previous hearing, the tenants sought the return of both their security and pet damage deposits. The arbitrator at that previous hearing adjourned that portion of the tenants' application to be considered with the landlord's application for a monetary order with respect to loss as a result of this tenancy. I find the landlord filed his application for a monetary award and to retain the tenants' deposits on February 6, 2015, within 15 days of receiving the tenants' forwarding address and is entitled to retain those deposits towards his monetary award, pursuant to section 72(2).

Section 72(2) of the *Act* would seem to be of relevance to the consideration of this application

- 72 (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted
- (a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and
 - (b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Based on the undisputed, sworn evidence of the tenants and the landlord, I find that the landlord is entitled to retain \$1600.00 security and pet damage deposit towards the monetary amount he is owed.

I dismiss the landlord's application for loss of rent or utilities after February 28, 2015 and grant his application for unpaid rent and utilities.

Having been successful in this application, I find further that the landlord is entitled to recover the \$100.00 filing fee paid for this application from the tenants.

Conclusion

The landlord is entitled to a monetary award as follows;

Item	Amount
Unpaid Rent – February 2015	\$1600.00
Unpaid (Gas) Utilities - January 2015	66.97
Less Security Deposit	-800.00
Less Pet Damage Deposit	-800.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$166.97

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: September 9, 2015

Residential Tenancy Branch

