



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's Application: MNSD, MNR, O, FF

Tenants' Application: CNC, MNDC, MNSD, OLC, PSF, O, FF

Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the "*Act*").

The landlord is seeking a monetary order to keep the security deposit; a monetary order for unpaid rent; an order for unspecified relief; and to recover the filing fee from the tenants for the cost of their application (the "Landlord's Application").

The tenants are seeking cancellation of a One Month Notice to End Tenancy For Cause (the "One Month Notice"); a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; a monetary order for the return of the security deposit; an order for the landlord to comply with the *Act*, regulations or the tenancy agreement; an order that the landlord provide services or facilities required by law; an order for unspecified relief; and to recover the filing fee from the landlord for the cost of their application (the "Tenants' Application").

The landlord appeared at the teleconference with a witness. All the tenants appeared at the teleconference hearing. The landlord, the landlord's witness and the tenants gave affirmed testimony. During the hearing the landlord and tenants were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

The tenants indicated that there was no need for the following claims made by the tenants:

- cancellation of the landlord's One Month Notice;
- an order for the landlord to comply with the *Act*, regulations or the tenancy agreement;
- an order that the landlord provide services or facilities required by law; and
- an order for unspecified relief.

As these claims are not necessary, I dismiss them.

The landlord did not specify the other relief sought in their application. Therefore, I dismiss the landlord's claim for unspecified other relief.

The tenants indicated that there was an error on the monetary worksheet and requested that their monetary claim be amended to reflect \$1,355.63. The landlord consented to the amendment. Accordingly, I amend the tenants' monetary claim.

Issues to be Decided

- Is the landlord entitled to keep the security deposit?
- Is the landlord entitled to a monetary order for unpaid rent?
- Is the landlord entitled to recover the filing fee for the cost of their application from the tenants?
- Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Are the tenants entitled to a monetary order for the return of the security deposit?
- Are the tenants entitled to recover the filing fee for the cost of their application from the landlord?

Background and Evidence

The undisputed evidence established that the tenants entered into a fixed term tenancy starting August 1, 2016 and ending July 31, 2017. The tenants gave the landlord one month notice terminating the tenancy early on March 1, 2017. Rent in the amount of \$2,200.00 was due on the first day of each month. The tenants paid a security deposit in the amount of \$1,100.00 and a pet deposit in the amount of \$1,100.00. The pet deposit was returned to the tenants but not their security deposit.

The tenants sent an email to the landlord with their forwarding address on February 28, 2017. The tenants testified that all communication with the landlord was through email. The landlord acknowledged receiving the tenants' email but testified that she overlooked the forwarding address. The landlord argued that the forwarding address was not provided in writing, only by email.

The landlord testified that new tenants moved in on March 17, 2017. The landlord testified that the landlord had an agreement with the tenants to pay rent up to when the new tenants moved in. The landlord is seeking a monetary order for rent in the amount of \$1,335.48 for the period of March 1, 2017 to March 16, 2017. The landlord is seeking to retain the security deposit in the amount of \$1,100.00 as payment towards the amount owed by the tenants.

The landlord is also seeking a monetary order for payment of the tenants' share of the utility bill in the amount of \$125.88. The tenant's agreed that they owed this amount to the landlord.

The tenants testified that they moved out of the rental unit as it was unsafe to live there. The tenants testified that there were no permits for an addition that was added. The tenants complained that the unit was not insulated and required a number of space heaters creating a fire hazard. The tenants also complained that the space heaters led to excessive electrical bills. The tenants testified that they were not given any indication as to how expensive the heating bills would be. The tenants are seeking a monetary order to compensate them for 75% of the heating costs incurred. The tenants' evidence established that the tenants paid \$997.10 for the hydro bill for the months of November and December 2016 and \$358.53 for the months of January and February 2017, for a total of \$1,355.63. The tenants are seeking a monetary order in the amount of \$1016.72 representing 75% of the total hydro bills.

The landlord testified that the heating costs incurred by the tenants are similar to the costs incurred by the landlord who is currently residing in the unit. The landlord supplied documentation to support the landlord's testimony. The landlord argued that the tenants' hydro bills are not extraordinary, but rather standard amounts to heat the unit. The landlord testified that there was a discussion about the cold and heating costs and the landlord suggested that the tenants set up a payment plan to lower the monthly payments when setting up their account.

The tenants are also seeking the return of their security deposit in the amount of \$1,100.00.

Both the landlord and the tenants are seeking to recover their \$100.00 filing fee paid for their application from the other party.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Pursuant to section 45(2) of the *Act*, a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) Is not earlier than one month after the date the landlord receives the notice,
- (b) Is not earlier than the date specified in the tenancy agreement, and

- (c) Is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 45(3) of the *Act*, permits the tenant to end the tenancy effective on a date that is before the end date specified in the tenancy agreement only if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure.

Residential Tenancy Policy Guideline #3 (the "Policy Guidelines") addresses the damages awarded for loss of rent when the tenant has breached the agreement. The damages are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement.

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Pursuant to section 72(2) of the *Act*, an amount ordered to be paid by a tenant to a landlord may be deducted from any security deposit due to the tenant.

Based upon the undisputed facts, I find that there is sufficient evidence to satisfy me that the tenants did breach the fixed term tenancy agreement by ending the tenancy before the date specified in the tenancy agreement. While there may be sufficient evidence that the landlord failed to comply with a material term of the tenancy agreement by not providing sufficient heat and insulation, I find that there is insufficient evidence that the tenants gave written notice of the

failure that provided the landlord with a reasonable period after receipt of the notice to correct the problem. Therefore, I find that the tenants did not end the fixed term tenancy in accordance with either section 45 (2) or 45(3) of the *Act*.

Pursuant to Policy Guideline #3, I find that the landlord is entitled to compensation for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. As the tenants could not legally have ended the tenancy earlier than July 31, 2017, I find that the tenants are responsible for any loss of rent up to that specified end date.

As the landlord rented the unit on March 17, 2017 for the same rent as that paid by the tenants, the landlord's loss is limited to the period between March 1, 2017 and March 16, 2017 totaling \$1,135.48. Therefore, I find that the landlord is entitled to a monetary order in the amount of \$1,135.48.

As the tenants agreed that they owed the landlord the amount of \$125.85 for the utility bill, I find that the landlord is entitled to a monetary order in the amount of \$125.85.

Pursuant to section 72(2) of the *Act*, the landlord is requesting to apply the tenants' security deposit in the amount of \$1,100.00 against the amounts owed by the tenants, which I allow.

As the landlord has been authorized to keep the security deposit to set off the amounts owed by the tenants for loss of rent, I find that the tenants are not entitled to the return of the security deposit. Therefore, I dismiss this claim.

With respect to the tenants' monetary claim, I find that there is insufficient evidence to satisfy me that the landlord violated the *Act*, regulations, or tenancy agreement. The parties had an arrangement that the tenants would pay their own hydro and the fact that the tenants believed the bills were excessive is not sufficient to find that the landlord did not comply with the *Act*, regulations or tenancy agreement. As the criteria set out in Section 67 of the *Act* have not been proven by the tenants, I dismiss the tenants' monetary claim in regards to the hydro bills.

As the landlord's application is successful, I find that the landlord is entitled to recover the \$100.00 filing fee for their application from the tenants.

Based upon the foregoing, I find that the landlord is entitled to a monetary order in the amount of \$461.33 as follows:

Rent for March 1 to 16, 2016	\$1,335.48
Utility Bill	\$ 125.85
Less Security Deposit	\$1,100.00
Filing Fee	\$ 100.00
Total Monetary Order	\$ 461.33

Conclusion

The tenants' application is dismissed.

The landlord's application is successful.

The landlord is permitted to apply the security deposit against the amounts owed by the tenants.

The landlord is granted a monetary Order in the amount of \$461.33 for loss of rent, the utility bill and filing fee, less the security deposit. This monetary Order must be served on the tenants as soon as possible. Should the tenants fail to comply with this monetary Order, it 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: June 12, 2017

Residential Tenancy Branch