



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNDL-S MNRL-S

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for January 23, 2018. I granted an adjournment in order to allow the tenant to be served with the landlord's amendment to her application.

The adjournment decision dated January 23, 2018 noted the requirements for service of the hearing package and evidence. The tenant acknowledged receipt of all hearing documents, and was ready to proceed with this matter. The tenant did not submit any written evidence for this hearing.

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

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

Both parties 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.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid utilities?

Is the landlord entitled to compensation for damage, money owed or loss under the *Act*, regulation, or tenancy agreement?

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on September 1, 2017 with monthly rent set at \$3,000.00. The landlord still holds a \$1,500.00 security deposit. The tenant moved out on November 30, 2017 before the end of this fixed-term tenancy, which was to end on August 31, 2018. Both parties confirmed that the tenant had provided a forwarding address to the landlord, and that both move in and move out inspections had been performed.

The landlord provided the following list of damages and losses for her monetary claim:

Item	Amount
Damaged Toilet	\$330.04
Replacement and disposal of toilet	210.00
Cardboard Removal	40.00
Kitchen Sink Leak	90.00
Hydro Bill (October 18-Nov. 20/17)	90.20
December Rent	3,000.00
January Rent	3,000.00
February Rent	3,000.00
Gas Bill (October 23-November 21)	157.66
Gas Bill (Nov 21-November 30)	32.08
Basement Restoration	1,280.00
Ceiling Panels	111.38
Insulation	117.21
Paint	129.86
Flea Treatment and Carpet Cleaning	1,200.00
Insecticide	560.00
Stove Element	41.26
Garbage Cleanup	50.00
Photo Developing	15.96
Postage for Application & Evidence	13.76
Filing Fee	100.00

Total Monetary Order Requested	\$13,569.41
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The landlord is seeking compensation for the early termination of this fixed-term tenancy in the amount of \$3,000.00 per month for the months of December 2017 through to February 2018. The tenant gave notice on November 1, 2017 that he intended to move out on November 30, 2017. The landlord included a copy of the tenant's notice in the landlord's evidence, which included the tenant's acknowledgement that the tenancy was to end on August 31, 2018. The landlord testified that she had placed advertisements for rent on November 4, 2017, but have not been able to find a suitable tenant. The tenant responded that he notified the landlord initially by text message on October 19, 2017 that he intended to move out, and the landlord failed to mitigate her losses as she did not place an advertisement until November 4, 2017. The tenant did not dispute that he sent his written notice to the landlord on November 1, 2017 by email.

In addition to the loss of rental income the landlord is applying for a monetary order for the unpaid utilities during the period the tenant resided there. The tenant disputes this stating that he had paid for some of these utilities by cash, and he did not receive receipts for these payments and therefore had no proof of payment. The tenant could not confirm the details of these payments, including the dates or amounts. The landlord testified that the invoices had arrived after the tenant moved out, and the tenant has failed to pay any portion of the outstanding utilities. In support of her monetary claim the landlord provided utility statements for the unpaid utilities

The landlord testified that when the tenant moved out, he did not dispose of his items. The landlord submitted a monetary claim of \$50.00 for the time required to dispose of the tenant's garbage. The landlord submitted photos to support this claim.

The landlord submitted a separate monetary claim of \$40.00 for removal of cardboard that was placed outside by the tenant during this tenancy. The date of this removal was on November 8, 2017. The landlord testified that she had warned the tenant of this cost if he did not remove his cardboard.

The landlord testified that the tenant had contacted her about a kitchen sink leak, and submitted a monetary claim of \$90.00 for her time to investigate the leak. The landlord testified that she found no leak, and no repairs were required.

The landlord testified that the tenant damaged the burner on the stove, which cost \$41.26 to replace. The stove was approximately 2 to 3 years old. The tenant disputes that the burner was not in working condition at the end of the tenancy. The landlord submitted a copy of the receipt for the new burner as well as the condition inspection reports for both the move-in and move-out inspections to support her claim.

The landlord testified that the tenant had allowed two kittens into the home without the permission of the landlord. The tenant admits that he had done this, and this is one of the reasons he had ended this tenancy early. The landlord submitted a monetary claim of \$1,200.00 for flea treatment and carpet cleaning, as well as \$560.00 for insecticide. The landlord submitted a copy of the cheque, as well as photos of the treatment in her evidence, but not an invoice as she had employed the services of a person, and not a registered company. The tenant disputes this monetary claim, and testified that he had cleaned the carpet, and that the kittens did not have fleas.

The landlord is also requesting a monetary order for the losses she suffered due to the damage caused by the tenant when he had attempted to install a bidet without the landlord's knowledge or permission. The tenant admitted that he had removed the toilet seat in order to install a bidet, but was not able to complete the project. On October 18, 2017 the tenant discovered the toilet was leaking, and water was entering the basement of the home. The landlord discovered that the toilet was damaged, and the tank was broken. The landlord testified that the plumbing and toilet were new, and installed in February 2017. The landlord submitted a receipt for the original toilet dated January 16, 2017. The landlord testified that the tenant had agreed to reimburse the landlord, but gave notice the next day that he was moving out instead. Both parties confirmed that the tenant sent a text message on October 19, 2017 that he wanted to end the tenancy. The tenant admitted he did not have the permission to make any changes to the toilet or plumbing, but that he had attempted to install the bidet in September 2017, and the crack occurred in October 2017. The landlord testified that that the toilet was brand new, and cracked as a result of the tenant tampering with the toilet and plumbing. The landlord testified that the screws were sawed off by the tenant, and as a result the base of the toilet and tank cracked. The tenant responded that he did not know what happened, or how it happened.

The landlord submitted a monetary claim of \$1,280.00 for the restoration, which included cleaning, restoration, and repainting. The landlord also submitted receipts for the materials required to fix the damage. The landlord testified that she mitigated her costs by employing the services of a person rather than a company. The landlord

included in her evidence cheques to support her losses, and receipts for the materials used.

The landlord also requested the reimbursement of the costs associated with filing this application for dispute resolution, in addition to the filing fee.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord

must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

The landlord applied for compensation from the tenant for the time spent in dealing with this matter, including cost of mailing and photos. Section 72 of the *Act* only allows me to allow the landlord to recover the filing fee, and not the other associated costs of filing a dispute resolution application. Accordingly, I am not granting the landlord's application for compensation associated with the costs of dealing with this dispute. The landlord's monetary claim for the costs associated with filing this dispute is dismissed without leave to reapply.

Section 44 of the *Residential Tenancy Act* reads in part as follows:

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

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(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;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (2) *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 as the end of the tenancy, 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.

The landlord provided undisputed, sworn testimony that the tenant had moved out prior to the end of this fixed term tenancy, in a manner that does not comply with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination

of this fixed term tenancy. The tenant moved out nine months earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenant did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenant vacated the rental unit contrary to Sections 44 and 45 of the *Act*. The evidence of the landlord is that she had attempted to re-rent the suite, without any success.

Although I find that the tenant failed to comply with the *Act*, I am not satisfied that the landlord had provided sufficient evidence of her efforts to mitigate the tenant's exposure to the landlord's monetary loss of rent for the December 2017 through to February 2018, as is required by section 7(2) of the *Act*. The landlord placed an advertisement for rent on November 4, 2017, as well as on future dates, but testified that the unit is still vacant as of the hearing date as she has yet to find a suitable tenant. The landlord submitted a monetary claim of 3 month's rent of \$9,000.00 total. The burden of proof falls on the landlord to demonstrate that the value of their loss, as well as her efforts to mitigate the tenant's exposure to this loss. As I find the landlord did make some effort to advertise the home for rent, I find that the landlord is entitled to a monetary order in the amount of \$3,000.00 for December 2017 in satisfaction of the lost rental income due to the tenant's failure to comply with sections 44 and 45 of the *Act*. The remainder of the landlord's monetary claim for lost rental income is dismissed without leave to reapply.

Section 46 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them. I find that the tenant was obligated to pay the utilities, as per the tenancy agreement. Although the tenant testified that he had paid some of the outstanding utilities, the tenant was unable to provide proof of payment, or details about the amounts paid, or when these payments were made. I find that the tenant's inability to provide details of these payments supports the sworn testimony of the landlord that on a balance of probabilities that the tenant has not paid the outstanding utilities. On this basis, I find that the landlord is entitled to a monetary order in the amount of \$279.94 for the outstanding utilities.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the landlord had complied with sections 23 and 35 of the *Act* which requires the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. I find that the landlord provided sufficient evidence to support that the stove element was not working at the end of the tenancy, and cost the landlord \$41.26 to replace. Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to

assess the remainder of the useful life of the stove element. As per this policy, the useful life of a stove is 15 years. The stove was approximately 3 years old at the end of this tenancy, and therefore had 12 years of useful life left. Accordingly, I find that the landlord is entitled to \$33.00 ($\$41.26/15 \times 12$), which is the approximate prorated value of the remainder of the useful life of the stove element.

The landlord also made a monetary claim for garbage cleanup at the end of this tenancy. I find that the landlord had provided sufficient evidence to support that the tenant failed to properly dispose of his items. Accordingly I find that the landlord is entitled to \$50.00 for the cleanup and disposal of these items.

The landlord testified that on November 8, 2017 she disposed of the tenant's cardboard, and submitted a monetary claim of \$40.00. I find that on November 8, 2017 the tenancy had yet to end, and accordingly the tenant had not failed in his obligations under section 37(2)(a) of the *Act*. Accordingly I dismiss this portion of the landlord's monetary claim without leave to reapply.

The landlord submitted a monetary claim for flea treatment, carpet cleaning, and insecticide for this tenancy. Although it was undisputed that the tenant had allowed two kittens into the home without the landlord's knowledge or permission, I find that the landlord did not provide sufficient evidence to support that the fleas were a result of the tenant's actions. Accordingly I dismiss this portion of the landlord's monetary claim without leave to reapply.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The landlord made a monetary claim in the amount of \$90.00 for her time to investigate a kitchen sink leak. Although the landlord discovered that no leak existed, I find that the tenant did not fail in his obligations as a tenant by notifying the landlord of the leak and requesting that this leak be investigated. Section 32(1) of the *Act* requires that a

landlord maintain the residential property, and an inspection of a possible leak is necessary for the landlord to fulfill his or her obligations under the *Act*. Accordingly, this portion of the landlord's monetary claim is dismissed without leave to reapply.

The tenant acknowledged that he had attempted to install a bidet, and made changes to the toilet and plumbing without the landlord's permission. I find the landlord provided sufficient evidence to support that the tenant had caused damage to the toilet, which resulted in the landlord's monetary loss to repair and restore the home. The tenant moved out without repairing the damage, or compensating the landlord for the losses due to the tenant's actions. Section 32(1)(3) of the *Act* states that a "tenant of a rental unit 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". Accordingly I find that the landlord is entitled to \$220.59 for the replacement toilet, \$1,280.00 for the restoration, and the costs of the materials required for the restoration and repair due to the damage caused by the leaking toilet, as well as the replacement and disposal costs of the old toilet.

As the landlord was successful in her monetary claim, I find that she is entitled to recover the filing fee for this application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

Conclusion

I issue a Monetary Order in the amount of \$4,031.98 in the landlord's favour under the following terms which allows a monetary award for damage caused by the tenant as well as losses associated with this tenancy, and allows the landlord to retain the security deposit. The landlord is also authorized to recover \$100.00 for the filing fee.

Item	Amount
New Toilet	\$220.59
Replacement and disposal of toilet	210.00
Hydro Bill (October 18-Nov. 20/17)	90.20
December Rent	3,000.00
Gas Bill (October 23-November 21)	157.66
Gas Bill (Nov 21-November 30)	32.08

Basement Restoration	1,280.00
Ceiling Panels	111.38
Insulation	117.21
Paint	129.86
Stove Element	33.00
Garbage Cleanup	50.00
Filing Fee	100.00
Less Security Deposit	-1,500.00
Total Monetary Order	\$4,031.98

The landlord is provided with this Order in the above terms and the tenants must be served with a copy of this Order as soon as possible. Should the tenants 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.

The remainder portion of the landlord's monetary claim is dismissed 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: April 27, 2018

Residential Tenancy Branch