



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDL-S MNRL-S
 FFT MNDCT MNSD

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for a monetary order for unpaid rent or utilities; a monetary order for damage to the rental unit or property; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit and to recover the filing fee from the tenant for the cost of the application.

The tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; a monetary order for return of all or part of the pet damage deposit or security deposit; and to recover the filing fee from the landlord.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The landlord also called his spouse as a witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give closing submissions.

No issues were raised by the parties regarding exchange of evidence or documents, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for damage to the rental unit?

- Should the landlord be permitted to keep the security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary order as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for repairs, damages, pain and suffering?
- Has the tenant established a monetary claim as against the landlord for return of the security deposit?

Background and Evidence

The landlord testified that this tenancy originally began in July, 2013 and was renewed for a fixed term starting May 1, 2017 and expiring on May 1, 2018, thereafter reverting to a month-to-month tenancy which ultimately ended in March, 2018. Rent in the amount of \$821.75 per month was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$400.00 which is still held in trust by the landlord. A copy of the tenancy agreement has been provided as evidence for this hearing which contains an incorrect date of when the security deposit was paid, and the landlord testified that it was collected on June 1, 2013, not June 1, 2012. The rental unit is a single family dwelling.

The landlord further testified that the tenant did not give notice to end the tenancy, other than an email, and a copy has been provided for this hearing. The landlord had given the tenant a Two Month Notice to End Tenancy for Landlord's Use of Property in 2017, but the tenant didn't move out and the parties carried on with the tenancy agreement. The tenant used that to justify ending the tenancy. The landlord re-rented the rental unit for June 1, 2018, and the landlord claims 1 month's rent in the amount of \$821.75.

The tenant did not provide the landlord with a forwarding address in writing, however the tenant's mailing address was and still is a Post Office Box Number in the community, and the landlord has received mail from, and delivered mail to the tenant.

The landlord also claims \$87.34 for hydro, and has provided copies of the bills for this hearing. The landlord does not reside near the rental unit and after the tenant vacated the landlord had to keep the hydro running. The first bill covers April to May 9, 2018 in the amount of \$76.00 and the landlord pro-rated the tenant's share of the next bill at \$11.34.

The landlord has also provided a Monetary Order Worksheet setting out the claims for unpaid rent and utilities as well as the following:

- \$650.00 for appliances:

The fridge in the rental unit was about 2 or 3 years old at the beginning of the tenancy and the stove was 2 years old. Both were meticulously cleaned at the beginning of the tenancy, and in such a condition at the end of the tenancy that they were beyond cleaning and had to be replaced. The dishwasher was only a year old at the beginning of the tenancy and at the end of the tenancy it was making huge noises. The landlord suspects that the lines froze because the tenant didn't keep the heat on when not at home. The primary heating system is base board heating, but the tenant used the wood stove as the primary heat source. A receipt for \$650.00 has been provided for this hearing. The landlord has also provided photographs which the landlord testified were taken between March 28 and March 30, 2018.

- \$400.00 for replacing the wood stove:

After the tenant moved out the ash box was full to the top of ashes. Also, the baffle was bent down probably about 25 degrees from horizontal at one end and 6 inches in length bent right down. The tenant in the other house on the property is a welder who said someone must have had the stove very hot. The landlord is positive that the tenant was burning his garbage in there; the landlord saw remnants of tin cans and other burned material in the shed where the tenant took ashes. Also, all bricks were broken during tenancy and the landlord had them replaced. After the tenant moved out all bricks were broken again. A hand-written receipt for \$400.00 has been provided for this hearing.

- \$300.00 WETT Certification for a new wood stove and installation:

The landlord testified that the welder was not able to heat the metal and get it to a place where it would work properly and didn't believe it was safe. The landlord has provided a written estimate on a piece of paper as evidence of the cost and testified that it was an estimate, and the actual bill was just received; the landlord waited all summer for someone to do the certification, which was done about 2 weeks ago. The actual bill was \$393.72.

- \$286.38 for blinds:

There were 6 sets of 1 inch plastic blinds on main floor of house, which were new at the beginning of the tenancy. Two were missing at the end of tenancy and 3 were broken. The landlord has provided an advertisement for 2-inch wood blinds with handwriting on them estimating the amount to replace the plastic blinds totaling \$286.38.

The landlord's total claim is \$2,545.47.

With respect to the tenant's claim, the landlord testified that during the winter of 2016/17 a neighbour was going to clean snow off the roof between the house and add-on, but the tenant wanted to do it himself, but didn't have time, and by the time the landlord knew that, snow had melted and it had started to leak. On New Years Eve the damage was done. If the tenant had told the landlord, the landlord would have had a neighbour do it; the landlord does not reside in the same community. In spring 2017 the landlord had to fix the roof and water damage around a window, and there was no other leaking noticed, nor any report from the tenant about leaking in 2017/18.

The tenant's photograph shows mold on the plastic part of the vapor barrier. After the tenant moved out the landlord found a 2 foot area of mold on the underside of the drywall in the add-on. The landlord does not know how it came down. Right away, the landlord contacted mold specialist and they exchanged emails, copies of which have been provided for this hearing. The email of the mold specialist says that he can't see it being a problem and that mold has no odor; there's probably more mold in 2 flower pots containing plants. Further, the tenant's photograph doesn't show any mold, and says he had health issues but has provided no proof of that. The tenant also says he fell off the roof while cleaning off snow, but he knew there was a snow rake that could be used from the ground. The tenant also claims damaged tools by water, but his photographs show it only leaked in one area. The tenant never told the landlord about that or about mold till he filed this claim. The floor of the add-on is laminate, which was new at the beginning of the tenancy. The tenant claims that water was pouring in, but there was no water damage at all on the laminate other than a rust stain.

The landlord's witness is the landlord's spouse and testified that the landlords have been renting since 2001.

The appliances were not usable at end of this tenancy. The fridge and stove very filthy and could not be cleaned. The dishwasher was 1 year old at the beginning of the tenancy and very noisy at end of the tenancy, and garbled very loud when used. A technician said it couldn't be fixed or would be very expensive and it would be cheaper to get another one, which the landlords did.

At the end of the tenancy a welder took the wood stove out to repair it but it couldn't be repaired, and wouldn't be safe and could not be certified so the landlords had to buy a new one.

Blinds were new at beginning of tenancy and at end of tenancy 1 is totally broken. Others appear to have been damaged by the tenant's cat.

The tenant testified that the landlord was very aware of bulging in the ceiling in the add-on and didn't do anything; and when he did in late 2016 the landlord tried to put up one sheet of drywall but he didn't attach trim. The tenant's girlfriend stepped on a nail and the tenant had to take her to the hospital for a tetanus shot. That happened near the move-out date.

The tenant agrees that there was no damage to the laminate because the tenant was moving buckets and towels around. The rust mark was from the tenant's generator and miter saw.

The tenant went up onto the roof to remove snow and got some off but heat tape caused an ice dam under the roof and through the wall into the living room sill. A realtor noticed the mold in the ceiling of the add-on. The tenant also testified that he was coughing a lot and sick, and the doctor said it could be due to mold. The tenant noticed the mold between 2016 and 2017 when the 2 X 2 foot piece fell down.

The tenant has also provided numerous photographs and typewritten summaries, which the tenant affirms are true to the best of his knowledge and belief. Included is a time-line of events from July 1, 2013 to May 23, 2018, in which the tenant claims

- \$100.00 for the landlord forcing the tenant to pay for a window that the tenant did not break;
- \$300.00 for labor and an employee discount for parts to repair the bathroom shower and tub fixtures;
- an overpayment of rent in the amount of \$257.40 due to the landlord increasing rent contrary to the law,
- \$900.00 for loss of tools;
- \$173.00 for tempered glass; and
- monetary compensation from the landlord for damages, repairs, pain and suffering in the amount of \$9,000.00.

The statements also include what appears to be an undated typewritten transcript of an email to the landlord from the tenant requesting a number of repairs, including a new door gasket for the wood stove, and that the tenant had paid for and installed a new one on November 6, 2015, and is worn out.

Another is a statement that the locks were replaced by the tenant and an advertisement showing that the cost through the 4 locksets through Amazon is \$259.22.

The tenant claims \$9,000.00 as against the landlord, based on 20% of rent paid, which includes the cost of damaged tools, glass and gaskets that the tenant replaced in the wood stove. The tenant tried to repair it, but it was built in 1985 and the stove is obsolete. The

tenant testified that he told the landlord, who assisted with the gasket, but it happened again. The tenant denies that baseboard heating is the primary source of heat and testified that it isn't attached to the wall.

The tenant has provided a copy of an Invoice for replacing tools totaling \$465.23 including taxes. Also provided is a receipt dated October 30, 2017 from a glass company totaling \$179.20 and another from a glass company dated June 23, 2014 totaling \$100.05.

The tenant's mailing address is a Post Office Box Number, which has not changed during or since the tenancy ended, and letters sent to the landlord have all contained that return address.

Analysis

Firstly, with respect to the landlord's claim for unpaid rent, a tenant who ends a tenancy must give the landlord notice in writing the day before rent is payable under the tenancy agreement, and must be effective no earlier than one month later.

In this case, the parties agree that rent was payable on the 1st day of each month. The tenant didn't give the landlord written notice to end the tenancy other than an email dated March 27, 2018 advising the landlord that he had moved out. I find that the effective date of the tenant's notice to end the tenancy could not be earlier than April 30, 2018 even if it were a month-to-month tenancy. The landlord was able to re-rent for June 1, 2018, and claims 1 month of rent, and I find that the landlord has established the claim of \$821.75.

I have also reviewed the utility bills, and having found that the tenant is responsible for April's rent, I also find that the tenant is responsible for the payment of utilities for that month. The first bill runs from April 8 to May 9, 2018, and calculating a pro-rated amount, I find that the landlord has established a claim of \$55.73 ($\$76.00 / 30 \text{ days} \times 22 \text{ days} = \55.73). I am not satisfied that just because the landlord had to leave the power running, that the tenant is responsible for any utilities beyond that.

The parties each claim monetary compensation from the other for damage or loss. In order to be successful, the parties must establish the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and

4. what efforts the claiming party made to mitigate any damage or loss suffered.

With respect to the landlord's claim of \$650.00 for appliances, any award must not put the landlord in any better position than the landlord would be had no damage occurred, and none of the appliances were new at the beginning of the tenancy. The landlord does not claim new appliances, but purchased some through a private sale, and has provided a receipt to substantiate the amounts.

I accept that the fridge and stove were not cleanable at the end of the tenancy, and the dishwasher could not be repaired. However, I also consider the undisputed email transcript provided by the tenant. It is not dated but notifies the landlord that the dishwasher was making loud noises during the tenancy. There is no evidence that the landlord ever investigated the cause, but testified that he suspects the tenant allowed the pipes to freeze. I am not satisfied that the landlord has established that the tenant failed to comply with the *Act* or the tenancy agreement causing the dishwasher to malfunction.

I refer to Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements, which puts the useful life of a refrigerator and stove at 15 years. The receipt shows a cost of \$300.00 for the fridge; \$250.00 for the stove and \$100.00 for the dishwasher. The landlord testified that the fridge was 2 or 3 years old at the beginning of the tenancy and the stove was 2 years old at the beginning of the tenancy, and the tenancy began in 2013. I find that the landlord has established a depreciated claim for the fridge of \$140.00 ($\$300.00 / 15 = \$20.00 \times 8 \text{ years} = \160.00 ; $\$300.00 - \$160.00 = \$140.00$) and \$133.31 for the stove ($\$250.00 / 15 = \$16.67 \times 7 \text{ years} = \116.67 ; $\$250.00 - \$116.66 = \$133.31$), for a total of \$273.31.

With respect to the landlord's claims of \$400.00 for the wood stove and \$300.00 for WETT certification, I accept the undisputed testimony of the landlord that the tenant caused damage to the wood stove by overheating and melting the handle as a result of burning household garbage in it. The landlord's spouse testified that the landlords have been renting since 2001, and given that there is no evidence to the contrary, I find that the wood stove is approximately 17 years old. The useful life of masonry and metals is about 20 years, and a full financial award would provide the landlord with a new wood stove rather than a depreciated amount. I find that the useful life remaining on the wood stove is 3 years, and the landlord is entitled to a depreciated amount of \$60.00. I also find that the tenant should be equally liable for the WETT certification in the amount of \$45.00.

With respect to the landlord's claim for replacing blinds, Policy Guideline #40 – Useful Life of Building Elements puts the useful life of such blinds at 5 years. Since the tenancy lasted 5 years, any award would provide the landlord with new or newer blinds, when the landlord would not have had new or newer blinds if the tenant or the tenant's cat hadn't damaged any of them. Further, the estimate provided by the landlord is for wood blinds, not replacement of plastic blinds. Therefore, the landlord's \$286.38 claim for blinds cannot succeed.

The tenant claims \$9,000.00 as against the landlord, being 20% of the rent paid to the landlord for damages, repairs, pain and suffering. The tenant's specific claims are:

- \$100.00 for the landlord forcing the tenant to pay for a window that the tenant did not break;
- \$300.00 for labor and an employee discount for parts to repair the bathroom shower and tub fixtures;
- \$257.40 due to the landlord increasing rent contrary to the law,
- \$900.00 for loss of tools;
- \$173.00 for tempered glass;
- \$259.22 for replacing defective locks; and
- monetary compensation from the landlord for the damages, repairs, pain and suffering to total \$9,000.00.

I have reviewed all of the evidentiary material, including the written submissions and all photographs. The photographs depict a rental unit that appears to require repairs, but also requires cleaning. A tenant is required to maintain reasonable health, cleanliness and sanitary standards, and a landlord is required to make repairs required in order to maintain the property in a state of decoration and repair that complies with the law and makes it suitable for occupation by a tenant.

Emergency repairs are different. A landlord is required to post an emergency contact number in a conspicuous place for the tenant. A tenant may make emergency repairs and claim them from the landlord upon producing a receipt, however only certain repairs are considered "emergency repairs."

33 (1) In this section, "**emergency repairs**" means repairs that are

(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing

- (i) major leaks in pipes or the roof,
- (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
- (iii) the primary heating system,
- (iv) damaged or defective locks that give access to a rental unit,
- (v) the electrical systems, or
- (vi) in prescribed circumstances, a rental unit or residential property.

The parties disagree on whether or not the wood stove is the primary heating system, however if that's what the tenant primarily used and it was available to him, I accept that it was. However, the *Act* also states:

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

With respect to the claim for tempered glass, the tenant has provided 2 receipts, totalling \$279.25, one dated June 23, 2014 and the other dated October 30, 2017. Although there is no evidence that the tenant made 2 attempts to telephone the landlord on either occasion, there is also no evidence that the landlord posted a telephone number for emergencies. I am satisfied that the landlord is responsible for the glass, and I grant the \$279.25 claim.

The tenant has not provided any evidence of the actual cost to repair a window, and whether or not the tenant was actually responsible, the tenant has not established element 3 in the test for damages. The same principle applies to the tenant's claim of \$300.00 for repairs to the bathroom shower and tub fixtures.

With respect to the alleged overpayment of rent, the parties entered into a new tenancy agreement on April 15, 2017 for a tenancy beginning on May 1, 2017 and rent in the

amount of \$821.75 per month. If the tenant did not agree to the amount of rent payable, the tenant ought not to have signed the tenancy agreement.

The tenant has provided costs for replacing some of the tools, but has not provided evidence sufficient to satisfy me that there was any loss of tools or that any such losses were a result of the landlord's failure to comply with the *Act* or the tenancy agreement. The tenant testified that he had pails and towels to deal with the leak in the roof, and has provided numerous photographs, but no photographs or evidence that any tools were damaged by that. If that were the case, the tenant ought to have removed them from the area. I find that the tenant has done nothing to mitigate any damage and has failed to establish any of the elements in the test for damages with respect to loss of tools.

I also accept the undisputed transcript of an email sent to the landlord by the tenant that the landlord admitted that the locks in the rental unit were nonfunctional, and the landlord has not denied the claim of \$259.22, and I find that the tenant is entitled to reimbursement by the landlord.

With respect to pain and suffering, in order to be successful, the tenant must be able to establish that the tenancy was devalued significantly because of the landlord's failure to comply with the law by maintaining the rental property. There is no evidence at all to satisfy me that the tenant suffered damages or any illness with respect to mold. Not all molds are toxic, and there is no medical evidence that the tenant suffered damages of any kind. Further, the landlord denies leaving any trim on the floor, and I am not satisfied that the tenant is entitled to damages for an alleged tetanus shot for the tenant's girlfriend. I find that both parties have failed to comply with the *Act*. The tenant has failed to maintain healthy living standards and the landlord has not completed required repairs. I find that the tenant has failed to establish that any such damage or loss was mitigated, and I dismiss that portion of the tenant's application.

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fee.

Having found that the tenant is owed \$538.47 (\$279.25 for tempered glass and \$259.22 for locks) and the landlord is owed \$1,255.79 (\$821.75 for unpaid rent; \$55.73 for utilities; \$273.31 for appliances; \$60.00 for the wood stove; \$45.00 for WETT certification), I order that the landlord keep the \$400.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord for the difference in the amount of \$317.32.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$400.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$317.32.

This order is final and binding and may be enforced.

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: October 05, 2018

Residential Tenancy Branch