



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDCT, MNSD, RPP
MNDCL-S, MNDL-S, MNRL-S, FFL

Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “Act”). The Landlords applied for monetary compensation, monetary compensation for damages, unpaid rent and for the recovery of the filing fee paid for their application. The Tenant applied for monetary compensation, the return of the security deposit and pet damage deposit and for the return of personal property.

The initial hearing regarding both matters was conducted on November 16, 2018 and was reconvened on January 8, 2019. This decision should be read in conjunction with the interim decision dated November 16, 2018. One of the Landlords and the Tenant were present for the duration of both hearing dates.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

The Tenant initially filed an application claiming for the return of personal property. However, at the reconvened hearing on January 8, 2019, the Tenant stated that he had met with the Landlord and collected the majority of his belongings. The Tenant confirmed that he would connect with the Landlord to arrange a time to collect the remainder of his belongings. The parties were also in dispute over the location of the Tenant’s cat, however it was confirmed that the Tenant had the information of the shelter where the cat was and had connected with them about the return of the cat.

As such, the Tenant stated that he was no longer seeking an order for his personal property to be returned. Therefore, pursuant to Section 64(3)(c) of the *Act*, the Tenant's Application for Dispute Resolution was amended to remove the claim for the return of personal property.

Issues to be Decided

Is the Tenant entitled to Monetary Compensation?

Is the Tenant entitled to the return of the security deposit and/or pet damage deposit?

Are the Landlords entitled to monetary compensation?

Are the Landlords entitled to compensation for damages?

Are the Landlords entitled to compensation for unpaid rent?

Should the Landlords be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy. The tenancy began on May 1, 2011. Monthly rent of \$1,000.00 was due on the first day of each month. A security deposit of \$475.00 and a pet damage deposit of \$475.00 were paid at the outset of the tenancy. The Landlords are still in possession of the full deposit amounts.

The parties were not in agreement as to the date the tenancy ended. The Landlord stated that the Tenant abandoned the rental unit on October 2, 2018, leaving his belongings behind. She submitted a video into evidence of him returning the keys and stated that this was taken on October 2, 2018. The Tenant stated that he left the rental unit on September 10, 2018 after receiving the 10 Day Notice. He later stated that he moved out on September 20, 2018 which is the day he gave the keys back.

The parties agreed that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice"). The 10 Day Notice, dated September 10, 2018 was submitted into evidence and states that \$1,000.00 in rent was not paid as due on September 1, 2018. The effective end of tenancy dated of the 10 Day Notice was stated as September 20, 2018, however the Landlord stated that she was willing to provide the Tenant until the end of September 2018 to move out.

The Landlords applied for the costs of repairing the glass cooktop of the stove which was damaged during the tenancy. Although the amount for repairing the stove was initially claimed as \$815.00, it was clarified during the hearing that the final cost was \$901.00.

At the hearing, the Tenant agreed that he would cover the cost of repairing the stove. The Tenant confirmed that an amount of \$901.00 could be retained from his deposits to pay for the repair of the stove. The Landlords submitted into evidence a photo of the broken stovetop, invoices for the purchase of the new stovetop and quotes for the labour for installation of the stovetop. Also submitted into evidence was a video of the Tenant stating that the repair of the stove will get paid for.

The Landlords have applied for unpaid rent in the amount of \$2,000.00. The Landlord testified that rent was not paid for September 2018, which was why a 10 Day Notice was served to the Tenant. She provided further testimony that the Tenant remained in the rental unit until October 2, 2018 when the keys were returned, and that rent was not paid as due on October 1, 2018.

The Landlord stated that due to the Tenant abandoning the rental unit and leaving his belongings behind, it took them until the end of October 2018 to move the majority of his items into storage and until November 7, 2018 to remove some of the larger furniture left behind. The Landlord stated that they were unable to advertise the unit for re-rental until November 2018 and did not re-rent the unit until December 15, 2018, after the stove repair was completed.

The Tenant was in agreement that he did not pay rent for September 2018. He stated that he told the Landlord that he would come back to get his belongings, but that he was forced to leave by the Landlord who threatened to have a bailiff remove him. As the Tenant was experiencing health issues at the time, he stated that he was hospitalized and was refused access to the rental unit after his stay at the hospital.

The Landlord stated that the Tenant gave the keys to the rental unit back voluntarily on October 2, 2018. When the Landlords asked the Tenant what to do with his belongings, the Tenant told them to put the items into storage. The Landlord submitted into evidence a video of the Tenant returning the keys to the Landlords. In the video, the Landlords ask what to do with the Tenant's belongings and the Tenant tells them to put the items into storage and confirms that he does not have a storage unit for the items. The Landlord testified that the video was taken on October 2, 2018.

On the Application for Dispute Resolution, the Landlords applied for compensation in the amount of \$1,139.00 for storage costs, cleaning, and packing and moving supplies. However, the specific amounts claimed add up to \$1,109.00. This amount includes two months of storage fees at \$480.00, truck rental at \$94.00, gas for the truck at \$20.00, cleaning costs of \$140.00, packing costs of \$320.00 and boxes and supplies for \$55.00.

The Landlord stated that as the Tenant left his belongings behind they were required to pack the items and find storage. The Landlords submitted into evidence a photo of the Tenant's belongings stored in a garage. They also submitted a receipt, dated October 12, 2018 stating a charge of \$480.00 for storage for October and November 2018 and photos of text messages to the Tenant dated October 12, 2018 in which they ask the Tenant to collect his belongings and offer to deliver them.

Although the Landlords initially applied for \$94.00 for the cost of renting a truck to move the Tenants items into storage, it was clarified during the hearing that the actual cost of the truck rental was \$47.09. The Landlord submitted a receipt, dated October 10, 2018 into evidence from a truck rental company in the amount of \$47.09. The Landlords also claimed \$20.00 for gas for the moving truck. There was no documentary evidence submitted regarding the gas costs.

The Landlord stated that she spent 7 hours cleaning the rental unit at an estimated cost of \$20.00 per hour, for a total of \$140.00. She stated that a Condition Inspection Report upon move-in was completed with the Tenant and that the Landlord completed a move-out inspection on their own after the Tenant abandoned the rental unit.

The Tenant stated that he participated in a move-in inspection but did not sign an inspection when he moved out. He noted that the tenancy began with two tenants and therefore he should not be responsible for everything claimed by the Landlord. The second tenant had moved out prior to the Tenant.

The Landlord submitted the move-in Condition Inspection Report into evidence dated May 1, 2011. The report notes no areas of dirt or uncleanness in the rental unit. The Landlord stated that most of the rental unit was new when the Tenant moved in, such as the appliances. The Tenant stated that he kept the rental unit very clean and there should not have been a need for 7 hours of cleaning.

The Landlords have also claimed \$320.00 for the cost of labour to pack the Tenant's belongings and move them into storage. They submitted into evidence a note from the Landlords stating that they paid a family member \$20.00 an hour over two days to pack the Tenant's belongings, load them into the truck, and unload them into storage. The Landlords also submitted a text message dated October 12, 2018 to the Tenant in which they notify him that his belongings are packed and ready to be picked up.

The Landlords claimed \$55.00 for the cost of supplies to move the Tenant's items into storage as well as the cost of purchasing some cleaning supplies. Three receipts were submitted for the purchase of the supplies from a hardware store. The first receipt, dated October 2, 2018 for an amount of \$31.34, the second dated October 5, 2018 for an amount of \$19.29, and the third dated October 25, 2018 for an amount of \$20.19.

The Tenant applied for monetary compensation in the amount of \$2,500.00. This includes the return of one month of rent in the amount of \$1,000.00, the return of the security deposit in the amount of \$500.00, the return of the pet damage deposit in the amount of \$500.00, and \$500.00 for towing costs due to the Landlord towing his car.

The Tenant submitted into evidence a Monetary Order Worksheet in which he outlined his monetary claims which total \$2,500.00 as stated on the Application for Dispute Resolution. However, on the Monetary Order Worksheet he also stated additional claims including compensation for overpayment fines, hospital medical costs, reputable damage, the purchase of personal items due to being locked out of the rental unit, and emergency repairs.

The Tenant did not provide monetary amounts he was seeking for the remainder of his claims and was provided an opportunity to do so during the hearing. He submitted some receipts into evidence that he stated were for the purchase of hygiene products after not having access to his belongings in the rental unit. The Tenant stated that he did not have the receipts in front of him during the hearing so was unsure of the amount he was claiming beyond what was outlined totalling \$2,500.00.

During the hearing, the Tenant withdrew his claim for \$500.00 for towing costs as he stated that despite threats to do so, the Landlords did not tow his car. The Tenant also confirmed that he paid \$475.00 for a security deposit and \$475.00 for a pet damage deposit, not \$500.00 each as noted on the Monetary Order Worksheet submitted into evidence.

The Tenant stated that he is claiming compensation one month of rent compensation in the amount of \$1,000.00. He stated that this is being claimed due to the stress of being evicted and the resulting homelessness he experienced. The Tenant also testified as to the condition of the rental unit during his tenancy. He stated that he often asked for repairs and that the Landlords would not respond. The Tenant stated that he had to pay to do laundry during a time when the appliances were not working at the rental unit.

The Landlord submitted that the appliances were new at the start of the tenancy. She noted that during the tenancy the refrigerator broke as did the clothes dryer, both of which were replaced. She also stated that the Tenant did not pay rent for September 2018 which is why the tenancy was ended through a 10 Day Notice.

The Tenant initially stated that he provided his forwarding address to the Landlords on October 10, 2018 and October 15, 2018. However, later he stated that his forwarding address was sent to the Landlords by registered mail but was unsure of the date. The Tenant submitted into evidence a copy of a document that included his forwarding address and information from the *Act* regarding the return of deposits. This document was not dated. The Landlord did not provide any testimony or evidence as to when the Tenant's forwarding address was received.

Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows regarding the claims of the Landlords:

Stove repair: The Landlord applied for compensation for repairing the stove that was damaged during the tenancy. The Landlord clarified that the final amount was \$901.00, which the Tenant agreed he would pay. Due to the stove being damaged during the tenancy and the evidence as to the cost of repairs, I also find that the Landlords are entitled to compensation for the repairs. As such, the Landlords are awarded an amount of \$901.00.

Unpaid rent: The Landlord claimed unpaid rent for September and October 2018 for a total of \$2,000.00. A 10 Day Notice, dated September 10, 2018 states that rent in the amount of \$1,000.00 was not paid as due on September 1, 2018.

The Tenant confirmed that rent was not paid for September 2018. Section 26 of the *Act* states that rent must be paid as due under the tenancy agreement. The parties were in agreement that rent of \$1,000.00 was due on the first day of the month. As such, I find that the Landlord is owed \$1,000.00 for September 2018 rent.

As for October 2018 rent in the amount of \$1,000.00, I find that the Tenant also owes this amount. Although the parties were not in agreement as to what day the Tenant moved out, I find evidence before me that he did not remove all his belongings from the rental unit and therefore did not fully move out of the rental unit until into October 2018.

Regardless of the date the keys were returned to the Landlords, I find that the Landlords were not able to re-rent the rental unit in October 2018 due to the time involved with packing and storing the Tenant's belongings. A text message submitted into evidence by the Landlord dated October 12, 2018 states that the Tenant's belongings were packed and ready to be picked up as of this date.

Although a party claiming a loss has a duty to take reasonable steps to minimize their losses as stated in Section 7 of the *Act*, I accept the Landlord's testimony that it took until November 2018 to finish emptying the rental unit of the Tenant's belongings. As such, I find that the Tenant owed rent for October 2018 in the amount of \$1,000.00.

Storage fees: The Landlords applied for \$480.00 for compensation for storage. They submitted a photo of the items stored as well as a receipt for \$480.00 for two months of storage. The items stored included a mattress, a bike and other furniture and household belongings.

In order to determine if compensation is due to a party claiming a loss, the *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* outlines a four-part test as follows:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I accept the testimony and evidence of the Landlord and find that the Tenant gave the key to the rental unit back to the Landlords and left his belongings behind. The video submitted into evidence is evidence that the Tenant told the Landlords to put his belongings in storage.

As such, I find that the Tenant was in breach of Section 37 of the *Act* which requires the rental unit to be left reasonably clean and undamaged at the end of the tenancy. I also find that the Landlords submitted sufficient evidence to establish the value of their loss and therefore award an amount of \$480.00 to the Landlords for compensation.

Truck rental: Although the Landlords applied for compensation for the truck rental in the amount of \$94.00, the receipt submitted into evidence confirms the amount as \$47.09. Therefore, I am satisfied that this is the amount spent by the Landlord to rent a truck to move the Tenant's belongings out of the rental unit and find that the Landlords are entitled to compensation in this amount.

As for the Landlords' claim for gas in the amount of \$20.00, I do not find evidence that this was paid and thus find that the Landlords did not prove the value of their loss in this regard. As such, I decline to award any compensation for gas.

Cleaning: The Landlords claimed \$140.00 for 7 hours of cleaning. Based on the evidence before me of the items left behind, I find it likely that cleaning would be required in the rental unit. Section 37(2)(a) states the following:

- (2) When a tenant vacates a rental unit, the tenant must
 - (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

As I have evidence before me that the rental unit was not left reasonably clean as it was not empty upon the Tenant vacating, I am satisfied that the Landlord was required to clean and find their estimate of time and cost spent cleaning to be reasonable. As such, I award the Landlords \$140.00 for cleaning.

Packing costs and supplies: The Landlords have claimed \$55.00 for the cost of supplies to move the Tenant's items into storage as well as some cleaning supplies. However, the three

receipts submitted into evidence add up to \$70.82. The receipts were dated October 2, 2018, October 5, 2018 and October 25, 2018. As the Landlords filed their application on October 22, 2018, I find that the first two receipts are the relevant receipts of costs that they applied for that add up to less than \$55.00.

As I have found that the Landlords were entitled to compensation for 7 hours of cleaning, I find that the purchase of some cleaning supplies is reasonable. I also find that boxes and other packing supplies would have been required to move the Tenant's belongings into storage after they were left behind.

Sections 24 and 25 of the *Residential Tenancy Regulation* outline a process for dealing with personal property that may have been left behind. As the Tenant returned the keys to the rental unit and advised the Landlords to put his belongings into storage, as evidenced in a video submitted by the Landlords, I find that they took reasonable steps to pack and store his belongings as requested.

As the keys had been returned, I also find it reasonable that the Landlords would not expect the Tenant to return for the belongings in the rental unit and instead that arrangements would be made for the Tenant to collect his belongings from storage.

I am satisfied that the receipts submitted into evidence establish the value of the Landlords' loss. However, as noted, I find that the Landlords claimed a total of \$55.00 for the cost of supplies on their application and therefore I decline to award more than this amount. As such, I award the Landlords reimbursement for \$31.24 from a receipt dated October 2, 2018 and \$19.29 from a receipt dated October 5, 2018 for a total amount of \$50.53.

The Landlords also applied for compensation in the amount of \$320.00 which they stated was \$20.00 per hour for 16 hours of packing and moving the items left behind. As this was paid to a family member, there is no evidence of the amount claimed or paid.

However, as it is clear that many of the Tenant's belongings were left behind, I do find that the Landlords were required to pack and move the items out of the rental unit and into storage and that this would involve time and labour. As such, I am satisfied that the Landlord spent money having the Tenant's items packed and moved into storage and award them compensation in the amount of \$320.00.

Security deposit and pet damage deposit: Section 38(1) of the *Act* states the following:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the testimony of both parties, I find that the tenancy ended on or around October 2, 2018. Although there was no clear information provided about when the Tenant's forwarding address was provided, I find that a service address was provided with the Tenant's Application for Dispute Resolution.

The Tenant applied on October 9, 2018 and the Landlords filed their Application for Dispute Resolution on October 22, 2018. As such, I find that the Landlords applied within 15 days of receiving the Tenant's forwarding address and therefore were in compliance with Section 38(1) of the *Act*. Pursuant to Section 38(4)(b) of the *Act*, the Landlords may retain the deposits towards compensation owing from the Tenant.

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows regarding the claims of the Tenant:

As stated above, the Tenant provided a Monetary Order Worksheet outlining 10 claims for compensation. This included one month of rent, the return of the deposits and the claim for the cost of his car being towed which was withdrawn. These claims totalled \$2,500.00, the total amount claimed by the Tenant. The remainder of the Tenant's claims did not include a monetary value being sought and the Tenant was unable to clarify a monetary value for each of these claims.

A party claiming compensation has the responsibility to submit sufficient information on their claims, including details on the monetary value of the claim. As stated by rule 2.5 of the *Rules of Procedure* an applicant should submit a detailed calculation of any monetary claim being made at the same time as the Application for Dispute Resolution.

I also find that the Tenant did not apply for more than \$2,500.00 on the Application for Dispute Resolution and these are the only claims that will be considered. The claims for which a monetary value was not provided will not be addressed.

One month rent: The Tenant applied for compensation in the amount \$1,000.00 which is equivalent to one month of rent. He stated that this was due to the stress of being evicted, as

well as the condition of the rental unit during the tenancy. I accept the testimony and evidence of both parties that the tenancy ended due to a 10 Day Notice to End Tenancy for Unpaid Rent.

Therefore, although the Tenant submitted evidence regarding a hospital stay and bills that came up due to having to move, I find the 10 Day Notice to be compelling evidence as to why the tenancy ended. As stated in Section 26 of the *Act*, a tenant must pay rent as it is due. By his own admission, the Tenant did not pay rent as due on September 1, 2018 and the Landlords were therefore within their rights to serve him with a 10 Day Notice pursuant to Section 46 of the *Act*.

Accordingly, I find that the tenancy ended due to non-payment of rent and do not find sufficient evidence to determine that the Landlords breached the *Act* and the Tenant should be compensated as a result. I decline to award the Tenant compensation due to the stress of being evicted.

The Tenant also testified as to repairs that were not completed during the tenancy. However, I do not find sufficient evidence before me to establish that repairs were not completed during the tenancy or that the rental unit was in poor condition during the tenancy. The Landlord provided testimony that repairs were completed as needed.

When two parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party making the claim to submit sufficient evidence to support their claim. As such, I find that the Tenant did not establish his claim for compensation in the amount of \$1,000.00 and I decline to award this amount.

Security deposit and pet damage deposit: The Tenant applied for the return of his security deposit in the amount of \$475.00 and the return of his pet damage deposit in the amount of \$475.00. However, as the Landlords have been awarded monetary compensation totalling over \$950.00, they may retain the deposits towards the amount owing.

As determined above, the Landlords were found to be in compliance with Section 38(1) of the *Act* regarding the timeline to claim against the deposits. Therefore, the Tenant will not be awarded the return of the deposits. The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

As the Landlords were successful in their Application for Dispute Resolution, pursuant to Section 72 of the *Act*, I find they are entitled to the recovery of the filing fee in the amount of \$100.00. The Landlords are awarded a Monetary Order in the amount outlined below.

Stove repair	\$901.00
September 2018 rent	\$1,000.00
October 2018 rent	\$1,000.00

Storage	\$480.00
Truck rental	\$47.09
Cleaning	\$140.00
Packing and cleaning supplies	\$50.53
Packing and moving items to storage	\$320.00
Recovery of filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$475.00)</i>
<i>Less pet damage deposit</i>	<i>(\$475.00)</i>
Total owing to Landlord	\$3,088.62

Conclusion

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a **Monetary Order** in the amount of **\$3,088.62** for compensation for two months of rent, cleaning and costs associated with packing and storing the Tenant's belongings, as well as the recovery of the filing fee for this application. The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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.

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: January 17, 2019

Residential Tenancy Branch