



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was scheduled in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- a monetary order for loss of rent pursuant to section 67;
- a monetary order for damage to the rental unit 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.

This hearing was also scheduled in response to the tenant's cross application for:

- a monetary order for damage or compensation under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord, the landlord's agent (collectively the "landlord"), the tenant and an articling student representing the tenant attended the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for loss of rent?

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the tenant entitled to a monetary order for damage or compensation under the *Act, Regulation* or tenancy agreement?

Is the tenant authorized to obtain a return of all or a portion of the security deposit?

Is either party authorized to recover the filing fee for this application?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on July 1, 2018 on a fixed term until June 30, 2019. Rent in the amount of \$2,000.00 was payable on the first of each month. The tenant remitted a security and pet deposit in the total amount of \$2,000.00 at the start of the tenancy, which the landlord still retains in trust.

The parties agreed that a move-in condition inspection report was completed and a copy given to the tenant. The parties further agreed that in the tenant's absence, a move-out inspection was conducted and a copy of the report given to the tenant.

On August 16, 2018 it became known to both parties that a water main line in the yard had burst. The following day, on August 17, 2018 the tenant informed the landlord that she could list the unit for rent. On September 2, 2018 the tenant confirmed by way of text message to the landlord, that he had vacated the unit.

Landlord's Claim & Tenant's Response

The landlord applied for a monetary order in the amount of \$29,148.21. During the hearing the landlord sought to reduce the landlord's monetary application to \$15,903.99 for the following;

Item	Amount
Loss of September Rent	\$2,000.00
Loss of October Rent	\$2,000.00
Loss of November Rent	\$2,000.00
Loss of December Rent	\$300.00
Loss of January Rent	\$300.00
Loss of February Rent	\$300.00
Loss of March Rent	\$300.00
Loss of April Rent	\$300.00
Loss of May Rent	\$300.00
Loss of June Rent	\$300.00
Move Out Cleaning	\$420.00
Garbage Removal	\$150.00
Mowing, Yard Care	\$514.50
Water Main Repair	\$4,598.21
Front Yard Repair	\$2,121.28
Total Monetary Claim	\$15,903.99

In accordance with section 64(3) of the *Act*, I amend the landlord's application to reflect the amount claimed to \$15,903.99.

Loss of Rent

The landlord testified that the tenant breached the fixed term tenancy agreement by ending the tenancy before the expiry of the fixed term. She testified that in order to attract a replacement tenant, she had to reduce the rent to \$1,700.00 per month, a reduction of \$300.00. The landlord testified that an advertisement was placed online September 4, 2018 but despite this; the unit was not re-rented until December 2018. The landlord attributed the delay in re-renting to the time of year and state of the yard. The landlord seeks to recover September, October and November 2018 rent in the total amount of \$6,000.00. She also seeks to recover the monthly reduction in rent she sustained for the last seven months of the fixed term in the total amount of \$2,100.00. A copy of the advertisement formed part of the landlord's documentary evidence.

Although the tenant acknowledged he ended the fixed term tenancy, he contended he had good reason. He testified that the unit contained black mold, smelled and made him sick. The articling student for the tenant presented that the landlord failed to mitigate any loss of rent through proper advertising. The tenant testified that the landlord did not advertise the unit on the site he used to find the unit originally. The legal advocate argued it was a “hot” rental market and should have rented quickly. To support his position, the tenant provided screenshots from the original site, of individuals looking for similar units.

Move Out Cleaning

The landlord testified that the unit was not left clean. In support of her position the landlord submitted a copy of the condition inspection reports, photographs, a written statement by the cleaner and an invoice for cleaning in the amount of \$420.00. During the hearing, the tenant testified that he had vacated the unit by September 2, 2018 and had cleaned the unit himself, that day.

Garbage Removal

The landlord testified that garbage was left strewn throughout the unit and several items were left outside the unit. The landlord has provided a copy of the condition inspection reports, photographs, a written statement by the cleaner and an invoice for garbage disposal in the amount of \$150.00. The tenant testified that he did not leave \$150.00 worth of garbage behind.

Mowing, Yard Care

The landlord testified that despite warning letters, the tenant did not maintain the yard throughout the tenancy. As a result, when the tenant vacated the unit, the yard was in disarray and required substantial work. In an effort to support her position, the landlord provided copies of the warning letters, photographs and a copy of an invoice in the amount of \$514.50. In reply, the tenant testified that the landlord’s failure to spray for weeds and excessive fertilizing led to the overgrowth the landlord has referred to. The tenant testified that the invoice was dated for some two weeks after he vacated and contained additional costs. The tenant also presented that the photographs submitted by the landlord are not date stamped and as such there is no way to truly know when they were taken.

Water Main Repair

It was the landlord's position that the burst water main and resulting damage occurred out of neglect by the tenant. The incident occurred while the tenant was out of province for work. The landlord argued that although she understood the tenant's job took him out of province for two weeks at a time, she testified that at the start of the tenancy, the tenant's agent assured her that the agent herself would check in on the house during the tenant's absences. The landlord testified that upon learning of the broken pipe she contacted the city who in turn told her that the issue was reported over a week ago by the tenant's neighbour who complained of a flooded yard. The landlord provided a copy of an invoice in the amount of \$4,598.21.

The articling student argued the landlord knew the tenant's work schedule and in spite of this, accepted him as a tenant. He contended that the tenancy agreement did not obligate everyday presence at the unit and at no time did the tenant's agent assure the landlord she would check in on the property in the tenant's absence. The tenant's agent provided direct testimony that she told the landlord she would attend the unit on an as needed basis only. The tenant testified that he did not contribute to the burst water main; he has no control over such matters. He testified that on August 7, 2018 he mowed the lawn and found no evidence of a water leak. He stated that the next day before leaving town, he walked across the lawn and again found no evidence of a water leak.

Front Yard Repair

The landlord testified that as a result of the burst water main and subsequent repair, the front lawn required restorative work. The landlord submitted a quote for the yard repair in the amount of \$2,121.28. The tenant denied liability for any costs associated with the burst water line.

Tenant's Claim & Landlord's Response

The tenant applied for a monetary order in the amount of \$6,550.00 for the following;

Item	Amount
Two Months' Rent	\$4,000.00
Twin Mattress	\$300.00
Clothes	\$500.00

Bedding	\$150.00
Stuffed Animals	\$300.00
Trailer Fuel	\$300.00
Security Deposit	\$1,000.00
Total Monetary Claim	\$6,550.00

Two Months' Rent

The tenant testified that the landlord did not maintain the unit pursuant to section 32 of the *Act*. He testified the unit was not suitable for occupation. Specifically, the unit smelled of cat urine, contained mold, the converted garage did not contain a closet and was not properly ventilated or heated and the nearby trains could be heard all hours of the day and night. The tenant testified that the urine smell and mold made him sick. The tenant testified that he reported the cat urine smell to the landlord but the landlord did not address it, instead the landlord denied a smell existed. The tenant testified that the plumber who attended the unit to repair the water main told him there was black mold in the basement and the unit was not safe for occupancy. The tenant testified that when this concern was brought forward to the landlord, the landlord told him black mold was not present. The tenant seeks reimbursement of the two months' rent he already paid in the total amount of \$4,000.00.

The tenant presented two witnesses and their written statements formed part of his documentary evidence. The first witness, his ex-partner and agent who initially viewed the unit on his behalf testified to the condition of the unit before the tenant's occupancy. She testified that the cat urine smell was present at the initial viewing and when she enquired about it at that time, the landlord assured her it would be taken care of. She testified that she was unaware of the close proximity of the train's tracks or lack of heat in the garage and the landlord did not advise her of such. The second witness, the tenant's current partner testified to the condition of the unit during the tenant's occupancy. She testified that the unit had a strong cat urine smell and trains could be heard throughout the day and night.

The landlord disputed the unit contained a cat urine odour or that the tenant's agent mentioned any such smell upon viewing the unit. The landlord also disputed the unit contained mold. The landlord testified that it was not until after the water main had burst on August 16, 2018, that she received her first message from the tenant of a cat urine odour or mold presence. She testified that the following day, on August 17, 2018 she offered the tenant the services of a cleaning company to address the cat urine smell

and employed the services of a restoration company to investigate the mold issue. She testified that the tenant did not respond to her request for cleaning services, but the contractor did attend the unit. The landlord has provided a copy of a written statement from the contractor which indicates the walls were tested with moisture meters and no traces of moisture, mold or smell were found. The landlord testified that as a precautionary measure, on this same date, the basement was sprayed with concrobium mold control.

In regards to the garage, the landlord testified it was an insulated garage conversion in place when the owner purchased the property five years ago. She testified it was listed as a den with the potential use as a bedroom. She testified that at the time of viewing she told the tenant's agent that an infrared heater was used to heat the area and offered the use of one for this tenancy. She testified that the tenant's agent declined her offer of the heater, saying the tenant did not require it as he had plenty of heaters already. The landlord testified that she did mention the trains at the viewing as she understood the tenant had a dog and this warranted some warning.

Twin Mattress, Clothes, Bedding, Stuffed Animals

The tenant testified that after vacating the unit, he discovered many of his possessions retained the cat urine smell and had to be replaced. The tenant's current partner testified that after moving out and despite multiple washings, the tenant's belongings still smelled of cat urine and had to be replaced. The tenant seeks to recover the cost to replace his daughter's mattress, clothes, bedding and stuffed animals in the total amount of \$1,250.00. The landlord did not provide a direct response to this portion of the tenants claim.

Trailer Fuel

The tenant seeks to recover \$300.00 in trailer fuel used to move his belongings. The landlord did not provide a direct response to this portion of the tenants claim.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. 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 this case, **the onus is on each party to prove**, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Analysis of Landlord's Claim

Loss of Rent

Based on the testimony of the parties and submitted tenancy agreement, the parties had a fixed term tenancy that was scheduled to end on June 30, 2019. The tenant ended the tenancy earlier than the date specified in the fixed term tenancy agreement, which is not in compliance with section 45 of the *Act*.

Pursuant to the Residential Tenancy Policy Guideline #30, neither a landlord nor a tenant can end a fixed term tenancy unless for cause or by written agreement of both parties. The parties in this case did not mutually agree to end the fixed term tenancy. Instead the tenant alleged cause; specifically that the unit contained black mold, smelled and made him sick.

A tenant ending a fixed term tenancy for cause is required to provide proper written notice of breach of a material term to the landlord. Notice must include a deadline the breach must be repaired by and notification the party will end the tenancy if the breach is not rectified by the deadline. I find the tenant provided insufficient evidence to establish they provided proper notice of a breach of a material term of the tenancy agreement and therefore find the tenant did not end this tenancy in accordance with the *Act*.

Pursuant to Residential Tenancy Policy Guideline #5, when a tenant ends the tenancy agreement contrary to the provisions of the *Act*, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature

of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, just what is reasonable in the circumstances.

Based on the landlord's testimony and documentary evidence, I find the landlord mitigated her loss by promptly advertising the unit, reducing the rent and securing a tenancy effective December 2018. I recognize the time of year, the condition of the front yard and proximity to the railway as contributing factors to the delay in re-renting. I find the efforts put forth by the landlord were reasonable in the circumstances and therefore award the landlord \$8,100.00 for loss of rent.

Move Out Cleaning

Section 37 of the *Act*, establishes 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. Upon review of the condition inspection reports, photographs and a written statement by the cleaner I am satisfied that the tenant left the rental unit contrary to section 37(2) of the *Act*. Therefore, I find the landlord is entitled to recover the cleaning costs in the submitted invoice amount of \$420.00.

Garbage Removal

Under Residential Policy Guideline #1, the tenant is responsible for the removal of garbage at the end of tenancy, unless an agreement exists to the contrary. I find the tenant's statement that he did not leave \$150.00 worth of garbage serves as an admission that some garbage was left behind. In the absence of documentary evidence to the contrary, I find the tenant left garbage which amounted to \$150.00 in removal costs and award this amount to the landlord.

Mowing, Yard Care

Residential Policy Guideline #1 establishes that a tenant is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is also responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

Upon review of the warning letters and photographs submitted by the landlord, I find on the balance of probabilities that the tenant failed to meet his obligation in routine yard maintenance; specifically in cutting the grass at regular intervals. However, in the

absence of a condition in the tenancy agreement requiring the tenant to maintain the flower beds, I find the landlord has failed to meet her onus in proving the tenant had this responsibility.

Although I find the landlord is entitled to recover some yard maintenance costs, I do not find the landlord is entitled to the costs claimed. The work was conducted sometime after the tenancy ended, in the case of an already neglected yard would only lead to increased labour costs. Further, the invoice contains charges for weeding the flower beds, which the tenant is not responsible for. For these reasons, I find the landlord is entitled to \$257.25 in yard maintenance costs, half the invoiced amount.

Water Main Repair

Under section 33 of the *Act*, the landlord is responsible for emergency repairs in the form of damaged or blocked water pipes. The landlord is typically responsible for the cost of such repairs, but can be relieved of this obligation if it is determined the damage was caused by the actions or neglect of the tenant.

In this case, I find the landlord provided insufficient evidence to substantiate her position that the burst water main was a result of the tenant's neglect. Although the tenant was absent at the time of the incident, and at other times throughout the tenancy, I find he had no obligation under the tenancy agreement to be present or ensure the presence of someone else. For this reason, I dismiss this portion of the landlord's claim, without leave to reapply.

Front Yard Repair

Because the front yard repair is attributed to the burst water main and the landlord failed to establish this was a result of the tenant's neglect, I find the tenant is not responsible for this cost. I dismiss this portion of the landlord's claim, without leave to reapply.

Analysis of Tenant's Claim

Two Months' Rent

Under section 32 of the *Act* a landlord must provide and maintain the unit and property in a state that complies with health, safety and housing standard required by law, having

regard to the age, character and location of the rental unit, making it suitable for occupation by a tenant.

Non-compliance to the above does not automatically entitle the tenant to monetary compensation in the form of rent. The tenant must take steps to minimize the loss. Specifically, when a tenant discovers a deficiency within the unit or property, the tenant must report the issue to the landlord and provide a timeline for expected repairs or compliance. If the landlord is not responsive, the appropriate remedy for the tenant is to apply to the Residential Tenancy Branch for an order of repairs, compliance and/or compensation for their loss.

In this case, the tenant did not provide a timeline or wait for any repairs; instead he just vacated the unit. In regards to the noise of the train, I find this is something that cannot be controlled by the landlord and does not constitute a contravention of section 32. I find the tenant failed to take the appropriate steps to minimize his loss and therefore dismiss this portion of his claim.

Twin Mattress, Clothes, Bedding, Stuffed Animals

As stated above, the tenant failed to mitigate his loss with respect to the deficiencies he listed. The tenant also failed to substantiate this claim with receipts. I dismiss this portion of the tenant's claim without leave to reapply.

Trailer Fuel

I find that the tenant voluntarily vacated the rental unit. He chose to move on his own accord, at the time that he did. Therefore, if the tenant incurred moving costs in the form of fuel, which he likely would in any event when moving to a new place, he must bear these costs. The tenant also failed to prove this monetary claim with a receipt. I dismiss the tenant's claim for trailer fuel in the amount of \$300.00, without leave to reapply.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for the application.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$2,000.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$6,927.25. As the landlord

was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$7,027.25.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$7,027.25 for the following items:

Item	Amount
Loss of Rent	\$8,100.00
Move Out Cleaning	\$420.00
Garbage Removal	\$150.00
Mowing, Yard Care	\$257.25
Less Security Deposit	(\$2,000.00)
Filing Fee	\$100.00
Total Monetary Claim	\$7,027.25

The tenant's entire application 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: January 31, 2019

Residential Tenancy Branch