



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL, FFT, MNDCT, MNSD

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord’s application for:

- a monetary order for unpaid rent in the amount of \$10,000.00 pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

And the tenant’s application for:

- authorization to obtain a return of her security deposit pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$5,300.00 pursuant to section 67; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that the tenant was personally served the notice of dispute resolution form and evidence on February 2, 2019. The tenant confirmed receipt of the notice of dispute resolution package via personal service on this date.

The tenant testified that she personally served the landlord the notice of dispute resolution form in January, 2019, but could not recall the exact date. The landlord confirmed receipt of the notice of dispute resolution form. The tenant testified that she did not serve any documentary evidence on the landlord. However, the tenant provided documentary evidence to the Residential Tenancy Branch.

Rule of Procedure 3.13 requires that an applicant serve the respondent with copies of the documentary evidence in advance of the hearing. The tenant failed to do this. Accordingly, pursuant to rule 3.17, I decline to accept into evidence any documents provided by the tenant to this Branch as the landlord did not have an opportunity to review these documents in advance of the hearing. The tenant was permitted to give oral evidence as to the content of the excluded documents.

Issue(s) to be Decided

Is the landlord entitled to:

- a monetary order for unpaid rent in the amount of \$10,000.00; and
- recover her filing fee for this application from the tenant?

Is the tenant entitled to:

- the return of her security deposit;
- compensation for damage or loss in the amount of \$5,300.00; and
- recover her filing fee for this application from the landlord pursuant to section 72?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed-term tenancy agreement signed November 3, 2018 and starting December 1, 2018. Monthly rent is \$2,200.00 and is payable on the first of each month. Utilities are not included. The tenant paid the landlord a security deposit of \$1,100.00 on November 2, 2018. The landlord still retains this deposit.

The tenant testified that, prior to entering into the tenancy agreement with the landlord, the landlord agreed to make certain repairs to the rental unit, including fixing a broken laundry room door. The tenant testified that it was very important to her that the laundry room door be fixed, as she has three small children, and she did not believe it was safe for the children to have access to the laundry room. Without the repairs, the tenant testified, she would not have been able to close the laundry room door.

There is no reference in the tenancy agreement to the repair of the laundry room door.

The landlord did not deny that the laundry room door was damaged, or that, in advance of entering into the tenancy agreement, she agreed to repair it.

The tenant testified that she paid December 2018 rent prior to moving into the rental unit (\$2,000.00 on November 20, 2018 and \$200.00 on November 30, 2018). She testified that on November 30, 2018 she received the key to the rental unit from the landlord, and that on December 1, 2018, she arrived at the rental unit to move in. She testified that rental unit was “really dirty” and that the carpet needed to be cleaned and that the floors were sticky. She testified that she contacted the landlord to advise the landlord of the problem, but that the landlord was on vacation in Australia at this time, and that no move-in inspection was made.

The landlord confirmed that she was in Australia on December 1, 2018, and she did not conduct a move-in inspection, nor did she offer times to the tenant for the inspection to be done at the start of the tenancy. She testified that she conducted a move-out inspection when the prior tenant vacated the rental unit, and that the rental unit was clean. I note that a copy of this move-out inspection report was not entered into evidence by the landlord.

The tenant testified that she contacted the landlord immediately regarding the condition of the rental unit. She testified that, due to its condition, she did not move into the rental unit on December 1, 2019.

The tenant testified that the landlord arranged for a cleaner to attend the rental unit on December 2, 2019, but did not specify a time. She testified that she waited at the rental unit in the morning, and the cleaner did not attend, but rather contacted her at 4:00 pm, when the tenant was not available to provide the cleaner access to the apartment. She testified that the cleaner was rude to her on this call, and could not reschedule.

The tenant and landlord both testified that after the failed attempt to have the cleaner attend the rental unit, the tenant agreed to wait until the landlord returned from Australia to deal with the cleaning of the apartment.

The tenant testified that she never moved into the rental unit due to the laundry room door being broken, and due to its lack of cleanliness. She testified that she did move some chairs into the rental unit, using it as storage. The landlord testified that the tenant moved furniture into the rental unit, and argued that as such she should be considered to be occupying it.

The tenant testified that, upon the landlord's return from Australia the landlord arranged with the tenant to attend the rental unit and conduct a move-in inspection. She testified that they agree to conduct the inspection and clean up the rental unit on December 23, 2018. The tenant (who had not yet moved into the rental unit, according to her testimony) attended the rental unit and waited all day for the landlord to arrive. The landlord did not arrive. She testified that the landlord apologized and rescheduled for December 30, 2018. She testified that she again attended the rental unit, waited the full day, and that the landlord failed to attend.

The landlord did not deny this.

The landlord testified that the tenant did not pay monthly rent for January 2019 on the basis that the rental unit had not been cleaned. The tenant confirmed that she had not paid January 2019 rent.

The tenant testified that the landlord finally attended the rental unit on January 7, 2018 to clean the rental unit. She testified that after this occurred the laundry room door was still not fixed, and she advised the landlord that she could not live in the rental unit if the laundry room door was not fixed. She testified that the landlord yelled at her following this statement. She testified that she told the landlord that when the landlord fixes what she asked him to fix that she would then start paying rent.

The landlord testified that, on January 12, 2019, she told the tenant that if she is not planning on staying at the rental unit, she could move her belongings out and return the rental unit key. The tenant agreed and, on January 15, 2019, she returned the key to landlord and removed her items from the rental unit.

Landlord's Claim for Damages

The landlord claims damages in the amount of \$10,000.00. The landlord did not provide a monetary order worksheet to show how she arrived at this amount. However, she testified that this amount captures the following:

- tenant's failure to pay January 2019 rent;
- loss of future rent the tenant would have paid under the fixed term tenancy agreement (February 2019 to November 2019); and
- tenant's failure to pay utility bill for December 2018 and January 2019.

The landlord testified that the tenant did not pay any utilities for the months of December 2018 and January 2019. She did not enter any utility bill into evidence.

The landlord testified that she has not taken any steps to re-rent the rental unit after the tenant returned the keys in January 12, 2019. She testified that she was waiting to see the outcome of the hearing before taking steps to re-rent the rental unit.

Tenant's Claim for Damages

The tenant claims damages in the amount of \$4,200.00, which represents two month's rent at her prior residence. She argues that, due to the landlord's failure to repair the laundry room door or to clean the rental unit in advance of her moving in, she was not able to move into the rental unit, and had to stay at her previous rental unit for the months of December 2018 and January 2019.

The tenant testified that the monthly rent of her previous rental unit was \$2,100.00, but did not provide any documentation in support of this.

The tenant also seeks the return of her security deposit in the amount of \$1,100.00. She did not provide any evidence as to whether she provided the landlord in writing with her forwarding address.

Analysis

The parties' version of events is substantively the same. The parties agree on the key events and their timing. I find that:

- per the tenancy agreement, the tenancy was to start December 1, 2018;
- the tenant paid the monthly rent for December 2018, and the security deposit, in November 2018;
- the tenant attended the rental unit on December 1, 2018, but did not occupy it as it was not clean;
- the rental unit was not at a reasonable standard of cleanliness and the laundry room door was broken on December 1, 2018;
- the tenant has not paid rent for January 2019, or any month thereafter;
- the landlord failed to conduct an inspection at the time of moving in, and failed to provide a written move-in inspection report;
- the tenant moved some items of furniture into the rental unit, but continued to reside at her previous rental unit;

- at the landlord's offer, the tenant returned the keys to the rental unit on January 15, 2019.

I accept the tenant's undisputed testimony that, prior to entering into the tenancy agreement, the landlord agreed to repair the laundry room door.

I accept the landlord's undisputed testimony that she has not made any efforts to re-rent the rental unit.

End of Tenancy

Section 44(1)(c) states:

How a tenancy ends

- 44** (1) A tenancy ends only if one or more of the following applies:
(c) the landlord and tenant agree in writing to end the tenancy.

Notwithstanding the requirement in the Act that the agreement be in writing, I find that, by offering to allow the tenant to return the rental unit key and move her belongings out, and by the tenant agreeing to do this on January 15, 2019, the parties agreed end the tenancy. I find that this agreement had the effect of ending the tenancy on January 15, 2019.

While the landlord did not explicitly state to the tenant that the returning of the keys and emptying of the rental unit would end the tenancy, I find that it is the only reasonable interpretation of her offer. It would be unreasonable to think that the landlord was proposing that the tenant surrender her access to the rental unit, and that she continue to pay rent for the duration of the fixed term. Such a proposal could not reasonably be accepted.

I do not find the fact that the agreement was not memorialized in writing prevents the tenancy from being ended by the parties' oral agreement. The writing requirement is intended to protect a party from unsubstantiated claims by an opposing party that the parties agreed to terminate the lease. In this case, neither party requires such protection, as both parties agree as to what the landlord offered.

Such a waiver of a writing requirement is indeed contemplated within the Act itself. For example, section 13 of the Act requires that a tenancy agreement be in writing, but section 12 states that "the standard terms are terms of a tenancy agreement whether or

not the agreement is in writing". If a writing requirement were without exception, such a clause would have no meaning. I do not find that the legislature when enacting the Act intended for any clause in the Act to have no meaning.

Damage to Landlord

I find that whether or not the tenant ever moved into the rental unit to be of no significance, as section 16 of the Act states:

Start of rights and obligations under tenancy agreement

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

I find that the tenant was obligated to pay monthly rent starting December 1, 2018 as of the date she signed the tenancy agreement.

I find that, by failing to pay monthly rent for January 2019, the tenant breached the tenancy agreement. Section 26 of the Act states:

Rules about payment and non-payment of rent

26 (1)A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant testified that she withheld January's rent as the rental unit was not properly cleaned, and as the laundry room door was not repaired. I find that this is not a valid reason for withholding rent. Accordingly, I find that the landlord is entitled to a monetary order in the amount of \$2,200.00 representing the monthly rent for January 2019.

I do not find that the mutual agreement to end the tenancy relieved the tenant from her obligation of paying the entirety of the monthly rent for January 2019, as the agreement itself is silent on the issue.

As the tenancy was ended on January 15, 2019, I do not find that the landlord is entitled to recover any amount for loss of income for the months following the end of the tenancy. Such an outcome would not be reasonable or in keeping with the Act.

The landlord provided neither an amount sought for unpaid utilities nor any documentary evidence demonstrating the rental property's utilities were unpaid. Accordingly, I decline to make any order in regards to unpaid utilities.

Damage to the Tenant

Section 32 of the Act states:

Landlord and tenant obligations to repair and maintain

- 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.
- (2)A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

I find that by failing to repair the laundry room door, and by failing to clean the rental unit prior to the tenant moving in, the landlord breached section 32 of the Act. I find that a broken laundry room door caused the rental unit to be in a state of repair not suitable for the occupation of the tenant. I find that, by not cleaning the unit in advance of the tenant moving in, the landlord caused the tenant to take possession of a rental unit in a state that the tenant was obligated by the Act to remediate, as per section 32(2). This is an obligation foisted upon the tenant by the landlord, and the tenant should not be expected to suffer loss as the result.

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- 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.

The duty to minimize loss is also set out at section 7(2) of the Act:

Liability for not complying with this Act or a tenancy agreement

7 (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.

As stated above, I find that the landlord has failed to comply with the Act.

I find that, as the result of this non-compliance the tenant has suffered damage or loss. She testifies that she was unable to move into the rental unit in the state she found it on December 1, 2018, and as a result needed to continue to remain at her previous rental unit.

I find that the tenant was able to quantify this loss. I accept her testimony that monthly rent at the previous rental unit was \$2,100.00, and that she paid it for the months of December 2018 and January 2019. This amounts to loss as the tenant paid monthly rent to the landlord for the rental unit in question for December 2018, and is obligated to pay monthly rent (as discussed above) for January 2019.

I do not find, however, that the tenant acted reasonably to minimize her damage or loss. I do not find it reasonable for the tenant to refuse to move into the rental unit on account of the floors being sticky and the carpets needing cleaning. Nor do I find it reasonable for her not to have moved in on account of the broken laundry room door. I find that a reasonable person would have moved into the rental unit, and attempted to remediate the problem. For example, a reasonable tenant might have hired a cleaning service to clean the floor, and sought repayment from the landlord. Likewise, the a reasonable person might have attempted to have the laundry room door repaired on their own, to keep their children out of the laundry room until such time as the landlord repaired the door. The tenant took none of these more measured approaches.

As the tenant failed to minimize her damages, I decline to order that the landlord reimburse her the cost of the monthly rent at her previous rental unit for December 2018 and January 2019.

However, I find that, if the tenant had acted in a reasonable manner, and moved into the rental unit, she would still have suffered loss (for example, loss of full use of the laundry room, or loss of quiet enjoyment of the rental unit due to its uncleanness). As such, she is entitled to some form of compensation for the landlord's breach of the Act,

Policy Guideline 16 states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

As such, I find it appropriate to award the tenant nominal damages in the amount of \$220.00 per month (representing a 10% reduction in her monthly rent) for December 2018 and January 2019 (\$440.00 in total).

Return of Security Deposit

The tenant claims for the return of the security deposit.

Section 23 of the Act states

Condition inspection: start of tenancy or new pet

23(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

[...]

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

Based on the testimony of the parties, I find that the landlord failed to conduct an inspection report on December 1, 2018, or on any other mutually agreed day.

Accordingly, section 24(2) of the Act applies:

Consequences for tenant and landlord if report requirements not met

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that, in accordance with section 24(2)(c) of the Act, the landlord's right to claim against the security deposit is extinguished for failure to complete a condition inspection report.

Residential Tenancy Policy Guideline 17 states:

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit

[...]

- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

The tenant has not specifically waived the doubling of the deposit. Accordingly, I find that as the landlord's right to claim against the security deposit is extinguished (discussed above) the tenant is entitled to receive double the security deposit from the landlord.

This entitlement to double the security deposit may be offset against the amount I have ordered the tenant to pay to the landlord for damages caused by failing to pay monthly rent for January 2019.

Conclusion

As both parties were parties successful in their application, I order that each party shall bear the cost of their respective filing fees.

I order that the landlord pay the tenant \$440.00 as follows:

Double security deposit	\$2,200.00
Credit for tenant's non-payment of January 2019 rent	-\$2,200.00
Nominal damages	\$440.00
Total	\$440.00

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: March 18, 2019

Residential Tenancy Branch