



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- Authorization to recover the filing fees from the tenant pursuant to section 72;
- A monetary order for damages to the rental unit pursuant to section 67;
- A monetary order for unpaid rent pursuant to section 67; and
- Authorization to retain a security deposit pursuant to section 38.

Both parties attended the hearing. The landlords were represented by SM ("landlord") and the tenants were represented by KV, the tenant's spouse/agent ("tenant"). As both parties were present, service of documents was confirmed. The tenant confirmed receipt of the landlord's application for dispute resolution and evidence. The tenant did not provide any documentary evidence. In accordance with sections 88 and 89 of the Act, I find the tenant was served with proper notice of proceedings.

Preliminary Issue

Both parties agree that there was a signed tenancy agreement, between the named landlords and the tenant, LW. No others signed the tenancy agreement. In accordance with Rule 6.2 I determined that the landlord did not have any claim against the other named party and dismissed the claim against him. The parties' corrected names are reflected on the cover page of this decision in accordance with Rule 4.2.

Preliminary Issue

The parties advised me there was a previous hearing by which the arbitrator was to determine whether the landlord was to return or retain the security deposit. The parties agreed that I should review the previous decision in order to determine whether I had jurisdiction to make this determination. The previous case number, referenced in the background and evidence, is listed on the cover page of this decision.

Issue(s) to be Decided

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

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

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

Can the landlord recover the filing fee for this application from the tenant?

Background and Evidence

A copy of the tenancy agreement was not provided as evidence by the landlord. The landlord testified the tenancy agreement was drafted on the standard RTB-1 form.

The landlord provided the following testimony. The rental unit is a 30 year old house with a pool and sauna recently purchased by the landlords to be used as a rental property. The condition of the house was clean and undamaged; the age of the carpets appeared to be about 10 years old, with freshly painted walls. The appliances were in good working conditions consistent with a home of that age.

The month to month tenancy began on June 25, 2018. The landlord testified rent was set at \$2,500.00 per month, however corrected this amount to \$2,800.00 per month when the tenant testified to this fact. The parties agree the tenancy agreement does not indicate the monthly rent. A security deposit in the amount of \$1,500.00 was collected from the tenant which the landlord continues to hold. The landlord reasoned a security deposit more than ½ of one month's rent payable was collected to offset the extra expense of a pool and sauna. The landlord testified the rent was payable on the 25th day of the month which is disputed by the tenant. Electricity and natural gas utilities were to be paid for by the tenant.

The parties did a 'walk-through' of the rental unit however the landlord did not complete a condition inspection report for the parties to mutually sign. No condition inspection report was provided to the tenant at the commencement of the tenancy nor at the conclusion.

The landlord testified she requested the rent from the tenant on the 25th of each month by text message and the tenant was usually late in paying the rent. No copies of text messages were provided by the landlord or the tenant. The tenant did not pay for December rent by the 25th of November and the landlord considered the rent to be late on November 26th.

On December 9th, the tenant LW gave the landlord the keys to the rental unit indicating to the landlord that they had moved out as they were unable to make the December rent payment. The tenant did not provide the landlord with a formal notice to end tenancy.

When the tenant vacated the rental unit, the house was in an unrentable condition. The landlord testified there were stains left on the carpets caused by a pet, requiring a full removal of both the carpets and the underlay. A receipt for new carpets and installation was provided as evidence. The pool was in such bad condition it had to be shut down. The sauna was no longer working. To assist in cleanup, the landlord hired a landscaping company who performed carpet removal, interior and exterior power washing and cleaning of the pet damage. A copy of the landscape company's invoice was provided as evidence. The landlord was unsure about when the house became re-rentable, but during the hearing, she concluded she believes a new renter was found for March 1st. The landlord did not provide any photographs of the rental unit to corroborate her claim for damages.

During the course of the tenancy, the tenants failed to put the electricity and natural gas utilities into their name. The landlord received notice to disconnect the electricity and provided a copy of the notice indicating arrears in the amount of \$601.51. The landlord testified she paid \$1,100.00 to pay the arrears and reconnect the service, however she did not provide any documentation to corroborate the difference between the amount owed and how much she paid to the electricity company. The landlord also provided an invoice from the natural gas company in the amount of \$192.00 which she paid. This invoice includes a previous amount of \$96.00 for previous charges however the invoice showed service between July 30 and August 30, 2018 in the amount of \$96.00.

The tenant provided the following testimony. The landlord never invited him to conduct a condition inspection or signed a tenancy agreement at the commencement of the tenancy on June 25th. It wasn't until October 16th that the landlord came to the rental unit to sign the tenancy agreement with the tenant, LW. The sauna never worked, and the pool was not in useable condition at commencement. The landlord never purchased pool chemicals for the pool, however the tenant maintained it by replacing the filter when needed.

A pipe burst in the house in November which the landlord repaired immediately, however the tenants feared potential health issues related to the drywall becoming wet. They moved some of their possessions to storage, however they never discussed moving out with the landlord. The tenant acknowledges rent was not paid on December 1st when it was due according to the tenancy agreement, though he fully intended on paying it.

On the morning of December 9th, the tenant came home from an overnight trip to discover the landlord and her associates moving their items out of the home and off the property. He discovered his car was towed off the property. The tenant was told by an associate of the landlord that since rent was not paid for the month of December, the tenants must move out. The tenant sought an order from the Residential Tenancy Branch and the arbitrator ordered the landlord return the removed items. The decision further ordered the tenants were to send a copy of the decision and order to the landlord

by registered mail, giving the landlord 15 days to deal with the security deposit. The tenant did not testify as to whether or not he served the decision by registered mail.

Although he acknowledges electricity and natural gas were his responsibility, water was not. The landlord failed to pay the water bill which the tenant paid in lieu of the other utilities which they were to discuss in settlement. The condition of the house on December 9th was undamaged and in rentable condition. The tenant acknowledges he had a puppy who caused minor staining to the carpets however he didn't have an opportunity to clean it when the landlord terminated his tenancy on December 9th without providing him a Notice to End Tenancy or an Order of Possession.

Analysis

- Claim for damages to the rental unit

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim, the landlord. The standard of proof is on a balance of probabilities. If the landlord is successful in proving it is more likely than not the facts occurred as claimed, applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Sections 23 and 35 of the Act require the landlord and tenant to participate in move-in and move-out condition inspections and document them in written reports. The landlord is responsible for scheduling the inspections.

Section 14 of the Residential Tenancy Regulations ("Regs") state:
the landlord and tenant must complete a condition inspection described in section 23 or 35 of the Act [*condition inspections*] when the rental unit is empty of the tenant's possessions, unless the parties agree on a different time.

Sections 17 and 18 of the Regs indicate it is the landlord's responsibility to schedule the inspections and provide a copy to the tenant.

Both the landlord and the tenant testified a condition inspection report was not completed, contrary to the Act and Regulation.

Without a condition inspection report signed by the parties acknowledging the pre-existing conditions of the rental unit, the landlord has put herself in a position where she

cannot prove, on a balance of probabilities, the existence of the damages caused by the tenant when the tenancy ended. Though her testimony bears some weight, she has not met the burden of proof to show me the difference in condition between move-in and move-out.

While the condition inspection report would provide the most compelling proof of damage, photographs to corroborate the landlord's claim would also have been informative. The landlord has provided neither. I find the landlord has not proven the existence of the damages caused by the tenant (part 1 of the 4 point test) and her claim for compensation for damages to the rental unit is dismissed without leave to reapply.

- Claim for unpaid rent

Though the landlord claims the tenants were to pay rent on the 25th of each month, the tenant disputed this, saying the rent was payable on the first day of each month. The landlord testified the tenancy agreement was drafted on a standard form RTB-1 which I note is pre-scribed with the following:

The tenant will pay the rent of \$ each (check one) day week month to the landlord **on the first day of the rental period** which falls on the (due date, e.g., 1st, 2nd, 3rd, 31st) day of each (check one) day week month subject to rent increases given in accordance with the RTA (emphasis added)

Without having a copy of the signed tenancy agreement in evidence and without compelling evidence to the contrary, I find rent was payable on the first day of the month. The tenant acknowledges rent was not paid between the periods of December 1st to December 9th. I find the landlord is entitled to pro-rated rent for the nine days in December ($\$2,800.00/31 \times 9 \text{ days} = \812.90) in the amount of **\$812.90**.

- Utility Bills

The tenant acknowledges electricity and natural gas were his responsibility. The landlord has provided copies of notices of termination of service to electricity in the amount of \$601.51 however testified they paid \$1,100.00 to pay outstanding arrears and reconnection fees. The landlord did not provide any corroborative evidence to show the electrical company required any amounts greater than \$601.51. I accept the landlord's testimony that the tenants failed to pay the electricity bill in the amount of **\$601.51** and I award her compensation for this amount.

The landlord's claim for natural gas includes a past due amount of \$192.00. Although the landlord testified the past due amounts were for a period covered by the tenancy, she has not provided any evidence to corroborate this. The landlord has failed to satisfy me the tenants were responsible for the full amount. The remainder of the natural gas was for a period covered by the tenancy from July 30 to August 30, 2018 which was to be paid by the tenant. I award the landlord **\$96.00** for the natural gas utility.

- Security Deposit

At the commencement of the tenancy, the landlord did not pursue a condition inspection of the suite with the tenant, as required by section 23 of the *Act*. Pursuant to section 24, the landlord's right to claim against the security deposit is extinguished if the landlord does not offer the tenant at least two opportunities for inspection.

Section 38(5) and (6) of the *Act* state that when the landlord's right to claim against the security deposit is extinguished, the landlord may not make a claim against it and must pay the tenant double the amount of the security deposit or pet damage deposit, or both, as applicable. This is further clarified in Residential Tenancy Branch Policy Guideline PG-17 which says, in part C-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*.

In this case, section 38(6) requires that the tenant's security deposit of \$1,500.00 be doubled to \$3,000.00.

The offsetting provisions of section 72 of the *Act* allows the landlord to draw on the security deposit if an arbitrator orders the tenant to pay any amount to the landlord. Pursuant to section 72 of the *Act*, the landlord is to deduct \$3,000.00 in partial satisfaction of the monetary order.

<u>Item</u>	<u>Amount</u>
Unpaid Rent from Dec. 1 to Dec. 9, 2018	\$812.90
Electricity Bill	\$601.51
Natural Gas Bill	\$96.00
Less security deposit (doubled)	(\$3000.00)
Total	(\$1489.59)

Conclusion

The tenants are entitled to a monetary order in the amount of \$1,489.59. I order that the landlords pay this sum forthwith.

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: June 4, 2019

Residential Tenancy Branch