Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- a monetary order for unpaid rent and utilities, for damage to the rental unit, and for money owed or losses arising out of this tenancy under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38 and 39; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. As the tenants confirmed that they were handed a copy of the landlord's dispute resolution hearing package on May 22, 2019, I find that the tenants were duly served with this package in accordance with section 89 of the *Act.* Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and utilities? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to a monetary award for other money owed arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

On January 26, 2017, the parties signed a one-year fixed term Residential Tenancy Agreement (the Agreement) that called for the tenants to have occupancy of the rental unit from March 1, 2017 until February 28, 2018. Monthly rent was set at $2,100.00, payable in advance on the first of each month, plus 25% of the utilities on this property, which also included the landlord's home. The landlord continues to hold the tenants\ $1,050.00 security deposit paid on January 26, 2017.

On February 12, 2019, another arbitrator appointed pursuant to the *Act* heard the tenants' application for a monetary award of $15,689.26 and for the return of the tenant's security deposit. In their February 20, 2019 decision (see above reference), the previous arbitrator dismissed the tenants' application for a monetary award, and dismissed the tenants' application for the return of their security deposit with leave to reapply. The previous arbitrator's decision read in part as follows with respect to the security deposit for this tenancy:

...The parties agreed that the tenancy ended between February 8, 2018 and February 12, 2018. The Tenants stated that their forwarding address was provided over the phone as well as by registered mail through a previous Application for Dispute Resolution. The Landlord stated that the forwarding address was received through the paperwork for a previous dispute resolution proceeding filed by the Tenants.

However, as the Act states that the forwarding address must be provided in writing, providing it over the phone is not sufficient. As for the address provided through a previous Application for Dispute Resolution, I find that the paperwork for a dispute resolution proceeding is not service of the forwarding address for the purpose of requesting the security deposit back. Instead, I find that the forwarding address should be provided in writing separately from a Notice of Dispute Resolution Proceeding package.

As I do not have confirmation that this was done, and the Tenants' address was not confirmed with the Landlord during the hearing to ensure they have the correct address, I cannot find that the Tenants' forwarding address has been provided for the purpose of requesting the return of the security deposit. Therefore, the Tenants must provide their current forwarding address to the Landlord in writing and the Landlord has 15 days from receipt of the forwarding address to comply with Section 38(1) of the Act. Should the Landlord not comply with Section 38(1), the Tenants may reapply for the return of double their security deposit, pursuant to Section 38(6) of the Act...

The landlord sent the tenants a letter on December 28, 2017, advising them that they were expected to have vacated the rental unit by February 28, 2018, the date identified on their fixed term Agreement. This letter stated that the landlord could not extend the tenancy as the landlord intended to use the premises for their own personal use after the tenancy ended. Both parties agreed that the landlord did not issue any formal Notice to End Tenancy, using an approved RTB form for doing so.

As was noted in the previous decision, the tenants maintained that they vacated the premises on February 8, 2018, while the landlord maintained that this did not happen until February 12, 2018.

Although the landlord completed a Monetary Order Worksheet, a more accurate breakdown of the landlord's claim for a monetary award of $13,323.26 was provided in the following portion of the landlord's written evidence:

Item	**Amount**
Unpaid Utilities	$915.32
Unpaid February 2018 Rent	2,100.00
Furniture Replacement Cost	1,766.00
Disposal of King Bed and Mattress	300.00
Christmas Tree Removal	200.00
Floor Replacement Tools & Material Costs	1,558.93
Painting Tools and Material Costs	1,183.01
Hiring Costs for Agent at Previous Hearing	1,000.00
Recovery of Filing Fee for this Application	100.00
Total of Landlord's Monetary Claim	**$13,323.26**

At the hearing, the landlord first testified that they were able to obtain new tenants who took occupancy of the rental unit as of March 1, 2018. When I questioned the apparent contradiction between this sworn testimony and the landlord 's claim for a monetary award equivalent to two month's rent after this tenancy ended, the landlord and their advocate reviewed the new tenancy agreement signed with the tenants who took possession of the rental unit after the landlord completed the necessary repairs to the rental unit. The landlord then revised their sworn testimony advising that they were mistaken originally, and that the new tenancy agreement for this space was signed on April 27, 2018, for a tenancy that began on April 29, 2018. The landlord testified that the new tenants were paying $2,300.00 as of that date, with the same provisions in

place as to the furnishings included with the rental unit and with respect to the tenant's responsibility for 25% of the utilities for this property. The landlord did not know when their agent listed the availability of the rental unit for rent.

The landlord provided extensive copies of the utility bills that formed the basis for the landlord's claim for $915.32 in utilities. These utilities included gas, hydro and water bills, for which the Agreement required the tenants to pay 25% of these utility costs for this property. The landlord entered written evidence supported by sworn testimony that the tenants did pay a $750.00 cheque for utilities on one occasion during this tenancy, but never made any further utility payments to the landlord. The tenants maintained that they made cash payments for utility bills whenever the landlord provided copies of these bills to the tenants. The tenants denied the landlord's claim that there were unpaid utility bills outstanding for which the tenants were responsible. At the hearing, Tenant ZH gave sworn testimony that they never asked for receipts for any of their cash payments to the landlord. The landlord testified that the tenants did not make any cash payments for utilities during this tenancy.

I heard conflicting testimony from the parties with respect to the landlord's claim for the replacement of furniture during this tenancy.

The landlord entered into written evidence copies of furniture bills that showed the landlord's purchase of $1,766.00 in new furniture on May 8, 2016. These purchases included the purchase of a king mattress for $989.00, $701.08 for a twin mattress, and $62.92 for a twin boxspring. In addition to these amounts, I note that GST of 5% and PST of 7% were added to the landlord's bill. Although the landlord's advocate said that the landlord did purchase replacement mattresses and furniture after this tenancy ended, the landlord did not provide any copies of receipts for these purchases. The landlord testified that the furniture replacements purchased were of similar quality to those purchased by the landlord in 2016, before this tenancy began. The landlord's advocate also noted that one of the text messages sent by Tenant MS advised the landlord that the tenants had decided to buy some of their own furniture and asked the landlord what he wanted done with the landlord's existing furniture.

Tenant ZH (the tenant) gave sworn testimony that the landlord's purchase of at least the king mattress was for the landlord's own bed, and was not part of the furnishings provided by the landlord during this tenancy. The tenant claimed to have photographs showing that the landlord's mattress was the one purchased in May 2016, and not the one placed in the tenants' rental unit. The tenant claimed that the furniture in the rental unit was old and questioned the authenticity of the landlord's receipts. The tenant

maintained that furniture was damaged by the water and moisture problems that arose during this tenancy, for which the landlord was responsible. The tenant asserted that the landlord helped the tenant move some of the furniture out of the rental unit and helped place them under the patio cover outside the rental unit.

Both parties maintained that the other was responsible for the flooding that had caused damage to the flooring. I note that in the previous hearing of the tenants` application for a monetary award, referenced above, the tenants claimed that they experienced losses arising from flooding problems in this rental suite for which the landlord bore responsibility.

As I noted at the hearing, the landlord`s receipts for painting tools and materials were of such poor quality as to render them illegibile. The tenant`s advocate confirmed that they could read only an occasional word on these receipts, as well. The landlord said that the premises were last painted in 2014, when the premises were remodelled.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, diagrams, videos, translated text messages, those receipts that were legible, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below. I have addressed the landlord's claim in the order outlined in the landlord's written evidence submission as identified in the table above.

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 order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Section 26(1) of the *Act* establishes that “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.”

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Although I have given the tenants' written evidence and sworn testimony due consideration, I find that the landlord has established a sound basis for their claim for $915.32 in unpaid utilities owed by the tenants from this tenancy. If the tenants did make cash payments, they bear responsibility for failing to ask for and obtain receipts for these cash payments. As I find on a balance of probabilities it more likely than not that these amounts remain owing, I allow the landlord's claim for $915.32 in unpaid utilities.

There is undisputed evidence that the tenants did not pay any rent for February 2018, for a fixed term tenancy that was not scheduled to end until February 28, 2018. While the tenants apparently withheld paying their rent for that month on the basis that they considered themselves to have received a 2 Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice), I find that the landlord's December 28, 2017 notice to them was not on a proper Residential Tenancy Branch (RTB) form. As no valid 2 Month Notice was issued to the tenants, the tenants are not eligible to have withheld their monthly rent pursuant to section 51 of the *Act.* For these reasons, I allow the landlord's application to recover unpaid rent that remains owing from February 2018 in the amount of $2,100.00.

Section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. In this case, the landlord's claim for loss of rent for two months following the end of this tenancy was based on the repairs to damage that the landlord claimed became necessary as a result of the tenants' actions. The tenants disputed their responsibility for the damage claimed by the landlord, maintaining that the landlord was responsible for these repairs.

Although I have given the landlord's application for loss of income for two months after this tenancy ended careful consideration, I find on a balance of probabilities that the landlord has not provided sufficient evidence to demonstrate that the tenants were responsible for this loss of income. In coming to this conclusion, I find that there is an element of merit to the tenants' assertions that the landlord's claim for this item is an attempt to obtain compensation from the tenants to upgrade the rental unit and to undertake repairs that arose from the landlords' failure to properly maintain these premises in accordance with the requirements of section 33 of the *Act*. In addition, the

landlord was unable to demonstrate to the extent required that the landlord took adequate measures to try to mitigate the tenants' exposure to the landlord's loss of income for two months following the end of this tenancy.

Sections 23 and 24 of the *Act* establish the rules whereby joint move-in condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. Sections 36 and 37 of the *Act* establish similar provisions regarding a joint move-out condition inspection and the report to be produced by the landlord(s) regarding that inspection.

While both parties have provided photographic evidence, including a video taken by one of the tenants when they ended their tenancy, the quality of this evidence from both parties is not of sufficient standard to constitute a replacement for properly completed joint move-in and move-out condition inspection reports. Although the Agreement notes that this is a furnished rental suite, there is little detail as to what was provided as part of these furnishings. Other than sworn testimony, there is little to assist with establishing whether the mattresses purchased in May 2016, which would have already been over a year old when this tenancy began, were both placed in the rental unit by the landlord.

I do find that the text message sent by Tenant MS does support to a certain extent that at least some of the landlord's furniture was damaged during this tenancy. However, it is unclear which items were damaged, whether that damage arose from the tenants' actions and whether the landlord was fully aware that these items were being left outside where they could be subject to further damage. I must also take into consideration the tenant's disputed assertion that the king mattress purchased in May 2016 was placed in the landlord's suite and not the tenants. The landlord has also not supplied any real proof that the landlord actually suffered losses requiring the landlord replace furniture for this rental suite. Under these circumstances, I find on a balance of probabilities that the landlord has not met the required threshold to establish the landlord's entitlement to the issuance of a monetary award for the cost of replacing furniture in the rental unit. For these reasons, I dismiss this part of the landlord's claim without leave to reapply.

The landlord produced no receipts to demonstrate any actual losses associated with the disposal of the king bed and mattress in this rental unit. Similarly, the landlord provided nothing to support their $200.00 claim for the removal of the tenants' Christmas tree. I dismiss both of these portions of the landlord's claim without leave to reapply.

There was also conflicting evidence from the parties as to whether the tenants were responsible for the damage to flooring in this rental unit, which the landlord needed to replace at the end of this tenancy. The landlord provided written and photographic evidence, supported by sworn testimony that the tenants allowed moisture and humidity to develop on an ongoing basis in the rental unit, refused to allow the landlord to address these problems, and attached an unauthorized hose to a water outlet, which would have contributed to the flooding problems that eventually required flooring replacement. The landlord testified that the entire suite, including the damaged flooring was remodelled in 2014. The landlord`s claim for replacement of the flooring only included tools and materials; the landlord undertook the flooring replacement themselves, with no claim for the labour involved in this work. The landlord entered into written evidence legible receipts to support this portion of their monetary claim.

The tenant and their advocate maintained that the damage to the flooring arose from a malfunctioning pipe behind the drywall in the bathroom. They claimed that they allowed the landlord`s representatives to access the rental unit many times, but the landlord refused to accept responsibility for this damage, which only increased over time. They alleged that damage to flooring and furniture arose because the landlord did not obtain the services of a qualified tradesperson to address these problems. They claimed that these problems were present in this 55 year-old home from early in their tenancy.

In this case, I note that there is quite likely at least an element of merit to the arguments of both parties. However, the person making the claim for a monetary award is responsible for demonstrating on a balance of probabilities entitlement to the monetary award claimed. In this case, there is no properly completed joint move-in and move-out condition inspection report in place. The landlord provided no direct sworn testimony or written evidence from those retained by the landlord to inspect and identify the source of this flooding problem. Under these circumstances, I find that the landlord has failed to meet the burden of proof in establishing this portion of the landlord`s claim for a monetary award for the replacement of flooring in this rental unit. I dismiss the landlord`s application for a monetary award for replacement of flooring without leave to reapply.

In considering the landlord`s application for costs associated with repainting the rental unit, I note that the landlord`s receipts were almost totally illegible. The landlord`s handwritten totals on each of these receipts was the only item, other than the name of the issuer of the receipts that was legible. In addition, the RTB`s Policy Guideline 40 establishes that the useful life of an internal paint job is four years. Since the landlord said that the premises were last painted as part of the 2014 remodelling of this rental

unit, the useful life of the existing paint job would have expired by 2018, when this tenancy ended. I dismiss this portion of the landlord`s claim without leave to reapply.

At the hearing, I advised the parties that the only hearing related cost that a party can recover from the other party is their filing fee for the application. While I allow the landlord`s application to recover their $100.00 filing fee for this application, I dismiss the landlord`s application to recover the $1,000.00 fee charged by the landlord`s advocate to prepare for and appear at the previous hearing (see above file number). There is no legal authority to recover fees charged by advocates to participate in the dispute resolution hearing process; this is a cost that the parties must absorb themselves.

Finally, I turn to the landlord`s application to retain the tenants` security deposit. At the current hearing, the parties confirmed that no report of the joint move-in condition inspection conducted between the landlord`s real estate agent and the tenants occurred. This would prevent the landlord from applying to retain the security deposit at the end of this tenancy because the landlord`s right to retain that deposit was extinguished in March 2017, shortly after this tenancy began. This is established by way of the following wording of paragraph 24(2)(c) of the *Act*:

Consequences for tenant and landlord if report requirements not met

24 *(2) The right of a landlord to claim against a security 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...

Although the landlord`s right to apply to retain the tenants` security deposit had expired by May 21, 2019, the date when the landlord applied to retain the deposit, the landlord`s responsibility to return the deposit is only activated by the latter of the end of the tenancy or the date when the tenant provides the landlord with their forwarding address in writing.

As was noted above, the tenants were specifically advised in the February 20, 2019 decision of the arbitrator who considered their application to recover their security deposit from the landlord that they ``must provide their current forwarding address to the Landlord in writing." At the hearing, the tenants and their advocate confirmed that the tenants had not sent the landlord their current forwarding address in writing after receiving the previous decision regarding their application.

Section 39 of the *Act* reads as follows:

Landlord may retain deposits if forwarding address not provided

> ***39*** *Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,*
>
> *(a) the landlord may keep the security deposit or the pet damage deposit, or both, and*
>
> *(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.*

The tenants did not act on this matter and did not provide their forwarding address in writing to the landlord within the required one year time period, even by May 21, 2019, the date when the landlord made their application. Although the landlord's right to retain the tenants' security deposit had been extinguished when the landlord applied to retain it, the wording of section 39 of the Act establishes that, "despite any other provision of this *Act*," the landlord may keep the security deposit. As a final and binding decision has already been made that the tenant's previous provision of their forwarding address to the landlord did not constitute having provided the landlord with their forwarding address in writing, I find that the landlord is entitled to keep the security deposit for this tenancy in accordance with section 39 of the *Act*.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, utilities and the filing fee for this application:

Item	**Amount**
Unpaid Utilities	$915.32
Unpaid February 2018 Rent	2,100.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	**$3,115.32**

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

In addition, I order the landlord to retain the tenants' security deposit.

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: August 06, 2019

Residential Tenancy Branch