



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, MNSD

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;

The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the *Act*.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party. Neither party raised any service issues. I accept the undisputed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the *Act*.

During the hearing the landlord's application was clarified. Although the landlord filed an amendment to the application, it was unclear what exactly the landlord was seeking as the landlord indicated that a claim was being removed. The landlord stated only that she was adding additional information to her claim. Further discussions revealed that no amendment/change to remove a claim was intended. The landlord stated that she wished to withdraw the amendment and proceed on the original application. As such, no further action was required for the amendment.

Extensive discussions over a 98 minute period failed to conclude the hearing. The hearing was adjourned. Both parties were advised that no further evidence was to be submitted nor would it be accepted. Both parties confirmed their mailing addresses as listed in their applications for dispute for delivery of the notice of adjournment for the continuation.

On March 16, 2020 the hearing resumed with both parties present. The hearing began with the tenant presenting her monetary claim. After 62 minutes the hearing was adjourned a second time due to lack of time.

On May 12, 2020, the hearing resumed with both parties present. The hearing began with the tenant requesting an adjournment. The tenant stated that due to the current state of emergency, her Advocate's office was closed and is unavailable to assist her until June 2020. The tenant stated that the Advocate's office would be open and able to help conduct a hearing in June 2020. The landlord suggested during the hearing that M.J. could act for the tenant as her agent as he has in the past. M.J. stated that he could not be the tenant's agent as he will be called as a witness during the tenant's claim. I find in the circumstances and that this is a monetary claim that an adjournment would not be a bias to either party. On this basis, the hearing is adjourned. Both parties were advised that a new notice of adjournment letter would be sent to both parties with the earliest date for adjournment to be in June 2020.

On June 25, 2020, the hearing was resumed with both parties present. At the outset, the tenant stated that she had 3 advocates on the line to assist her. The landlord stated that she had a family member to assist her with her evidence but would not provide any evidence or participate.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed, for unpaid rent or damage?
Is the tenant entitled to a monetary order for money owed or compensation for damage or loss and return of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced

here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

During the hearing the landlord cancelled item #10, \$400.00 for ½ months rent, June as it was made in error as a duplicate to item #8. This portion of the claim shall be removed from the claim list. The landlord's claim shall proceed on the below noted list.

The landlord seeks a clarified monetary claim of \$7,800.00 which consists of:

\$1,600.00	Unpaid Rent, 2 months at \$800.00 per month
\$1,500.00	Unpaid Utilities, 10 months at \$150.00 per month
\$2,200.00	Compensation, recovery of \$200.00 monthly deduction in lieu of services (for 11 months)
\$50.00	Vet costs, medication for dog
\$300.00	Storage, Abandoned 5 th Wheel \$100.00/month (April, May, June 2019)
\$300.00	Storage, Abandoned 5 th Wheel \$100.00/month (July, August, September 2019)
\$800.00	Loss of Rent, June 2019
\$800.00	Cleaning
\$250.00	Garbage Disposal

Extensive discussions with both parties during the hearing clarified that the landlord's monetary claim is based upon the above list for \$7,800.00.

The landlord claims that the tenant failed to pay rent of \$1,600.00 for the two months of April and May 2019. The landlord stated that the tenant vacated on May 26, 2019. The tenant disputes this claim stating that rent was provided to the landlord through a third party, but that it was refused by the landlord. Both parties confirmed that the unpaid rent was provided by the ministry and that the landlord had notified the ministry that the tenant was vacating the rental unit. The landlord provided undisputed affirmed testimony that the tenant had previously agreed to vacate the premises by April 1, 2019 and as such, the landlord notified the ministry of such. The tenant provided undisputed affirmed testimony that she vacated the rental unit at the end of May 2019 and that no rent was paid to the landlord for April and May 2019.

The landlord seeks unpaid utilities of \$1,500.00 at \$150.00 per month for a 10 month period. The tenant disputes this claim arguing that as per a submitted ministry shelter form completed by the landlord, utilities were included in the tenancy agreement. The landlord argued that the additional \$150.00 utility payment was made in a verbal

agreement. The landlord stated that because this was a verbal agreement, she did not have any documentary proof of such, however the landlord stated that the tenant had paid the utilities for 1 month in March 2019. The landlord stated the tenant had written up a receipt which noted the additional \$150.00 payment for utilities which the landlord had signed. The tenant confirmed the payment and the landlord's signing in receipt of the utility payment, however the tenant argued that she felt forced to pay this as the landlord had threatened to have her evicted.

The landlord seeks \$2,200.00 as compensation for recovery of a \$200.00 monthly deduction in rent for services to maintain the property around the rental. The landlord clarified that her practice was to deduct \$200.00 from the monthly rent in exchange for the tenant in maintaining the area around the rental. The landlord stated that this was a verbal agreement with the tenant. The tenant disputed this claim stating that it was not a term of the tenancy agreement.

The landlord seeks a combined total of \$600.00 for storage of an abandoned "5th Wheel" trailer for the 3 month period April to June 2019 and the 3 month period July to September 2019 at \$100.00 per month for the total 6 month period. The landlord argues that the tenants vacated the rental unit leaving the "5th Wheel" trailer on the property. The landlord stated that telephone inquiries in the local area found on advertisements determined that \$100.00 monthly fee was justified. The Tenants dispute this claim arguing that they have been unable to remove the "5th Wheel" due to the items surround the trailer. The tenants argued that the items belong to the landlord and is preventing them from removing it. The landlord confirmed that there are items in the way, but that they belong to the tenant. The landlord has referenced a picture of a fridge and freezer next to the trailer, however no evidence in support of who the items belong to.

The landlord seeks recovery of \$50.00 for the cost of a veterinarian prescription. The landlord claims that the tenant's dog had bit her dog. The tenants dispute this claim arguing that her dog did not bite the landlord's dog and that this matter was not an issue covered by the Residential Tenancy Act.

The landlord seeks compensation of \$800.00 for the loss of June rent. The landlord claims that an order of possession was granted at the end of May and the tenant moved out in compliance with that order. The landlord stated that she could not advertise the rental unit for rent until July 1, 2019. The tenants dispute this claim arguing that the landlord had a new tenant for March 1, 2019 who had subsequently moved in on June 1, 2019. The landlord stated that the new tenants moved in mid-June as they were not

able to move on June 1, 2019 due to the tenants not vacating the rental unit in March as previously agreed. The landlord stated that once the tenants had vacated notice had to be given by the new tenants to their existing landlord before moving. The landlord also noted that the new tenants had to clean and paint the rental due to the condition of the unit at the end of tenancy with these tenants.

The landlord seeks \$800.00 for cleaning of the rental unit. The landlord stated that the tenants vacated the rental unit leaving it dirty requiring cleaning. No explanation for the \$800.00 amount was provided. The tenants dispute this claim arguing that the rental unit was left clean after vacating it.

The landlord seeks \$250.00 as compensation for clean up of the rental property. The landlord stated that some of these costs were for taking garbage to the dump for disposal. The tenants dispute this claim arguing that no garbage was left by the tenants. The landlord stated that she has some receipts only, but that none of them were provided for the dispute.

The tenant seeks a monetary claim of \$12,331.95 which consists of:

\$4,431.95	Damage to Personal Property
\$500.00	Loss of Access
\$1,600.00	Loss of Quiet Enjoyment, unlawful entry
\$5,000.00	Aggravated Damages, illegal eviction
\$800.00	Return of Double Security Deposit

The tenant claims that her personal property was damaged by the landlord during an illegal eviction attempt. The tenant has provided a spreadsheet detailing the \$4,431.95 claim. The items listed comprise primarily of food items, kitchenware, an electric guitar, light fixture and a Fifth Wheel Trailer. The tenant stated that the landlord damaged the tenant's personal property during the eviction attempt by placing most of it outside and dumping rat feces into the boxes. The landlord disputes the tenants claim arguing that during the eviction the tenants many items were placed on tables covered with tarps. The landlord argues that none of the items were broken by the landlord. The tenants further argue that the damage to the personal property was caused by rat, dog and pig feces and that the tenants' trailer was outside and damaged by rats. The tenants stated that a complaint was filed with the police, but that as of the date of this hearing no results from the complaint were made by the police. The landlord further stated that the trailer was already in bad shape when it was brought by the tenant. The landlord argues that the rats were attracted to the trailer due to the neglect and actions of the

tenant. Further discussions with both parties revealed that the tenants had been evicted as a result of the landlord obtaining an order of possession from the Residential Tenancy Branch.

The tenant also seeks a claim for intangible damages of \$7,100.00 which consists of:

\$500.00	Loss of Access
\$1,600.00	Loss of Quiet Enjoyment
\$5,000.00	Aggravated Damages, Illegal Eviction Attempt

as the tenant claims that the loss of access, lack of quiet enjoyment, mental damage and aggravated damages was caused by the landlord. The tenants claim that the landlord illegally evicted the tenants and seek \$500.00. The tenants also stated that the landlord entered the rental unit on one occasion in which the landlord had entered the rental unit without the tenants' consent. The tenants suffered a loss of quiet enjoyment on April 11 or 12 of 2019 in which the tenants suffered a loss of access for couple of hours and seek \$1,600.00 equal to two months rent. The tenants also seek \$5,000.00 for Aggravated Damages for an illegal eviction attempt.

The tenant stated that the first portion of this claim is for \$500.00 for the loss of access/damage as the landlord has illegally evicted the tenant. The tenant stated that in another RTB case a tenant was awarded \$500.00 in nominal damages for a single illegal entry by the landlord. The tenant was unable to provide any supporting evidence how the facts of that case were relevant in this claim. The tenant did state that she suffered a loss of access for "a couple of hours". The tenants argued that they suffered a loss of quiet enjoyment on one occasion caused by the landlords' friend.

The landlord disputed these claims arguing that the tenant was properly evicted after being granted an order of possession through the RTB on May 26, 2019.

The tenant seeks return of double the \$400.00 security deposit. In this case, both parties confirmed that the tenancy ended on May 28, 2019; the tenants paid a security deposit of \$400.00 and the tenants provided their forwarding address in writing for return of the security deposit in a letter dated July 18, 2019. The landlord confirmed that she still holds the \$400.00 security deposit as she claims that it does not belong to the tenants. The landlord stated that she made an agreement with the ministry to not return the \$400.00 security deposit to the tenants but provide it to the ministry upon their

request. The landlord did not provide any evidence in support of this agreement or of the tenants forfeiting their right to the security deposit to the ministry.

Analysis

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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The landlord seeks \$7,800.00 in compensation for unpaid rent, unpaid utilities, compensation for property upkeep, storage of an abandoned “5th Wheel” Trailer, veterinarian costs and cleaning costs.

The landlord has provided undisputed affirmed evidence that rent was not paid for April and May 2020 for \$1,600.00. The tenants confirmed that no rent was actually paid, although payment was offered and refused by the landlord. On this portion of the claim, I am satisfied that there was unpaid rent of \$1,600.00 for April and May 2020.

The landlord has stated that the tenants failed to pay utilities of \$1,500.00 that was owed for a 10 month period. I find that the landlord has established a claim for unpaid utilities of \$1,500.00 at \$150.00 per month. Although the tenant argued that utilities were included as part of the tenancy agreement, the landlord disputed this claim and provided undisputed evidence that the tenant had made a payment on March 19 for utilities. I also note that a review of the signed tenancy agreement does not show that

any of the utilities (electricity or heat) with the exception of water was included under section 2 of the agreement. I also note that the attached addendum to the tenancy agreement does not provide any details for including utilities. On this basis, the landlord has provided sufficient evidence to establish this claim.

On the landlord's claim for \$2,200.00 in compensation for \$200.00 monthly deductions in rent for services to maintain the property around the rental, I find that the landlord has failed. Although the landlord stated that this was a verbal agreement between the two parties, the tenants have disputed that such an agreement was made. The landlord was unable to provide any supporting evidence of this agreement. On this basis, this portion of the landlord's claim is dismissed.

The landlord's claim for \$600.00 in storage fees for two periods of time from April to June 2019 and July to September 2019 is dismissed. Although both parties confirmed that the "5th Wheel" trailer was left on the rental property, the tenants have argued that the trailer could not be removed until the landlord cleared her personal property (a fridge and freezer) from blocking access to the trailer for removal. The landlord has argued that the items are the property of the tenants but has not provided any evidence in support of this claim. On this basis, without sufficient evidence of the ownership of the fridge and freezer, I find that the tenants were prevented from removing the trailer and as such, the landlord has failed to establish a claim.

On the landlord's claim of \$50.00 for veterinarian prescription costs, I find that the landlord has failed. The landlord has relied solely on direct testimony that her dog was bitten by the tenants' dog. The tenants have disputed this claim. On this basis, I find that the landlord has failed to provide sufficient evidence that the tenant's dog had bitten the landlord's dog and that this was not a matter related to the Residential Tenancy Act. This portion of the landlord's claim is dismissed.

I find that the landlord has failed to establish a claim for the \$800.00 for the loss of June rent. Although the landlord has stated that the tenants had vacated the rental unit at the end of May and the landlord had suffered a loss of rent for June, the tenants' provided undisputed affirmed testimony that the landlord had new tenants occupy the rental mid-June. I find that this directly contradicts the landlord's own evidence, however the landlord did provide undisputed testimony that her new tenants who were supposed to begin their tenancy in March were forced to wait for the tenants to vacate first. Justifiably the new tenants provided proper notice to end their tenancy prior to moving in and starting their tenancy in mid-June. On this basis, I find that the landlord's claim is not justified, but that the landlord provided sufficient evidence that the landlord suffered

a loss of ½ months rent equal to \$400.00. I grant the landlord a nominal award of \$400.00.

On the landlord's claim of \$800.00 for cleaning, I find that the landlord has failed. The tenants have disputed the landlord's claim that the rental was left dirty requiring cleaning. The landlord failed to provide any supporting evidence that the unit was left dirty or of the \$800.00 claim from any type of costs incurred.

I find on a balance of probabilities that the landlord has failed to establish a claim for the \$250.00 in clean up costs. The tenants have disputed this claim and the landlord failed to provide any supporting evidence of any clean up costs incurred or of any garbage left by the tenants on the rental property. On this basis, this portion of the landlord's claim is dismissed for lack of evidence.

I find that the tenants have failed to establish a claim for the \$4,431.95 claim for damage to personal property. Although the tenants have made claims that the landlord damaged the tenants' personal property during the eviction, the landlord has disputed this claim. On this basis, I find on a balance of probabilities that the tenants have failed to provide sufficient evidence that the landlord damaged the tenants' personal property during the eviction process. I note that the tenants failed to provide any documentary evidence in support of this claim.

I find on a balance of probabilities that the tenants have failed to establish a claim for the combined claim of \$7,100.00 which consists of loss of access/damage for \$500.00; loss of quiet enjoyment for \$1,600.00 and \$5,000.00 in aggravated damages for an illegal eviction. The tenants made many claims of which the landlord has disputed. The tenants cited a case of an award of \$500.00 for a single illegal entry but has failed to provide any evidence on how this other case was relevant to her claim. No details were provided by the tenants. I also note that the tenants have repeatedly argued that the tenant suffered a loss of quiet enjoyment due to the unlawful entry and illegal eviction claimed by the tenants. Although the landlord has disputed these claims stating that an order of possession was granted by the Residential Tenancy Branch, the tenants failed to provide sufficient evidence of these claims. On this basis, I find that this portion of the tenants' claims for intangible damages are dismissed.

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord

is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s). However, pursuant to paragraph 38(4)(a) of the Act, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

In this case, both parties confirmed that the tenancy ended on May 28, 2019; the tenant provided their forwarding address for return of the \$400.00 security deposit via a letter dated July 18, 2019. The landlord confirmed in her direct testimony that she holds the deposit and will not return it due to an agreement made with the ministry to only return it to the ministry upon their request. The landlord did not provide a copy of this agreement or of any agreement made by the tenants forfeiting their right to the return of the security deposit. I find that the tenants have established a claim for return of double the security deposit for \$800.00. The landlord has failed to comply with section 38(1) of the Act by applying for dispute of its return nor has the landlord returned the \$400.00 deposit. On this basis, the landlord is liable to pay an amount equal to the \$400.00 security deposit pursuant to section 38(6) of the Act.

The landlord has established a total monetary claim of \$3,500.00. The tenants have established a total monetary claim of \$800.00. In offsetting these claim, I grant a monetary order to the landlord for \$2,700.00.

Conclusion

The landlord is granted a monetary order for \$2,700.00.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the 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: July 10, 2020

Residential Tenancy Branch