



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary order for unpaid rent or money owed pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- a monetary order for compensation for loss or money owed pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord 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.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”). In accordance with section 89 of the *Act*, I find that both the landlord and tenant were duly served with each other’s application packages.

Preliminary Issue – Evidence

After discussing the service of each other's evidentiary materials, both parties confirmed that they wished to proceed with each other's prospective applications, with the exclusion of the tenant's evidence package that was not served within the prescribed timeline.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing. As I am not satisfied that the landlord was served with the tenant's last evidence package in accordance with RTB Rules of Procedure, I exercise my discretion to exclude this portion of the tenant's evidence. As both parties confirmed the service of the remaining evidentiary materials, I find that these documents were served in accordance with section 88 of the *Act*.

Preliminary Issue – Name of Landlord

The landlord testified that although his legal name was reflected in the tenant's application, the landlord preferred to be identified by the name indicated on his application, and as reflected on the written tenancy agreement. The landlord requested that the application reflect the name on the tenancy agreement. The tenant opposed the removal of the landlord's legal name from his application.

As the landlord did not dispute that the tenant's application reflects the landlord's legal name, I decline to remove the landlord's legal name from the tenant's application. As the landlord identifies himself by the name on his application, and as he did not dispute that his legal name differed from this name, I amend the hearing documents to reflect both the landlord's legal name and his alias.

Issue(s) to be Decided

Are both parties entitled to a monetary order for compensation and losses that they have applied for?

Are both parties entitled to recover the filing fees for their applications?

Is the tenant entitled to return of his security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or

arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy began on April 1, 2019, with monthly rent set at \$1,750.00, payable on the first of every month. Both parties confirmed that the landlord still holds a security deposit in the amount of \$875.00. The tenant testified that the landlord had originally collected an additional \$300.00 for the security deposit, in contravention of the *Act*, but confirmed that this additional \$300.00 was returned to him. The tenant gave written notice to end the tenancy on May 28, 2020 for the tenancy to end on June 30, 2020, by which date the tenant had vacated the rental unit.

The landlord is seeking the following monetary orders:

Item	Amount
Unpaid Rent – May 2020	\$1,750.00
Unpaid Rent – June 2020	1,750.00
Unpaid Move-in Fee	150.00
Filing Fee	100.00
Total Monetary Order Requested	\$3,750.00

The tenant does not dispute that he withheld the rent payments for May and June 2020. The tenant testified that he does not believe that he should be responsible for the move-in fee as the landlord has failed to provide sufficient evidence that this payment was made. The landlord included a copy of a statement of account dated May 14, 2019, which shows a \$150.00 move-in charge on April 5, 2019 for a move-in in April of 2019. The landlord testified that this statement shows that this amount was owed against their account for the move-in.

The tenant is seeking the following monetary orders:

Item	Amount
20% rent reduction for 15 months for unresolved odour issue	\$5,250.00

10% rent reduction for 1 month for delay in repairing dryer	175.00
Double Damage Deposit for Withholding Damage Deposit	1,750.00
Filing Fee	100.00
Total Monetary Order Requested	\$7,275.00

The tenant is seeking a reimbursement in rent for the landlord's failure to resolve an odour issue in the rental unit. The tenant testified that he had noticed an odour coming from the kitchen sink area since the beginning of the tenancy, and despite multiple requests to the landlord to address the issue, the landlord failed to do so. The tenant testified that he had called the landlord repeatedly, as well as in writing. The tenant submitted copies of the letters sent to the landlord about the issue dated September 17, 2019 and April 11, 2020, as well as other documented attempts to address the issue with the landlord such as phone calls. The tenant testified that instead of addressing the issue, the landlord had attempted to end the tenancy. The tenant called a witness, SL, who testified to the strength of the odour, and the tenant's attempts to address the issue himself. SL testified that she was present when the plumber had attended, and had followed the plumber's recommendations. The tenant testified that he wanted to call his own plumber, which the landlord denied him.

The landlord testified that he had attempted to address the issue, but was unable to locate the source of the odour. The landlord provided invoices for the plumber that was dispatched dated June 11, 2019 and July 31, 2019. The landlord testified that the eventually filed a claim with their home insurance, and provided the report dated September 11, 2020. The landlord testified that several requests were made of the tenant to provide access to do a site inspection during the tenancy, as documented in his summary of the timeline. The report provided by the restoration company states that a site visit was conducted on July 3, 2020 after a claim was received on May 6, 2020. The landlord testified that he had never issued any Notices to End Tenancy, but after not being able to resolve the odour issue, had offered the tenant the ability to end the tenancy by way of a Mutual Agreement as the tenant was not happy with the tenancy.

The tenant is also seeking a reimbursement in rent for the landlord's failure to address the issues with a dryer in a timely manner. The tenant testified that he had to wait a substantial amount of time for the landlord to resolve the issue. The tenant's witness

confirmed that even with the door closed, they could hear the dryer. The tenant submitted a video of the dryer and the noise, which the tenant testified was still there even when the dryer was not on. The landlord testified that he had addressed the matter in a timely manner, and provided an invoice for service and replacement of the booster fan on April 15, 2019.

Analysis

Section 26 of the Act, in part, states as follows:

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 did not dispute the fact that he had withheld the monthly rent for May and June 2020. I find that the tenant did not have the right under the *Act* to deduct or withhold this amount, nor was the tenant in possession of an order by an Arbitrator to withhold any portion of the rent. I, therefore, grant the landlord's application for the monthly rent owed for the months of May and June 2020.

The landlord also made a monetary claim for an unpaid move-in fee. Although the tenant disputes the claim, stating that the landlord failed to provide proof that this amount was paid by the landlord, I find that the landlord had provided sufficient evidence to support that the landlord was assessed this move-in fee for the tenant's move-in in April of 2019 in the amount of \$150.00, which is reflected in the statement of account. I find that this balance is owed by the landlord, and regardless of when or whether the payment was made, this charge was applied to the landlord's account. I am satisfied that the tenant has not paid this move-in fee, and accordingly, I allow the landlord's monetary claim of \$150.00 for the move-in fee that remains unpaid by the tenant.

As the landlord was successful with their monetary claim, I allow the landlord to recover the filing fee for their application from the tenant.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section

38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

In this case, I find that the landlord had filed their application on July 7, 2020, within the 15 day time period required by the *Act*. Accordingly, I find that the tenant is not entitled to compensation under section 38 of the *Act*. As the landlord continues to hold the tenant's security deposit of \$875.00, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award above.

The tenant also filed monetary claims related to the landlord's failure to perform repairs in a timely manner during the tenancy. 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 or 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 addition to a monetary claim for monetary loss, section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

Section 32 of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

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.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 33 of the *Act* states the following in regards to emergency repairs:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system...
 - (v) the electrical systems....

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs...

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b)...

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

I have reviewed and considered all relevant evidence presented by the parties. On preponderance of all evidence and balance of probabilities I find as follows.

As stated above, the tenant applicant has the burden of proof in supporting their claim for a rent reduction and monetary compensation. In the matter pertaining to the dryer repair, I find that the landlord provided sufficient evidence to support that the booster fan was repaired on April 15, 2020, within the first 15 days after the tenancy had began. I am not satisfied that the landlord had failed in their obligations in relation to repairing the dryer nor am I satisfied that the tenant had provided sufficient evidence to support a monetary loss nor a reduction in the value of the tenancy agreement. Accordingly, I dismiss the tenant's monetary claim for a rent reduction related to the repair of the dryer without leave to reapply.

The tenant is also seeking a monetary claim related to an unresolved issue of odour in the rental unit. I accept the testimony of the tenant and his witness that there was a

strong odour in the rental unit. However, in consideration of the evidence and testimony before me, I do not find the odour to fall under Section 33 (1)(c) of the *Act* as an emergency repair. I now must consider whether the landlord had fulfilled their obligations under section 32 of the *Act* to perform repairs. Although I am sympathetic towards the tenant that the odour was not resolved during the tenancy, I find that the landlord had provided detailed evidence to support that the landlord had made attempts to address the issue by dispatching a professional and licensed plumber on at least two occasions, and ultimately filing an insurance claim. The invoices for the plumber were dated June 11, 2019 and July 31, 2019, and the landlord provided evidence to support that the insurance claim was filed on May 6, 2020. Although the expectations of the tenant was not met for this tenancy, I find that the landlord had met their obligations under the *Act*, tenancy agreement, and as required by law. Although I find it undisputed that the odour issue remained unresolved during the tenancy, I am not satisfied that the odour was due to the landlord's failure to comply with the *Act*, nor am I satisfied that the tenant met their burden of proof to support the reduction in the value of the tenancy as claimed.

I note the tenant's concern that the landlord attempted to avoid the issue by ending the tenancy. I find the landlord's proposal to end the tenancy by way of a Mutual Agreement is not the equivalent of a Notice to End Tenancy, and it is within the landlord's right under the *Act* to make this proposal. The tenant had no obligation to accept the proposal. I find that the tenancy had ended on the basis of the notice given by the tenant on May 28, 2020, and not on the basis of a Notice to End Tenancy.

I find that the tenant failed to provide sufficient evidence to support their claim for a rent reduction or monetary claim. I also find that the landlord had fulfilled their obligations under section 32 of the *Act*. I find there is insufficient evidence for me to make a finding that the landlord had failed to meet their obligations regarding this matter, and on this basis I am dismissing the tenant's application in relation to the odour without leave to reapply.

As the filing fee is normally awarded to the successful party after a hearing, I dismiss the tenant's application for recovery of the filing fee without leave to reapply.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$2,875.00 as set out in the table below:

Item	Amount
Unpaid Rent – May 2020	\$1,750.00
Unpaid Rent – June 2020	1,750.00
Unpaid Move-in Fee	150.00
Filing Fee	100.00
Less Security Deposit Held	-875.00
Total Monetary Order to Landlord	\$2,875.00

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

The remainder of the applications are dismissed.

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: October 23, 2020

Residential Tenancy Branch