



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FF, ERP, FF, 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 and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package via Canada Post Registered Mail on March 6, 2020 and the amendment application and submitted documentary evidence via Canada Post Registered Mail on June 5, 2020. Both parties also confirmed the tenant served the landlord with the notice of hearing package, the amendment to the application for dispute and the submitted documentary evidence on February 7, 2020 via Canada Post Registered Mail. Both parties also confirmed the tenant served the landlord with the second application for dispute via

Canada Post Registered Mail on March 4, 2020. Neither party raised any other service issues. I accept the undisputed affirmed testimony of both parties and find that both parties have been sufficiently served.

Preliminary Issue(s)

At the outset, the landlord's application was clarified in that the landlord had stated that an amendment to the application was filed. A review of the Residential Tenancy Branch File and database does not reveal an amendment, but that a notation was made when the landlord called on June 8, 2020 for a monetary claim of \$3,323.75. However, as the tenant has confirmed that she did receive an amendment from the landlord and that the landlord has lowered his monetary claim for this amendment, the hearing shall proceed based upon the agreed amendment by both parties. The landlord's amendment seeks a lowered claim of \$3,323.75.

The tenants' applications were clarified. The tenant filed an initial application for emergency repairs and recovery of the filing fee on February 6, 2020. This was amended in the tenant's application of amendment dated February 7, 2020 which cancelled the tenant's request for emergency repairs as the tenancy had ended and added a monetary claim of \$8,114.27. Subsequently a second application was filed for return of double the security deposit and recovery of the filing fee for \$2,400.00.

Extensive discussions over 110 minutes resulting in the hearing being adjourned. Both parties confirmed their contact information for delivery of the interim decision and the notice of adjournment. Both parties were also cautioned that no new evidence was to be submitted nor would it be accepted. At the conclusion of this initial hearing, the landlord stated that because of his difficulty explaining and giving details on his application he would obtain an interpreter for himself in the Bengalese language for the adjournment.

On August 20, 2020 the hearing resumed with both parties present. The landlord attended with the assistance of a Bengalese Interpreter. Extensive discussions over 154 minutes resulted in the hearing being adjourned a second time. Both parties were again cautioned that as the hearing had commenced that no new evidence was to be submitted nor would it be accepted. Both parties again confirmed their contact information for delivery of the interim decision and the notice of adjournment.

On October 8, 2020 the hearing resumed with both parties present. The landlord attended with an assistant, E.H. who stated that he understood the landlord's issues and was prepared to help the landlord.

Issue(s) to be Decided

Is the landlord entitled to a monetary claim for unpaid rent, for money owed or compensation and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Is the tenant entitled to a monetary order for money owed or compensation, return of double the security deposit and recovery of the filing fee(s)?

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.

This tenancy began on September 1, 2019 on a fixed term tenancy until August 30, 2020 as per the submitted copy of the signed tenancy agreement dated August 10, 2019. The monthly rent was \$1,580.00 payable on the 30th day of each month. A security deposit of \$750.00 and a pet damage deposit of \$400.00 were paid on August 5, 2019.

Both parties agreed that the tenancy ended on February 1, 2020 when the tenant moved out.

The landlord seeks an amended monetary claim of \$3,323.75 which consists of:

\$2,370.00	Loss of Rent, 1 ½ times monthly rent of \$1,580.00
\$381.25	\$131.25 Pest Control
	\$250.00 Landlord's labour
\$157.00	Plumbing Costs
\$315.00	Drywall Repairs

The landlord claims that the tenant terminated the tenancy agreement prematurely and as a result the landlord was forced to immediately re-rent the unit without proper notice. The landlord upon being notified advertised the unit for rent on January 12, 2020 but was unsuccessful in re-renting the unit until March 15, 2020. The tenant disputed this

claim arguing that notice to end the tenancy was given 5 weeks in advance on December 23, 2019 to end the tenancy on February 1, 2020. The landlord stated that due to a family illness at this time, the landlord was unable to advertise the unit sooner. The landlord stated that once advertising began, he received approximately 10-12 calls of interest and 10-12 showings, but only 1 had expressed an interest in making an application to rent, but then changed their mind later. The tenant disputed the number of calls received by the landlord but provided no further details of their dispute over the number of calls.

The landlord also seeks \$381.25 which consists of \$131.25 for pest control services and \$250.00 for the landlord's labour. The landlord stated that the tenant reported rat feces in the wall behind the stove. The landlord retained pest control services who attended on December 12, 2019 and inspected the rental property for which an invoice has been provided. The technician reported that there was a rat problem, but that no pests were found and that no access points were found to exist. The landlord noted that the invoice from the technician states in part, "No point of entry upon inspection only way rats coming from front door 10 year old house." The tenant argued that she had only kept the door open twice and was always present and never saw a rat at the door. The tenant stated that she had caught 1 rat. The landlord also seeks \$250.00 for his time and labor for 2 hours of inspection due to the stress caused by the tenant.

The landlord seeks \$157.50 for plumbing costs. The landlord stated that the tenant had made complaints of mold on the ceiling which was inspected by a plumber. An inspection was made by a plumber who had opened the drywall. The plumber reported that the stain was from a previous issue that was no longer a problem. The landlord also stated that the plumber reported that there was no mold and everything was dry. The tenant disputed this claim arguing that the landlord had this work done after she had moved out.

The landlord also seeks \$315.00 for drywall repair costs. The landlord hired a drywaller to repair the drywall after a plumber had completed his inspection of the plumbing.

The tenant has filed two applications for a monetary claim.

One claim is for \$8,114.27 which consists of:

\$7,900.00	5 months of rent at \$1,580.00
\$68.70	U-Haul Rental
\$45.57	Printing

\$100.00

Filing Fee

The tenant stated that she had loss of quiet enjoyment of the rental unit for a 5 month period due to:

- 1) noise
- 2) loss of privacy
- 3) rat infestation
- 4) water damage
- 5) mail receipt problem

The tenant stated that she did not have the “full use” of the rental unit due to the unit not being clean, properly maintained and noise caused by the landlord’s family. The tenant explained that the landlord mis-represented the condition of the rental unit prior to the tenant taking possession. The tenant stated that the landlord’s spouse suffers from seizures and the landlord has a young son who makes a lot of noise.

The tenant stated that on September 8, 2019 the tenant notified the landlord of excessive noise that was coming from a doorway between the two units. The landlord’s solution was to place a towel at the bottom of the door.

The landlord argued that the tenant is too sensitive as her predecessor, another tenant of 3 years never had any issues with noise. The landlord stated that he tried to fix the sound issue for the tenant as best that he could.

The tenant also stated that in November more noise issues took place and the tenant sent a letter to the landlord complaining of the noise issue. The tenant stated that the landlord never responded to this letter. The tenant stated that she had called the police regarding excessive noise.

The tenant stated on one occasion there was a breach of privacy. The tenant stated that while having friends (other tenants of the building) over discussion took place about the landlords. The tenant stated that the landlord served a notice to end tenancy to the other tenants regarding a conversation that the landlord overheard in the tenant’s unit. The landlord disputed this claim. The tenant called the witness, T.T. (the other tenant) who stated that she was cat sitting for the tenant; had a private party with friends where the conversation was regarding not having proper heating in the building. The witness stated that the next day, the landlord talked to the witness and served a notice to end tenancy for “health problems”.

The tenant also argued that there was a rat issue; water damage to the ceiling and a mail receipt problem on one occasion. Both parties confirmed the rat issue and the water damage were the same facts as provided during the landlord's monetary claim.

The tenant stated that there is 1 mailbox for delivery of the mail and that tenant had an issue receiving mail on one occasion. The tenant argued that a package was received by the landlord which the tenant did not receive until 2 days later, despite the tenant contacting the landlord.

The landlord disputes these claims arguing the rat issue was investigated and reported upon by the landlord's pest control service as noted above. The landlord also argues that the water damage issue was falsely reported by the tenant as noted above regarding the landlord's plumbing and drywall costs in responding to the tenant's claims. The landlord reiterated that the pest control invoice clearly stated an inspection and that although there was a rat problem no access points were found for entry. The landlord also detailed that there was not ceiling mold as noted by the plumber that the stain was a previous issue and no mold or plumbing issues were found. The landlord argued that the tenant's package was accepted by him on behalf of the tenant. The landlord stated that he tried to deliver the package to the tenant, but the tenant was not home causing the package to be delivered on the second day.

The tenant seeks recovery \$68.70 for the cost of renting a uhaul vehicle to move out. The tenant argued that she was forced to incur this expense for moving because of the landlord's neglect and actions for ending the tenancy for excessive noise, loss or privacy and poorly maintained rental.

The tenant seeks \$45.57 for the cost of printing documents for service of this dispute resolution.

The 2nd monetary claim is for \$2,400.00 which consists of return of double the security, double the pet damage deposits and recovery of the \$100.00 filing fee.

Both parties confirmed that the tenancy ended on February 1, 2020 and that the landlord currently holds a \$750.00 security deposit and a \$400.00 pet damage deposit. Both parties confirmed that the tenant provided her forwarding address in writing to the landlord via Canada Post Registered Mail on February 10, 2020.

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.

On the landlord's monetary claim of \$2,370.00, I find that the landlord has failed in this claim. Despite the tenant prematurely ending the fixed term tenancy on February 1, 2020 instead of August 30, 2020, the tenant provided undisputed affirmed evidence that notice to end the tenancy was given to the landlord on December 23, 2019 for February 1, 2020. The landlord did not dispute this claim only stating that because of a family illness, the landlord was prevented from advertising the rental unit until January 12, 2020. The landlord stated that because of this the landlord was unable to find a new tenant until March 15, 2020.

Residential Tenancy Branch Policy Guideline #5, Duty to Minimize Loss, states in part

A landlord or tenant claiming compensation for damages or loss has a legal obligation to do whatever is reasonable to minimize the damage or loss.

A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:

- *remove and dry the possessions as soon as possible;*
- *promptly report the damage and leak to the landlord and request repairs to avoid further damage;*

- *file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.*

Compensation will not be awarded for damage or loss that could have been reasonably avoided.

Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. *If in the above example the tenant reported the leak, the landlord failed to make the repairs and the tenant did not apply for dispute resolution soon after and more damage occurred, this could constitute partial mitigation. **In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred...***

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

- *re-rent the rental unit at a rent that is reasonable for the unit or site; and*
- *re-rent the unit as soon as possible.*

For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.

If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied...

[reproduced as written with emphasis]

In this case, the tenant gave notice on December 23, 2019 for February 1, 2020. The landlord was not able to re-rent the unit until March 15, 2020. However, the landlord did not begin to advertise the rental unit immediately until January 12, 2020 due to a family illness. As such, I find that the landlord did partially mitigate possible losses of rental income by advertising it for rent but did not immediately advertise it until January 12, 2020. On this basis, I find that the landlord has established a claim for partial compensation equal to 1 months rent of \$1,580.00.

On the landlord's claim for \$381.25, I find that the landlord has been successful. The landlord upon being notified by the tenant of a "rat issue" engaged a pest control service who inspected the rental unit. The landlord submitted a copy of the invoice which shows that there is a rat problem but that no points of entry were found and noted the

only entry would have been the rental unit door which the tenant confirmed was left open on two occasions. On this basis, I find on a balance of probabilities that the landlord was established a claim for recovery of expenses for the \$131.25 pest control services. The landlord's claim for \$250.00 for labour is dismissed. Despite the landlord's claim that this claim was for stress and his reasonable time, insufficient details were provided by the landlord to justify this portion of the claim. I also note that it is the landlord's obligation to respond to tenant issues without compensation.

On the landlord's claim for \$157.50 for plumbing costs, I find that the landlord has been successful. The landlord responded to the tenant's claim of mold on the ceiling by having a plumber attend to inspect it. The plumber reported that the stain on the ceiling was from a previous issue that was no longer a problem after opening the drywall to inspect above the drywall. I make this order, despite the tenant's claim that the landlord had the work performed after the tenancy had ended as this was an issue that was reported to the landlord that was responded to.

I also order that the landlord has been successful in recovery of the \$315.00 claim for drywall repairs after the ceiling plumbing was inspected.

I find that the tenant has failed to establish a claim for \$7,900.00 for compensation equal to 5 months of rent. Despite the tenant providing arguments that she suffered the loss of use of the rental unit, the tenant has failed to provide any evidence in support of her claim the monetary amount equal to \$1,580.00 for each of the 5 months sought. The tenant provided evidence of excessive noise being reported to the landlord coming from the landlord's spouse and child. This was confirmed by the landlord that the tenant did suffer an inconvenience, but not on a level would prevent her from using the rental unit on a full time basis for the entire 5 months. The tenant provided 1 instance of a privacy breach issue in which the landlord was able to hear the tenant's guest(s) conversations through the doorway between the units. Although not sophisticated, the landlord made initial reasonable attempts at mitigating the noise issue. However, as the tenant has provided sufficient evidence of an inconvenience, I grant an arbitrary nominal award of \$250.00 which is equal to \$50.00 per month for the 5 months.

During the hearing the tenant's monetary claim was clarified. The tenant's claim items #7 and #8, uhaul rental and printing of documents were dismissed.

The tenant confirmed that she gave notice to the landlord to vacate the premises and would have incurred this cost in any event. The tenant confirmed that ending the tenancy was by choice.

On item #8, printing costs of documents for the dispute resolution hearing, I find is dismissed. Section 72 of the Act addresses Director's orders: fees and monetary order. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claim for recovery of litigation costs 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).

Both parties confirmed the tenant provided her forwarding address in writing via Canada Post Registered Mail to the landlord on February 10, 2020. A review of the landlord's application for dispute show that the initial application seeking a monetary claim and to offset that against the security and pet damage deposits was filed on February 24, 2020, 14 days later. On this basis, the landlord has complied with the Act. The tenant's request for return of double the security deposit is dismissed.

The landlord has established a total monetary claim of \$2,183.75. The tenant has established a monetary claim for \$250.00. In offsetting this claim, I authorize the landlord to retain the combined \$750.00 and the \$400.00 deposits in partial satisfaction of this claim. I also waive recovery of the \$100.00 filing fee of both parties as they have each been successful.

Landlord's Monetary Claim	\$2,183.75
Tenant's Monetary Claim	-\$250.00
Offset Tenant's Combined Deposits	-\$1,150.00
Total	\$783.75

Conclusion

The landlord is granted a monetary order for \$783.75.

This order must be served upon the tenant. Should the tenant 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: October 14, 2020

Residential Tenancy Branch