Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Randall North Real Estate Inc. and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent in the amount of $7,003.33; and a monetary order for damages of $11,065.50; and a monetary order for damage or compensation for damage of $6,000.00, retaining the security deposit for these claims; and to recover the $100.00 cost of their Application filing fee.

An agent for the Landlord, G.C. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenants. The teleconference phone line remained open for over 30 minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave her an opportunity to ask questions about the hearing process. During the hearing the Agent was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenants did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent submitted applications for substituted service for the Tenants, because the Tenants did not provide a forwarding address. The Landlord was successful in being granted an order for substituted service, allowing the Landlord to serve the Tenants via email.

The Agent also testified that she served the Tenants with the Notice of Hearing documents by Canada Post registered mail, sent to the Tenants' workplaces on September 23, 2020. The Agent provided Canada Post tracking numbers as evidence of service.

Based on the evidence before me in this matter, I find that the Tenants were deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agent in the absence of the Tenants.

Preliminary and Procedural Matters

The Agent provided the Parties' email addresses in the Application, and confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Agent that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The tenancy agreement states that the fixed-term tenancy began on April 1, 2019, and ran to March 31, 2020, and then operated on a month-to-month basis. The tenancy agreement indicates that the Tenants paid the Landlord a monthly rent of $1,900.00, due on the first day of each month. The Agent confirmed that the Tenants paid the Landlord a security deposit of $950.00, and a pet damage deposit of $950.00, and she advised that the Landlord still holds the deposits, having claimed against them for this Application. The Agent said that the tenancy ended on September 30, 2020, after the Landlord was awarded an order of possession of the rental unit from the Tenants. The Agent said that the Tenants did not provide the Landlord with their forwarding address.

The Agent said the Parties conducted a condition inspection report at the start of the tenancy and another inspection at the end of the tenancy. The Agent said that the

Tenants "didn't do a huge amount of damage", but that the Landlord is making a claim. The Agent said that the rental unit is the top floor of a house that was renovated just prior to the Tenants moving in.

The Landlord submitted a monetary order worksheet setting out the following claims.

	Receipt/Estimate From	For	Amount
1	[Electricity Co.] (balance not paid)		$105.42
2	[Electricity Co.]	Jan 8 to March 6/20	$609.56
3	[Electricity Co.]	Mar 7 to May 5/20	$417.23
4	[Electricity Co.]	May 6 to July 6/20	$171.12
5	[Electricity Co.]	July 7 to Sep 30/20	$400.00
6	Landlord	July's Rent	$1,900.00
7	Landlord	August Rent	$1,900.00
8	Landlord	September Rent	$1,900.00
9	[Maintenance company]	Estimate mould remediation	$11,065.50
10	Landlord	Additional Damage	$5,000.00
		Total monetary order claim	**$24,068.83**

#1 ELECTRICITY CHARGES OWING BY THE TENANTS → $1,703.33

In the tenancy agreement it states: "The tenants are responsible for a proportionate percentage of the hydro bill determined by [the Landlord] based on the total number of occupants in the house." The Agent advised that the separate suites in the residential property do not have their own meters.

The Agent said that tenants are allocated a share of the utility bills, based on the number of people in the house. She said, "They had four upstairs and only one in basement suite downstairs." The Agent said that the Tenants were billed for 70 percent of the electricity charged to the residential property. She said that the Landlord's bookkeeper takes care of calculating each bill for the Landlord and the tenants, and that the Agent can open up the program and see what was charged in each month.

The Landlord submitted copies of the electricity bills which have the total amounts. The Landlord multiplied these totals by 70 percent to arrive at the amounts owing by the Tenants and claimed in the above table. The Landlord also submitted invoices they issued to the Tenants requiring them to pay their allocated electricity bills. These invoices were dated, had the Tenants' names, the rental unit address, identification of the charge, and ssaid "Payment Due Immediately Upon Receipt", with the Landlord's mailing address.

#2 OUTSTANDING RENT OWED TO THE LANDLORD → $5,700.00

In the hearing, the Agent said:

> [The Tenants] stopped paying rent altogether, using Covid as an excuse. But you have to at least make an effort. Your income didn't change – you have to make an effort or apply to government for subsidies. We offered them the repayment plan, but they didn't bother. Even before the government mandate – if you can't pay the full $1,900.00, you need to be making some payments, but they didn't want to.

The Agent said that the Tenants did not pay any rent for July, August, or September 2020, and therefore, that they owe the Landlord $5,700.00 in outstanding rent.

The Landlord submitted a document entitled: "Rent_Roll_Sept_2020", which she said shows the arrears from April to September 2020, including utilities owing.

#3 MOULD REMEDIATION → $1,119.00

The Agent said, and I noted in the move-in CIR, that the inspection from March 2019 showed no sign of mould in the rental unit at the start of the tenancy. However, the Agent uploaded eight photographs showing that mould was present in March 2020, and she said: "It has gotten substantially worse since then." The photographs submitted show mould on the walls and ceiling throughout the rental unit in March 2020.

The Agent said they consulted different companies for estimates, but ultimately found one at a fraction of the cost of the estimate submitted. She said:

> The initial company wanted to tear down the ceiling and drywall and . . . all of that stuff. We found a contractor who cleaned it up and used mould paint. It hasn't come back yet.

The Agent said that they tried to initiate remediation of the rental unit while the Tenants were there, but that they would not respond to the Agent's communications.

The Agent submitted copies of emails she wrote to the Tenants requesting their cooperation, so that remediation could begin. The first email is dated July 3, 2020, and states:

> [Tenants]
>
> Please be advised that the contractor needs all your items removed from the attic before he can do the required work. He also noticed that there seems to be rat activity in the attic; therefore, they may have gotten into your stuff. Please advise when you have taken care of this and we will then book an appointment. I will not book anything until I receive confirmation that this has been taken care of.
>
> It was also noted again from the mould specialist and the contractor that the cause of the mould is due to lack of cleaning and taking care of condensation; which is normal in older homes. You are responsible for wiping up condensation regularly, for letting air circulate by opening windows and leaving doors open. We will install a better humidistat and fan in the bathroom; but you NEED to do your part to manage the condensation.
>
> . . .

The Agent submitted additional, similar emails to the Tenants about this dated July 7, 12, 13, and 24th, 2020. The last email submitted states the following:

> Hello [Tenants],
>
> This is now the fourth time that I have requested that you remove your personal items from the attic and to advise me when this has been done so that we can get a second quote and get the remediation work completed.
>
> Please have this done within 7 days and advise me when it has been done,
>
> Thanks.

The Agent said that the contractor they retained charged the Landlord only $1,119.00 for remediating the mould in the rental unit. The Agent did not upload an invoice for this contractor.

#4 LANDLORD – ADDITIONAL DAMAGE ESTIMATE → $5,000.00

In the hearing, the Agent said that this category addresses "…all the loose ends."

The Agent said that the Landlord incurred the following costs for these items:

Carpet and house cleaned	→ $ 314.99
Yard clean up	→ $1,203.72
Dump run	→ $1,057.26
Locksmith – no keys returned	→ $ 167.18
Towed vehicle - no tires, junk in it	→ $ 105.00
TOTAL	**$2,848.15**

The Agent did not direct me to any invoices or receipts she had uploaded for these costs.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Rule 6.6 sets out that the person making the claim bears the onus of proving their case on a balance of probabilities. In order to do so, a claimant must present sufficient evidence at the hearing to support their claim, meeting this standard of proof.

#1 ELECTRICITY CHARGES OWING BY THE TENANTS → $1,703.33

Section 46 (6) of the Act sets out that a landlord may consider unpaid utilities as unpaid rent, if the landlord has served the tenant with a written demand for payment of them, and if the utility charges are unpaid for more than 30 days after receipt of the written demand.

I find that the Landlord issued written demands for payment of the amounts claimed in this category of the Application. I find that the Landlord may, therefore, consider these debts as unpaid rent, pursuant to section 46(6) of the Act.

Based on the Agent's testimony and supporting documentary evidence, I find that the Landlord has met their burden of proof in setting out the amount the Tenants owe the Landlord for electricity charged to the rental unit during first two-thirds of 2020. I find that

the Landlord has proven that the Tenants owe the Landlord $1,703.33 in electricity charges, that the Landlord has demanded this amount from the Tenants, and therefore, I award the Landlord with **$1,703.33** from the Tenants, pursuant to section 67 of the Act.

#2 OUTSTANDING RENT OWED TO THE LANDLORD → $5,700.00

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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." There is no evidence before me that the Tenants had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

I find based on the undisputed evidence before me overall, that the Landlord has proven their case for this claim on a balance of probabilities. I, therefore, award the Landlord with **$5,700.00** from the Tenants for this claim, pursuant to sections 26 and 67 of the Act.

#3 MOULD REMEDIATION → $1,119.00

Landlords' and tenants' rights and obligations for cleaning and repairs are set out in sections 32 and 37 of the Act. Section 32 states:

> **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. .

[emphasis added]

Based on the undisputed evidence before that there was no mould in the rental unit when the tenancy started, and that mould was prevalent throughout the rental unit a year later, I find it more likely than not that that Tenants were non-compliant with section 32(1) of the Act. I, therefore, award the Landlord with **$1,119.00** from the Tenants for this claim, pursuant to sections 32 and 67 of the Act.

#4 ADDITIONAL DAMAGE ESTIMATE → $5,000.00

I find that the Landlord did not provide sufficient evidence to support these claims, as the Agent did not point out any invoices or receipts that she had uploaded to substantiate these claims, and provided only brief testimony listing the amounts claimed. I, therefore, dismiss this category of claims without leave to reapply, pursuant to section 62 of the Act.

Summary and Set Off

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security and pet damage deposits of $950.00 each in partial satisfaction of the Landlord's monetary awards.

	Receipt/Estimate From	For	Amount Awarded
1	[Electricity Co.]	Electricity charges owing	$1,703.33
2	Landlord	Outstanding rent owing	$5,700.00
3	[Maintenance company]	Estimate mould remediation	$1,119.00
4	Landlord	Additional Damage	$0.00
		Total monetary order claim	**$8,522.33**

The Landlord is also awarded recovery of the $100.00 Application filing fee from the Tenants pursuant to section 72, for a total monetary award of **$8,622.23**. The Landlord is authorized to retain the Tenants' $1,900.00 security and pet damage deposits in

partial satisfaction of this award. I grant the Landlord a Monetary Order of **$6,722.33** for the remaining award owing by the Tenants to the Landlord.

Conclusion

The Landlord is successful in their claim for compensation from the Tenants in the amount of $8,522.33. The Landlord is also awarded recovery of the $100.00 filing fee for this Application from the Tenants.

The Landlord is authorized to retain the Tenants' $950.00 security deposit and their $950.00 pet damage deposit in partial satisfaction of this award.

I grant the Landlord a Monetary Order under section 67 of the Act from the Tenants in the amount of **$6,722.33** for the remainder of the awards owed to the Landlord by the Tenants.

This Order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court. The Landlord may wish to consult the Provincial Court (Small Claims) for direction on substituted service provisions in this matter.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: January 21, 2021

Residential Tenancy Branch