Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing involved cross-applications made by the parties. On October 9, 2020, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On October 26, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking to apply the security deposit towards this debt, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

These Applications were originally set down for a hearing on January 28, 2021 at 1:30 PM. Tenant H.P. attended the original hearing. The Landlord attended the original hearing as well, with D.C. and J.Y. attending as agents for the Landlord. D.C. advised that he was not the Landlord, but he acted as the Landlord's property manager. As such, his name was removed from the Style of Cause on this Decision.

This original hearing was subsequently adjourned for reasons set forth in the Interim Decision dated January 29, 2021. These Applications were then set down for a reconvened hearing on April 26, 2021 at 11:00 AM.

H.P. attended the reconvened hearing; however, neither the Landlord nor a representative of the Landlord attended at any point during the 52-minute reconvened hearing. At the outset of both hearings, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless

prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to recover the filing fee?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

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

All parties agreed that the tenancy started on November 1, 2019 and ended when the Tenants gave up vacant possession of the rental unit on October 5, 2020. Rent was established at an amount of $3,000.00 per month and was due on the first day of each month. A security deposit of $1,500.00 was also paid. A copy of the tenancy agreement was submitted as documentary evidence.

All parties also agreed that a forwarding address in writing was provided on October 13, 2020.

During the original hearing, the Tenant advised that they were seeking compensation in the amount of **$3,000.00** because the heating system in the rental unit was not

functioning properly since the start of the tenancy as it was not providing heat. This amount of compensation is for the month of November 2019. She contacted D.C. about this issue immediately and he provided her with the phone number to the strata, who told her to go away. She continued to contact D.C. about this issue, and she accommodated the repair people assigned to fix the heating system. As she was without heat in the rental unit, she sent her son away to stay with his father. She, herself, only stayed in the rental unit for five or six days in November 2019 and the Landlord did not offer her any alternative solutions for a place to live.

D.C. advised that he was first contacted by the Tenant on November 2, 2019 because there was no hot water in the rental unit, and this was addressed immediately. With respect to the heating issue, he stated that this repair was a priority even though the heat provided was at a reasonable temperature between 18 and 20 degrees. He confirmed that the heating issue was not repaired in November 2019, but the Tenant and the Landlord reached an agreement for compensation for this issue, for December 2019 and January 2020, in the total amount of $1,000.00.

During the reconvened hearing, the Tenant advised that they were seeking compensation in the amount of **$3,000.00** for December 2019 rent because the heating system was still not repaired. There was a cold spell and living in the rental unit without heat was awful. She continued to contact D.C. about this issue and attempted to find a solution about this with him. Her son was forced to sleep at his father's place, and she was only able to spend approximately 14 nights in the rental unit.

Neither the Landlord nor D.C. were present at the reconvened hearing to make any submissions with respect to this claim.

During the reconvened hearing, the Tenant advised that they were seeking compensation in the amount of **$3,000.00** for January 2020 rent because the heating system was still not repaired. She stated that she was barely able to live there during this month without heat but stayed approximately 14 nights. She submitted that she was provided with a commercial grade space heater in early January 2020, but this was a dangerous piece of equipment, especially if her child was around. She was then provided with two residential space heaters in late January 2020; however, only one could be used at a time otherwise the fuse would blow. Like the previous other months, she had to allow repair people into the rental unit, and it was a "nightmare" to coordinate.

Neither the Landlord nor D.C. were present at the reconvened hearing to make any submissions with respect to this claim.

During the reconvened hearing, the Tenant advised that they were seeking compensation in the amount of **$3,000.00** for July 2020 rent because the air conditioning system was not working in June 2020. She contacted D.C. immediately and approximately 10 site visits were coordinated in an attempt to rectify this issue. She stated that the windows in the rental unit barely opened and that the air conditioning repair people confirmed that the rental unit was too hot to live in. She was only able to live in the rental unit for approximately 6 days in July 2020 as overheating is a trigger for her epilepsy. She stated that this air conditioning problem was fixed on August 17, 2020.

Neither the Landlord nor D.C. were present at the reconvened hearing to make any submissions with respect to this claim.

During the reconvened hearing, the Tenant advised that they were seeking compensation in the amount of **$500.00** for the replacement cost of a Dyson heater appliance. She submitted that she purchased this brand new approximately a year before the tenancy started. She stated that the heat function stopped working in January 2020 as it had been running constantly for four months. While she did not provide a receipt to demonstrate that she purchased this item, she submitted a picture that showed how much this item would cost to replace.

Neither the Landlord nor D.C. were present at the reconvened hearing to make any submissions with respect to this claim.

During the reconvened hearing, the Tenant advised that they were seeking compensation in the amount of **$1,500.00** for alternate living accommodations; however, she stated that this amount of compensation was “hard to break down”. She stated that as she was not able to live in the rental unit, she incurred costs for the ferry, for gas, and for take-out food as she was not able to cook in the rental unit. She did not provide any documentary evidence to support these claims.

Neither the Landlord nor D.C. were present at the reconvened hearing to make any submissions with respect to this claim.

During the reconvened hearing, the Tenant advised that they were seeking compensation in the amount of **$310.24** for the cost of renting moving boxes. She

stated that this rental was not intended to be a short-term tenancy, and that she was required to move quickly. She stated that it was not possible for her to find the necessary moving boxes, so she rented some instead.

Neither the Landlord nor D.C. were present at the reconvened hearing to make any submissions with respect to this claim.

During the reconvened hearing, the Tenant advised that they were seeking compensation in the amount of **$987.53** for the cost of movers. She submitted that she had no intention of moving but it was necessary as the rental unit was not safe due to the ongoing lack of heat and air conditioning. She stated that it should be the Landlord's responsibility to move her to a suitable and safe accommodation.

Neither the Landlord nor D.C. were present at the reconvened hearing to make any submissions with respect to this claim.

Finally, during the reconvened hearing, the Tenant advised that they were seeking compensation in the amount of **$4,702.23** for the loss of personal time and stress suffered as a result of having to live in the rental unit under these conditions. She referenced the dates and times that she was required to accommodate the repair people. She stated that she spent numerous hours doing this, as well as rearranging her schedule, and missing work to accommodate them. Due to these conditions and the length of time it took to rectify them, she was unable sleep, and this affected her mental and physical well-being. She advised that D.C. confirmed that the building was "horrible", and that he was not sure "how it passed occupancy".

Neither the Landlord nor D.C. were present at the reconvened hearing to make any submissions with respect to this claim.

During the reconvened hearing, the move-in and move out inspection reports were discussed. The Tenant confirmed that she conducted a move-in inspection report with D.C. on October 11, 2019; however, she was never provided with a copy of this report. She also confirmed that she conducted a move-out inspection report with D.C. on October 13, 2020; however, she was provided with a copy of this report two weeks after she contacted him about a return of her deposit on October 17, 2020.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed day. As well, the Landlord must offer at least two opportunities for the Tenants to attend the move-out inspection report.

Section 21 of the *Residential Tenancy Regulations* (the "*Regulations*") outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenants have a preponderance of evidence to the contrary.

Section 18 of the *Regulations* states that the Landlord must give the Tenants a copy of the signed move-in condition inspection report within 7 days after the condition inspection is completed, and give a copy of the move-out inspection report within 15 days after the later of the date the condition inspection is completed, and the date the Landlord receives the Tenants' forwarding address in writing.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* outlines the Landlord's requirement to provide a rental unit that meets housing, health, and safety standards required by law.

Section 67 of the *Act* permits compensation to be awarded if damage or loss results from a party not complying with this *Act*.

When establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to

the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided." As well, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The first issue I will address is with respect to the security deposit. Given that the undisputed evidence is that a copy of the move-in and move-out inspection reports were not provided to the Tenants in accordance with the *Regulations*, I find that the Landlord has extinguished the right to claim against the deposit. However, as this right pertains to damage to the rental unit, and as the Landlord has also applied for recovery of losses that are not considered damage to the rental unit, I find that the Landlord is still entitled to claim against the deposit.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenants' deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full 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 pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, the Landlord received the Tenants' forwarding address in writing on October 13, 2020. Furthermore, the Landlord made an Application, using this same address, to attempt to claim against the deposit on October 26, 2020. As the Landlord made this Application within 15 days of receiving the Tenants' forwarding address in writing, and as the Landlord was permitted to claim against the deposit still, I am satisfied that the Landlord has complied with the *Act*. However, as the Landlord neglected to attend the hearing to make submissions with respect to their Application, I dismiss their claims without leave to reapply. Furthermore, as the Landlord made a claim against the deposit but failed to provide copies of the reports in accordance with Section 38(5) of the *Act* and Section 18 of the *Regulations*, I find that the doubling provisions do apply to the security deposit in this instance. As such, I grant the Tenants a monetary award in the amount of **$3000.00**.

With respect to the rest of the Tenants' claims, when reviewing the totality of the evidence before me, the consistent and undisputed evidence is that there were issues with the heating system of the rental unit from the beginning of the tenancy until they were repaired at the end of January 2021. As well, the consistent and undisputed evidence is that there was a problem with the air conditioning in or around July 2020 that required being repaired. While these issues may have been due to a defect of the heating and ventilation systems, even if these problems were covered under warranty, the Landlord is still required to provide a rental unit that meets housing, health, and safety standards required by law.

Furthermore, even if the Landlord took steps to correct these issues, this does not change the fact that the heating and ventilation systems did not function properly for these months. As such, I am satisfied that the Tenants suffered a loss. However, given that the Landlord and Tenants came to an agreement for compensation for the months of December 2019 and January 2020 already, I dismiss the Tenants' claims for these months without leave to reapply. For the claims for compensation of November 2019 and July 2020, I grant the Tenants a monetary award in an equivalent amount of $500.00 per month, totalling **$1,000.00**.

Regarding the Tenants' claim for compensation in the amount of $500.00 for a replacement Dyson heater, the Tenant advised that it was her belief that this appliance stopped working as she was forced to run it constantly for four months. However, I note that she also stated that she spent only portions of the months of November, December, and January in the rental unit. Given that she did not spend the entirety of these months living in the rental unit, I am doubtful that she would have left this appliance running to heat a rental unit for which she was not occupying. Moreover, without any evidence to support when or if this item was purchased, and without any evidence to support the condition of this appliance, I find that I am not satisfied of the legitimacy of this claim. As such, I dismiss it in its entirety.

With respect to the Tenants' claim for compensation in the amount of $1,500.00 for alternate living accommodations, I find that the claims for compensation for not having heat in the rental unit have already been addressed above. Furthermore, I do not find that the Tenants have provided sufficient evidence to support the submissions made in the reconvened hearing. As such, I dismiss this claim without leave to reapply.

Regarding the Tenants' claims for compensation in the amounts of $310.24 for the cost of renting moving boxes and $987.53 for the cost of movers, I find that these are the costs associated with moving that the Tenants elected to pay for. There was no

necessity for the Tenants to incur these costs as they could have found their own boxes and moved themselves. Moreover, I can reasonably infer that the Tenants would have eventually moved from this rental unit at some point in the future and would have incurred moving costs anyway. As such, I am not satisfied of these claims and I dismiss them in their entirety.

Finally, with respect to the Tenants' claim for compensation in the amount of $4,702.23 for the loss of personal time and stress suffered as a result of having to live in the rental unit under these conditions, I find it important to note that the Tenants have already been compensated above for a lack of heat or air conditioning in the rental unit. While the *Act* does not provide compensation for loss of personal time or stress, I can reasonably infer that this claim is for a loss of quiet enjoyment of the rental unit associated with facilitating and living through the repairs. Given that the consistent and undisputed evidence is that there were necessary repairs required in the rental unit, I do not find it reasonable to expect that the Tenant should be so deeply involved in facilitating repairs that the Landlord is ultimately responsible for fixing in a timely manner. However, I do not find that the Tenants have provided sufficient compelling or persuasive evidence to support the very specific amount of compensation that they are seeking. Based on a review of the evidence before me, I am satisfied that the Tenants should be awarded compensation in the amount of **$2,000.00** for a loss of quiet enjoyment.

As the Landlord did not attend the reconvened hearing to make submissions with respect to that Application, I dismiss the Landlord's Application without leave to reapply.

As the Tenants were partially successful in these claims, I find that the Tenants are entitled to recover the $100.00 filing fee paid for this Application.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

November 2019 rent compensation	$500.00
July 2020 rent compensation	$500.00
Loss of quiet enjoyment	$2,000.00
Filing fee	$100.00
Doubling of security deposit	$3,000.00
TOTAL MONETARY AWARD	**$6,100.00**

Conclusion

The Tenants are provided with a Monetary Order in the amount of **$6,100.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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 Landlord's Application is dismissed without leave to reapply.

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: May 12, 2021

Residential Tenancy Branch