



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR FF

Landlord: MNR MND MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on May 7, 2021. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the “Act”).

Both parties attended the hearing and provided testimony. The Landlord was present at the hearing along with her mother (referred to as the Landlord). The Tenant attended the hearing on his own.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Issues

Both parties agreed that the Tenant moved out of the rental unit on February 15, 2021, shortly after filing his application to dispute the Notice. As of the time of this hearing, the Tenant’s application to cancel the 10 Day Notice is moot, as he has already moved out and the Landlord does not require an order of possession. Given this, I dismiss the Tenant’s application, in full, without leave, as the issues are moot.

The Landlord requested at the hearing to amend her application to withdraw her request to claim against the security deposit, and to remove her claim for damage to the rental unit. The Landlord stated that she was given permission from the Tenant (agent of) to

retain the deposits at the time the move-out inspection was completed and she may not need her application to keep the deposits to offset the damage to the unit.

With respect to the Landlord's request to withdraw her application against the security deposit, and to claim for damage to the rental unit in the amount of \$1,300.00, I find the Landlord should have provided the other party with written notice that this was being withdrawn, prior to the hearing. There is insufficient evidence that this was done, and the Tenant was present at the hearing and was prepared to discuss the merits of all aspects of the Landlord's application. The matter the Landlord requested to withdraw appears to be closely related to the other monetary issues on her application and allowing this issue to be removed or amended could be prejudicial to the Tenant.

As such, I decline to allow the Landlord to withdraw this item or to amend her application to remove it, and I will proceed to decide on all grounds selected on her application and on her amendments, and for all items listed on her monetary order worksheet (laid out below).

Service of the Tenant's application is not relevant, given his application is moot. The Tenant did not submit any documentary evidence either for his application or in response to the Landlord's application. The Landlord provided registered mail tracking information to show she sent her application, Notice of Hearing, amendment, and all evidence in one package to the Tenant's forwarding address on March 2, 2021. The Tenant confirmed the Landlord had his correct forwarding address, and it was as listed on the move-out condition inspection report. The Tenant denies getting any package from the Landlord. However, pursuant to section 89 and 90 of the Act, I deem the Tenant is served with the package on March 7, 2021, 5 days after it was mailed. I find the Landlord sufficiently served her package for the purposes of this Act.

Issues to be Decided

- Is the landlord entitled to a monetary order for damage to the rental unit, for or loss under the Act or for unpaid rent or utilities?
- Is the Landlord authorized to retain all or a portion of the Tenant's security and pet deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Background and Evidence

Both parties agreed in the hearing that monthly rent in the amount of \$1,600.00 was to be paid on the first of each month. Both parties also agreed that the Landlord collected

a security deposit in the amount of \$800.00, and a pet deposit of \$500.00. The Landlord stated that she never returned either of these deposits because of the damage caused by the Tenant, and the fact that his sister, acting as his agent, authorized the Landlord to retain the deposits at the move-out inspection. The parties both agree the tenancy started on November 1, 2020, and ended on February 15, 2021, when the Tenant abandoned the rental unit, after receiving a 10 Day Notice, and when his sister returned the keys/did the move out inspection.

The parties agree that the move out inspection was conducted on February 15, 2021. The Tenant stated that his sister attended the rental unit on his behalf to conduct the move-out inspection. A copy of the move-out inspection was provided into evidence.

The Landlord provided some pages of the tenancy agreement into evidence. However, it is missing the page which specifies the term of the tenancy agreement. The Landlord stated that the missing page in fact specifies that the tenancy started on November 1, 2020, and lasted for a fixed term until May 31, 2026. The Landlord stated that although the agreement lists 2026 as the end of the fixed term, she meant it to be 2021. The Tenant did not provide any clear explanation as to whether or not the tenancy agreement was fixed term, and for what length of time.

The Landlord provided a monetary order worksheet which lays out the following items:

- 1) \$1,600.00 – Unpaid Rent – February 2021

The Landlord stated that the Tenant lived in the unit for over half the month, and failed to pay any rent for that month. The Landlord stated that the Tenant did not properly communicate his plans about moving out.

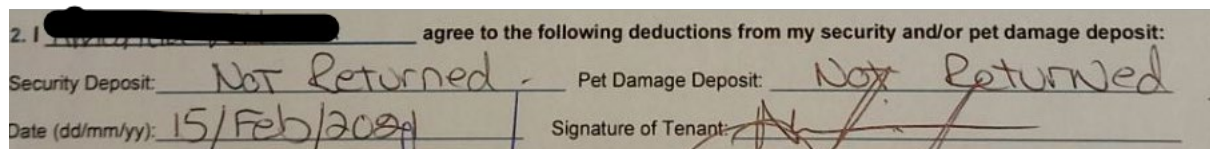
The Tenant agrees he did not pay rent for February 2021. However, he stated that he didn't pay rent because there were so many issues with the rental unit, including issues with the heat, and building codes.

- 2) \$1,300.00 – Damages and cleaning

The Landlord was given a chance to speak to why this amount is warranted, and what it is based upon, and she stated that the Tenant's agent, at the move-out inspection, gave permission to the Landlord to keep both deposits to pay for damages and cleaning. The Landlord stated she filed this application for damages and cleaning but thinks it may be unnecessary because of their agreement at the move-out inspection.

The Landlord did not specify how long it took to clean the unit, and what was involved in clearing out the Tenant's belongings. The Landlord provided a few invoices. However, she did not elaborate and explain any of the amounts on those invoices or why the Tenant ought to be liable for them. The invoices total approximately \$450.00-\$500.00. However, the Landlord did not refer to them whatsoever, or explain how she arrived at \$1,300.00 for the total amount of damage to the unit. There was also no breakdown of cleaning expenses or time.

The Landlord provided a move-out condition inspection report which shows that there were several broken items in the rental unit. Although she did not directly speak to or explain any of these items in the hearing. The Landlord pointed to the end of the condition inspection report to show that the Tenant's sister agreed to the following:



2. I, [redacted] agree to the following deductions from my security and/or pet damage deposit:

Security Deposit: Not Returned Pet Damage Deposit: Not Returned

Date (dd/mm/yy): 15/Feb/2021 Signature of Tenant: [signature]

The Landlord stated that this shows the Tenant's agent agreed to forfeit the deposits at the end of the tenancy to offset the cleaning and repair expenses.

The Tenant stated that he cleaned very well before he left, and denies that he left a mess. The Tenant stated it was left in acceptable condition. The Tenant did not elaborate further other than stating the rental unit was in poor condition overall, and had issues with building codes. The Tenant stated that his sister signed the condition inspection report on his behalf but he stated it was unclear as to what he owed and why. The Tenant does not feel this portion of the move-out report should allow the Landlord to retain all of both of his deposits, given the lack of clarity around what it is based upon.

3) \$800.00 – Liquidated Damages

The Landlord pointed to term #2 on the tenancy agreement addendum, which specifies that the tenancy is fixed term, and that the Landlord is entitled to \$800.00 to cover the administrative costs of re-renting the unit if the Tenant breaches the fixed term agreement. As summarized previously, the Landlord stated the agreement was supposed to be fixed term, for 6 months, ending in May 2021, but she listed the date at 2026 instead. The Landlord also failed to provide a copy of the page of her tenancy agreement which specifies that this is a fixed term tenancy agreement.

The Tenant does not feel he should have to pay for this amount as the term was unclear, and he feels there were so many issues with the rental unit itself.

4) \$1,600.00 – Lost rent for March 2021

The Landlord explained that she was unable to re-rent the unit for March, due to the fact that the Tenant failed to clean up, and due to some of the damage. The Landlord stated that since the Tenant was under a fixed term agreement, he should be liable for this month, as he was not legally entitled to end the tenancy when he did. The Landlord stated that she was able to re-rent the unit for April. The Landlord stated that she re-posted the ad at the beginning of February, when the Tenant stopped paying rent. The Landlord did not explain what further steps she took to mitigate the loss. The Landlord provided a copy of the ad, but it was undated.

The Tenant does not feel he should have to pay for this month, as he left part way through February, after receiving a 10 Day Notice. The Tenant did not explain whether or not he provided any notice to the Landlord, in writing, that he would be vacating when he did.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The Landlord provided a monetary order worksheet which lays out the following items:

1) \$1,600.00 – Unpaid Rent – February 2021

I have reviewed the testimony and evidence on this matter, and I note Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. Although the Tenant was unhappy with

some aspect of the rental unit, there is insufficient evidence he had any legal basis to withhold rent. If the Tenant was seeking a rent reduction for issues with the rental unit, he should have filed an application for dispute resolution, rather than unilaterally withhold rent.

I find the Tenant is responsible for February 2021 rent, in full. I award \$1,600.00 to the Landlord for this item.

2) \$1,300.00 – Damages and cleaning

First, I turn to the issue regarding the alleged agreement made between the Landlord and the Tenant on the move-out condition inspection report. I note the following portion of section 38 of the Act:

(4)A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a)at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b)after the end of the tenancy, the director orders that the landlord may retain the amount.

I accept that the Tenant's sister was authorized to conduct the move-out inspection on the Tenant's behalf. The Tenant does not dispute this fact. I also accept that she signed the form, including the following section:

2. I agree to the following deductions from my security and/or pet damage deposit:

Security Deposit: Not Returned - Pet Damage Deposit: Not Returned

Date (dd/mm/yy): 15/Feb/2021 Signature of Tenant: [Handwritten Signature]

However, I find there is a lack of clarity regarding what the actual deductions were based upon, and specifically what the Tenant's liabilities and obligations were. I note both deposits total \$1,300.00, and I also note the Landlord claims the amount of cleaning and repairs exactly totals this amount. I find it odd these amounts are exactly the same, especially with no explanation or itemization.

Upon reviewing this matter, I find the lack of clarity in this portion of the report, as well as the poor itemization and explanation as to show how \$1,300.00 was calculated as the overall cost for cleaning and repairs, leads me to question whether or not there was a meeting of the minds with respect to what was owed, what was agreed upon, and

why. Ultimately, the Landlord may be entitled to retain the deposits under section 38(4) of the Act if there is sufficient evidence that both parties agree in writing and that the amount is to pay an outstanding liability of the Tenant. In this case, I am not satisfied there is sufficient clarity regarding what the liabilities were, either at the time this part of the form was signed, or as of the time of the hearing, such that I could be satisfied the Landlord may retain the deposit pursuant to section 38(4) of the Act and by way of the agreement on the move-out inspection report.

I note the Landlord listed \$1,300.00 as the overall cost for the cleaning and repairs to the rental unit. However, the Landlord provided no explanation in the hearing as to how this was calculated, despite being given an opportunity to do so. The Landlord only generally spoke to the rental unit being in poor condition and that it required cleaning, and debris removal. The invoices provided by the Landlord do not come anywhere close to the amount of \$1,300.00, and there is no explanation as to what amount of cleaning and decluttering was required.

That being said, I find the photos taken at the end of the tenancy, as well as some of the damage and debris noted on the move-out condition inspection report show that the Tenant failed to leave the rental unit in a reasonably clean, and sanitary manner. The photos show debris, and unclean surfaces. I note the following portion of the Act:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,

I find there is sufficient evidence that the Tenant breached this part of the Act and ought to be liable for some expenses incurred. However, given the poor explanation and itemization, determining the appropriate amount is difficult.

I note that an arbitrator may award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find a nominal award is appropriate, and I award the Landlord \$200.00 for cleaning and repairs.

3) \$800.00 – Liquidated Damages

I have reviewed the evidence and testimony on this matter. Residential Tenancy Policy Guideline 4 provides for liquidated damages. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the fixed term by the Tenant. If a liquidated damages clause is determined to be valid, the Tenant must pay the stipulated sum unless the sum is found to be a penalty.

In this case, I find the Landlord has failed to provide the relevant part of the tenancy agreement, which shows if that there was in fact a fixed term agreement, or what the term was. The Landlord acknowledged there was some date anomalies in this part of the tenancy agreement, and the Tenant was also unclear about whether this was a fixed term, and if so, how long. Ultimately, the onus is on the Landlord to demonstrate this was a fixed term tenancy agreement, and that the Tenant breached this fixed term, thus triggering the liquidated damages term in the addendum. However, I find the Landlord has failed to sufficiently demonstrate that this was a fixed term tenancy, or how long the fixed term may have been for. I dismiss the Landlord's claim for liquidated damages, in full, without leave.

4) \$1,600.00 – Lost rent for March 2021

I have reviewed the testimony and evidence on this matter. I note the following portion of the Act:

How a tenancy ends

44 (1) *A tenancy ends only if one or more of the following applies:*

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [tenant's notice];

(i.1) section 45.1 [tenant's notice: family violence or long-term care];

(ii) section 46 [landlord's notice: non-payment of rent];

(iii) section 47 [landlord's notice: cause];

(iv) section 48 [landlord's notice: end of employment];

(v) section 49 [landlord's notice: landlord's use of property];

(vi) section 49.1 [landlord's notice: tenant ceases to qualify];

(vii) section 50 [tenant may end tenancy early];

- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;*
- (c) the landlord and tenant agree in writing to end the tenancy;*
- (d) the tenant vacates or abandons the rental unit;*
- (e) the tenancy agreement is frustrated;*
- (f) the director orders that the tenancy is ended;*
- (g) the tenancy agreement is a sublease agreement.*

In this case, I note the Landlord issued the Tenant a 10 Day Notice on or around February 2, 2021. The Tenant appears to have moved out, rather than follow through with a dispute of the Notice. I find the tenancy ended by way of the 10 Day Notice, even if the Tenant stayed in the unit a couple days after the effective date of that Notice.

As stated above, the Landlord has not sufficiently demonstrated that this was a fixed term tenancy agreement, or what the actual term was. I do not find the Tenant was under any obligation to provide a Notice under section 45 of the Act that he would be moving out, given this tenancy ended by way of a 10 Day Notice. As stated above, the Tenant is responsible for February rent, in full. However, with respect to March 2021 rent, I do not find the Landlord has sufficiently demonstrated the Tenant is responsible for this amount due to being in a fixed term tenancy, or due to moving out with short notice, after receiving the 10 Day Notice.

When confronted with a vacant rental unit, the Landlord is obligated to mitigate losses, and be able to sufficiently explain what steps were taken to mitigate the lost rent. I note the Landlord provided very little explanation as to how she managed the re-posting, and the pricing (and/or any price reductions), and whether or not there were inquiries or showings, and if so, how many. I find the Landlord has failed to demonstrate that she took sufficient steps and measures to mitigate her lost rent. Her mitigation strategies and attempts were poorly explained in the hearing, and she did not explain how any of her documentary evidence related to her mitigation efforts to keep her rental losses low. I find the Landlord has failed to meet this part of the test, and I decline to award any rent for March 2021.

Further, I am not satisfied, based on the Landlord's explanation, that the rental unit was left in such a poor state that would preclude it from being rented out significantly before April 1, 2021.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was partially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount still owed by the Tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
February rent	\$1,600.00
Nominal Award	\$200.00
Other:	
Filing fee	\$100.00
LESS:	
Security/Pet deposit currently held by Landlord	(\$1,300.00)
TOTAL:	\$600.00

Conclusion

The Tenant's application to cancel the 10 Day Notice is dismissed.

The landlord is granted permission to retain the security and pet deposit, in full, and it also granted a monetary order pursuant to Section 67 in the amount of **\$600.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: May 10, 2021

Residential Tenancy Branch