



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL, MNDCL, FFL; MNSD, RPP, MNDCT

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent, for damage to the rental unit, and for compensation under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- authorization to obtain a return of the tenant's security deposit, pursuant to section 38;
- an order requiring the landlord to return the tenant's personal property, pursuant to section 65; and
- a monetary order for compensation under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67.

The landlord's agent and the tenant's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's agent confirmed that she had permission to represent the landlord at this hearing. The tenant's agent confirmed that she had permission to represent the tenant, who is her son, at this hearing. This hearing lasted approximately 31 minutes.

At the outset of this hearing, I informed the landlord's agent and the tenant's agent that they were not permitted to record the hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. During the hearing, the landlord's agent and the tenant's agent both affirmed under oath that they were not recording, and they would not record this hearing.

I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not have any objections, they did not want to settle these applications, and they wanted me to make a decision regarding their applications. Both parties did not make any adjournment or accommodation requests at this hearing.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage to the rental unit?

Is the landlord entitled to recover the filing fee for his application?

Is either party entitled to a monetary order for compensation under the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to a return of his security deposit?

Is the tenant entitled to an order requiring the landlord to return the tenant's personal property?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2020. Monthly rent in the amount of \$1,000.00 was payable on the first day of each month. A security deposit of \$500.00 was paid by the tenant and the landlord continues to retain this deposit. No pet damage deposit was paid the tenant to the landlord. A written tenancy agreement was signed by both parties. The tenant's forwarding address was provided to the landlord, by way of his application for dispute resolution. No move-in or move-out condition inspection reports were completed for this tenancy.

The landlord's agent claimed that this tenancy ended on February 1, 2021. The tenant's agent claimed that this tenancy ended on February 8, 2021, when the landlord changed the locks to the rental unit.

The landlord seeks a monetary order of \$4,358.25 plus the \$100.00 application filing fee. The tenant disputes the landlord's entire application.

The landlord's agent testified regarding the following facts. The landlord seeks compensation for damages that the tenant caused, totalling \$908.25, which was provided in the landlord's estimate evidence. The tenant damaged the walls and the landlord had to repair it, as per the photographs provided with the estimate. The landlord seeks rent that the tenant failed to pay, totalling \$2,450.00, as follows: \$450.00 for November 2020, \$1,000.00 for December 2020, and \$1,000.00 for January 2021. This information was referenced in the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities given to the tenant by the landlord. The landlord seeks a loss of \$1,000.00 for February 2021 rent because the landlord had to repair the basement.

The tenant's agent stated the following facts in response to the landlord's application. The tenant never received rent receipts from the landlord. The tenant paid rent in cash. The tenant disputes the landlord's damages, as no condition inspection report was done when he moved into the rental unit. The tenant was forced out of the rental unit by the landlord in February 2021, so he does not owe rent for that month. The tenant paid full rent of \$1,000.00 for November 2020. The tenant only owed \$475.00 for December 2020, but the landlord refused this rent from the tenant on December 25, 2020, because he paid it late, and the landlord just wanted the tenant to move out. The tenant did not pay rent of \$1,000.00 for January 2021 to the landlord because the landlord shut off the tenant's hydro and it was included as part of his tenancy agreement. The tenant has proof of all the rent he paid in his bank records, but he did not provide them for this hearing.

In his application, the tenant seeks a monetary order of \$2,750.00 plus a return of his personal property from the landlord. The landlord disputes the tenant's entire application.

The tenant's agent stated the following facts. The landlord left the tenant's possessions outside, said he had an order of possession, and the police would not help the tenant. On February 16, 2021, the tenant received a text from the landlord to come to the rental unit and get his items in two hours. The tenant and his agent went to the rental unit to collect the tenant's items and took what they could and tried to clean but had to leave

because of the landlord. On December 25, 2020, the landlord shut off hydro to the unit until late January 2021, so the tenant did not have light and could not see anything, and it was cold during that time. The tenant was told to remove his garbage bags, even though garbage was included in the tenancy agreement. The tenant wants a monetary order for items that were damaged in the rental unit. There was food in the refrigerator and there was damage to the tenant's car, when the landlord kicked in the tenant's car mirror, on January 26, 2021. The police did not help with the car incident. The tenant lost his passport, vaporizer, wallet, money, and \$150.00 in groceries. The tenant wants a return of his security deposit of \$500.00. The tenant told the landlord that his key was broken in the lock to the rental unit, so the tenant had to purchase a new lock and key.

The landlord's agent stated the following facts in response to the tenant's application. The landlord did not change the locks to the unit, the tenant changed them first. The tenant told the landlord via text message, did not provide the landlord with a new key, and the tenant did not have authority from the RTB to change the locks. The landlord needed access to the furnace in the basement, so he called the non-emergency police line, and they told the landlord that he could change the locks. The tenant called the police saying that the landlord tried to access the rental unit.

Analysis

Legislation and Rules

During the hearing, I notified both parties that as the applicants, they were required to present their applications and prove their claims on balance of probabilities.

The following RTB *Rules of Procedure* state, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that both parties did not properly present their evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity to do so during the hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*. During the hearing, both parties failed to properly go through all of their specific claims, the amounts for each claim, and their documents. The hearing lasted 31 minutes, so both parties had ample opportunities to present their applications.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the respondent in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties.

Landlord's Application

Section 26 of the *Act* requires a tenant to pay monthly rent to the landlord on the date indicated in the tenancy agreement, which in this case, both parties agreed is on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate a landlord for damage or loss that results from that failure to comply.

I find that the tenant was not entitled to a rent reduction, the landlord did not agree to a rent reduction, the tenant did not pay for emergency repairs as per section 33 of the *Act*, and the tenant did not have an order from an Arbitrator to reduce his rent. I find that the tenant was not entitled to withhold rent, even if the hydro was allegedly shut off at the rental unit.

Both parties agreed that the tenant failed to pay rent of \$1,000.00 for January 2021 to the landlord. Accordingly, I find that the landlord is entitled to rental arrears of \$1,000.00 from the tenant.

I find that the landlord is entitled to rent arrears of \$450.00 for November 2020 and \$1,000.00 for December 2020, totalling \$1,450.00. I accept the landlord's agent's testimony that this rent was unpaid by the tenant. I find that the tenant failed to provide documentary records such as bank statements to show that he made a full rent payment of \$1,000.00 for November 2020 or a partial rent payment of \$525.00 for December 2020, to the landlord. The tenant had ample time from receiving the landlord's application, which was filed on March 4, 2021, and this hearing date of May 13, 2021, to provide this evidence.

I dismiss the landlord's application for a rent loss of \$1,000.00 for February 2021, without leave to reapply. The landlord confirmed that the tenant vacated the rental unit by February 1, 2021. The written tenancy agreement provided by the landlord indicates that this was a month-to-month tenancy, not a fixed term. I find that the landlord failed to provide sufficient evidence of his efforts to re-rent the unit after the tenant vacated. The landlord's agent did not indicate if or when the rental unit was re-rented, if or when any advertisements for re-rental were posted, if or when any inquiries were answered from prospective tenants, and if or when or any showings of the rental unit were completed for prospective tenants.

I dismiss the landlord's application for damages of \$908.25, without leave to reapply. The landlord's agent did not review the landlord's estimate in any detail during the hearing. She did not indicate if or when the landlord had any repairs done, what repairs were done, and if or when any costs were actually paid. The estimate provided by the landlord indicates that it was made on March 2, 2021, more than a month after the tenant vacated on February 1, 2021. The landlord's agent did not indicate the reason for any delay. The estimate does not indicate if any repairs were actually done at the rental unit and it does not indicate that any amounts were actually paid, as no receipts for payment were provided by the landlord. Further, the landlord failed to complete move-in or move-out condition inspection reports to demonstrate the condition of the rental unit when the tenant moved in or out. Accordingly, I find that the landlord failed to show if any damages were pre-existing when the tenant moved in and which damages the tenant may have caused while living at the rental unit.

The landlord continues to hold the tenants' security deposit of \$500.00. Over the period of this tenancy, no interest is payable on the deposit. Although the landlord did not apply to retain this deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$500.00, in partial satisfaction of the monetary award.

As the landlord was partially successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the tenant.

Tenant's Application

The tenant's agent failed to provide any testimony during this hearing, regarding the tenant's claim for the return of his personal property from the landlord. This claim was only indicated in the tenant's online application. Therefore, this claim is dismissed without leave to reapply.

As noted above, I have offset the tenant's \$500.00 security deposit against the landlord's monetary award for unpaid rent. Therefore, the tenant's application for the return of his security deposit of \$500.00 is dismissed without leave to reapply.

During the hearing, both parties agreed that the tenant did not pay a pet damage deposit to the landlord. The tenant's agent did not make any submissions about this claim, nor did she review any evidence of same, during the hearing. The written tenancy agreement provided by the landlord indicates that no pet damage deposit was payable by the tenant, for this tenancy. Therefore, the tenant's application for the return of his pet damage deposit of \$250.00, is dismissed without leave to reapply.

The tenant's application for a monetary order of \$2,000.00, is dismissed without leave to reapply. The above amount was taken from the tenant's online application. The tenant's agent failed to provide a breakdown of the tenant's monetary claim, aside from stating that the tenant lost \$150.00 in groceries. She indicated that the tenant lost his passport, wallet, money and vaporizer but did not provide any values for same. The tenant's agent failed to go through any of the tenant's documentary evidence during this hearing, including any photographs, invoices, receipts, or estimates. She did not even indicate how the tenant came up with the numbers that he did. She referenced providing documents, but did not indicate any details, and she did not point me to any specific documents, provisions, pages or other information. I asked the tenant's agent repeated questions during the hearing about the tenant's claims and documents, but she still failed to go through same.

Conclusion

I order the landlord to retain the tenant's entire security deposit of \$500.00, in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$2,050.00 against the tenant. Should the tenant 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 landlord's application is dismissed without leave to reapply.

The tenant's entire 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 13, 2021

Residential Tenancy Branch