



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, MNR-S, MNDC-S, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for alleged damage to the rental unit by the tenant;
- a monetary order for unpaid rent;
- compensation for a monetary loss or other money owed;
- authority to keep the tenant's security deposit to use against a monetary award;
- and
- recovery of the filing fee.

The landlord and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The tenant confirmed receiving the landlord's first evidence package, but not the landlord's second evidence package, which were rental viewing inquiries. The landlord submitted that he had not served it to the tenant. As that is a requirement of the Act and the Residential Tenancy Branch Rules of Procedure (Rules), I exclude this part of the landlord's evidence.

The landlord confirmed receiving the tenant's evidence.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the

parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenants, to use their security deposit against a monetary award, and to recover the cost of the filing fee?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of March 1, 2020, a fixed term through February 28, 2021, monthly rent of \$3,500, due on the 1st day of the month, and a security deposit of \$1,750 being paid by the tenant to the landlord.

The landlord retained the tenant's security deposit, having made this claim against it.

The landlord's monetary claim is:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid rent January 2021	\$3,500
2. Unpaid rent February 2021	\$3,500
3. Cleaning	\$393.75
TOTAL	\$7,393.75

In support of his monetary claim for unpaid monthly rent, the landlord submitted that he never received formal notice from the tenants that they were vacating, but was informed on December 23, 2020, that they were moving out by January 1, 2021.

The landlord submitted that they immediately started advertising the rental unit on December 24, 2020, and used multiple, online platforms. The landlord said that he had informed the tenants that the lease was a year long, which was a requirement for the building. The evidence of the listings has been excluded.

The landlord said that they had approximately 10 inquiries and 3 or 4 showings, but that the landlord ultimately moved back into the rental unit on March 1, 2021.

As to the landlord's monetary claim for cleaning, the landlord submitted that the rental unit was not sufficiently cleaned by the tenants.

The landlord submitted that the stove top burner had burn marks, the drawers were moldy with a mildew build-up, and there were stains on the walls and floor.

The landlord submitted additionally that there was black mold in the bathroom, thick dust on the baseboards, the windows were moldy, the tenants failed to remove soap and clean the hair in the bathroom, there was excessive dust in every room and lint in the dryer vent.

Filed in evidence were photographs of the rental unit, a move-in and move-out condition inspection report (Report), emails between the parties, and a cleaning receipt.

Tenant's response –

The tenant submitted that the condition of the rental unit at the end of the tenancy was much better than the condition at the beginning of the tenancy. The tenant submitted he did the cleaning himself and provided the photographs. The tenant submitted that there was an initial move-out clean and another cleaning, after the first inspection.

At the move-in inspection, the landlord went very quickly through the inspection and tried to say everything was clean. In particular, the tenant said that there was a lot of dog fur at the beginning of the tenancy and the tenants had to clean the rental unit.

As to the issue of unpaid monthly rent, the tenant submitted that they moved out of the rental unit due to the landlord's breach of a material term. The tenant said that they have had an issue with bedbugs for at least the last 6 months of the tenancy. The tenant submitted that his family's health, particularly his children, was endangered by the bedbugs. The tenant submitted that his young daughter had a rash everyday due to the bedbug bites and after the tenants moved, the bedbug bites cleared up.

The tenant submitted that he first notified the landlord in August 2020 about the issue with the bedbugs, in text messages and emails. There were three cleanings in regard to the bedbugs.

The tenant submitted that he notified the landlord through text message in October and in November 2020, that they were vacating the rental unit at the end of December 2020, due to the bedbug issue. The tenant asserted that the landlord was given two months' notice.

The tenant submitted that they searched for the listing of the rental unit, and on January 25 and February 1, 2021, there were not listings for the rental unit.

The tenant submitted that on one Craigslist listing, there were no details, which reduced the amount of inquiries and the landlord never reduced the price for the monthly rent. The tenant submitted that the landlord moved back into the rental unit in February 2021.

The tenant's relevant evidence included photographs of the rental unit at the end of the tenancy and electronic communication between the parties.

The landlord responded that he was not aware of a bedbug issue in December, 2020, but was aware of one in August 2020. The landlord said he immediately responded to the bedbug report by hiring a pest control company, who did two inspections.

The landlord submitted that the tenant's wife requested a third inspection and he was told that the problem was not bedbugs.

The landlord said that there was another rental unit advertised at the same time, which may lead to confusion as to whether the rental unit was advertised.

The landlord submitted that there is no evidence the rental unit was dirty at the beginning of the tenancy and that he immediately acted on any complaints.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Test for damages or loss

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 each of 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.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did whatever was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The claiming party, the landlord in this case, has the burden of proof to substantiate their claim on a balance of probabilities.

Loss of rent –

Section 45(2) of the Act states that a tenant may end a fixed-term tenancy by giving the landlord written notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the

day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In other words, the tenant must give written notice to the landlord ending a fixed-term tenancy at least one clear calendar month before the next rent payment is due and **that is not earlier than the end of the fixed term.** [emphasis added]

In the case before me, the fixed-term ended on February 28, 2021, and I find the tenants are liable to the landlord for monthly rent under the terms of the tenancy agreement, subject to the landlord's obligation to minimize their loss. The tenants vacated by the end of December 2020, and did not pay any further monthly rent.

On the basis of this undisputed evidence, I find that the tenants breached the terms of their written tenancy agreement by ending the tenancy before the end of the fixed term.

Although the tenants questioned whether the landlord did whatever was reasonable to minimize their loss, the text message notice from the tenant to the landlord was not provided in a manner consistent with section 88 of the Act, as text message is not listed as an accepted manner in which to serve written documents. Recognized ways in which to serve written documents include by mail or registered mail, personal service, leaving it in the mailbox or mail slot, or attaching it to a door.

The tenant's text message notices were insufficient as noted. I therefore find it reasonable that the insufficient notice to the landlord would not have allowed a landlord to begin advertising.

Additionally, while the tenants claimed that the landlord breached a material term of the tenancy agreement to justify moving out earlier than the end of the fixed-term, I find they submitted insufficient evidence of this breach.

Section 45 (3) of the Act states that if a landlord has failed to comply with a material term of the tenancy agreement, and the landlord has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice. I did not see evidence of such notice to the landlord to correct the situation. The tenant's text message was simply informing the landlord they were vacating. I also did not see a response from the landlord, and had no verification that the landlord received the notice.

For these reasons, I find the landlord submitted sufficient evidence to support their claim for loss of rent for January 2021 and, as a result, I **grant** the landlord a monetary award of \$3,500.

As to the landlord's claim for loss of rent revenue for February 2021, I find the landlord submitted insufficient evidence. I have excluded the landlord's evidence showing the listings and I find that the landlord did not supply the dates, times or content of the listings or whether the landlord reduced the monthly rent to facilitate interest in the rental unit. I also find the landlord submitted insufficient evidence of why they moved into the rental unit themselves.

The tenant submitted the landlord moved back into the unit in February 2021 and the landlord said they moved into the unit in March 2021. Without further evidence, I find the landlord has not sufficiently shown they took all reasonable steps to minimize their loss for March 2021. Additionally, the written tenancy agreement required the tenants to vacate as the landlords were moving into the property.

For these reasons, I dismiss the landlord's claim for loss of rent revenue for February 2021, due to insufficient evidence.

Cleaning –

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean and undamaged, except for reasonable wear and tear.

Reasonable wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Under the Act, tenants are required to leave the rental unit reasonably clean when they vacate. The tenants are responsible for paying cleaning costs where the property is left at the end of the tenancy that does not comply with the Act. Tenants are not responsible for cleaning of the rental unit to bring the premises to a higher standard.

I have reviewed the photographs submitted by the landlord and the tenant. Although the landlord's photographs show minor deficiencies in some items, such as dust on the baseboards, a few hair strands behind the toilet lid, lint in the dryer, and some minor

marks on the walls, the landlord did not provide photographs of the entire rental premises to show the rental unit was not left in its totality reasonably clean.

On the other hand, the tenant submitted photographs of the entire rental unit and up-close pictures from inside cabinets, cupboards, and bathroom fixtures.

Also, I heard evidence that the tenant returned to the rental unit for additional cleaning, and I therefore was unable to determine whether the landlord's undated photographs were taken after the first clean or final clean. This is consistent with the move-out condition inspection Report, which showed a move-out date of January 1, 2021, on the first page and a move-out date of December 30, 2020 on the third page, and further inspection on January 2, 2021.

I accept the tenant's testimony that he and his spouse cleaned the rental unit, as my viewing of the tenant's photographs indicated the rental unit was left reasonably clean.

For these reasons, I find the landlord submitted insufficient evidence to show that the rental unit was not left reasonably cleaned and undamaged, excepting reasonable wear and tear.

As a result, I **dismiss** the landlord's claim for cleaning of \$393.75.

As the landlord had some measure of success with their application, I grant them recovery of their filing fee of \$100.

Based upon the above, I grant the landlord a monetary award of \$3,600, comprised of unpaid monthly rent of \$3,500 for January 2021 and recovery of the filing fee of \$100.

The landlord applied to keep the tenant's security deposit and I allow the landlords' request to retain the security deposit of \$1,750 in partial satisfaction of their monetary award.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,850 under the following terms:

ITEM	AMOUNT
1. Unpaid rent for January 1, 2021	\$3,500.00
2. Filing fee	\$100.00
3. <i>Less security deposit</i>	<i>-\$1,750.00</i>
TOTAL MONETARY ORDER	\$1,850.00

The landlord is provided with this order in the above terms and the tenant must be served with this order as soon as possible. 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.

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: June 3, 2021

Residential Tenancy Branch