



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: CNR MNRT MNDCT OLC RP PSF LRE RR FFT
For the landlord: MNRL-S FFL

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act).

The tenants applied to cancel a 10 Day Notice for Unpaid Rent or Utilities (10 Day Notice) for a monetary order for \$5,131.68 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the cost for emergency repairs, for an order directing the landlord to regular repairs to the unit, site or property, to suspend or set conditions on the landlord's right to enter the rental unit, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for an order directing the landlord to provide services or facilities agreed upon but not provided, for a rent reduction, and to recover the filing fee.

The landlord applied for a monetary order of \$3,200.00 for unpaid rent or utilities, for loss of rent, for authorization to retain all or part of the security deposit, and to recover the filing fee.

The landlord and the tenants attended the teleconference hearing and were affirmed. The hearing process was explained, evidence was reviewed, and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed testimony evidence and to make submissions to me. I have considered all of the evidence that was submitted in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules), and testimony provided. 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 is prohibited under the RTB 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, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

Also, Rule 2.3 of RTB Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants and the landlord indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is to dispute the 10 Day Notice for the tenants, and for a monetary order related to unpaid rent only. I find that not all the claims on the tenants' application is sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to set aside the 10 Day Notice, for the cost of emergency repairs, and for the filing fee, and the landlords' request for unpaid rent and loss of rent and the filing fee at this proceeding. The balance of the tenants' application is **dismissed, with leave to re-apply**.

At the outset of the hearing, the tenants confirmed they vacated the rental unit on April 13, 2021 and the landlord stated they became aware that the tenants vacated on either April 14th or 15th of 2021. Given the above, I find the 10 Day Notice is now moot as the tenancy ended on April 13, 2021, when the tenants vacated the rental unit. As a result, I find it is not necessary to issue an order of possession as the landlord has possession of the rental unit and confirmed they re-rented the rental unit to new tenants as of June 1, 2021.

Issues to be Decided

- Is the landlord entitled to a monetary order for unpaid rent and loss of rent, and if so, in what amount?
- Have the tenants provided sufficient evidence to support compensation for emergency repairs under the Act?
- Is either party entitled to the recovery of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy agreement began on September 1, 2020 and was scheduled to revert to a month to month tenancy after August 31, 2021. According to the tenancy agreement, monthly rent of \$1,600.00 was due on the first day of each month.

Although the tenants originally disputed the 10 Day Notice by filing an application on April 6, 2021, the tenants moved out shortly after on April 13, 2021, which ended the tenancy. The landlord is seeking unpaid rent of \$1,600.00 for April 2021 and loss of May 2021 of \$1,600.00.

The tenants confirmed they did not pay rent for April 2021 and only gave notice verbally and in not in writing to end the tenancy. The tenants were advised that verbal notice has no effect under the Act as the landlord cannot rely on verbal notice to end a tenancy. The tenants were asked what emergency repairs they completed in relation to section 33(a),(b) and (c) of the Act which states:

Emergency repairs

33(1) In this section, "emergency repairs" means repairs that are

- (a)urgent,
- (b)necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c)made for the purpose of repairing
 - (i)major leaks in pipes or the roof,**
 - (ii)damaged or blocked water or sewer pipes or plumbing fixtures,**
 - (iii)the primary heating system,**
 - (iv)damaged or defective locks that give access to a rental unit,**
 - (v)the electrical systems, or**

(vi) in prescribed circumstances, a rental unit or residential property.

[Emphasis added]

The tenant first mentioned an ant problem. Then the tenant confirmed they did not spend money to repair major leaks in pipes or the roof, or the primary heating system, or damaged or blocked water or sewer pipes or plumbing fixtures, or damaged locks (other than being reimbursed for a front door lock already), or electrical system of \$4.00 to replace a wired non-functioning smoke detector with a battery-powered one supplied by the landlord.

Based on the above, the tenants were advised that I was not satisfied that the tenants had any authority under the Act to deduct any amount from their monthly rent, which I will address further below.

Regarding loss of rent; however, the tenant presented a text from the landlord which states on Thursday, March 25, 2021 in part:

Hi B and S

As you told us today that you wants to move out at the end of April 2021. We are ok with that and no problem with the lease. It is confirmed that place can be empty on May 1st 2021. Sorry for inconvenience. Wish you good luck to find new place. Thanks, P

[Reproduced as written except for anonymizing name of tenants and landlord to protect privacy]

The tenants' position is that by sending the text above, the landlord was releasing them from the lease and now the landlord is applying for loss of rent for May 2021.

Analysis

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

Unpaid rent – Firstly, the tenants confirmed that they did not pay rent for April 2021. In addition, I find the tenants failed to provide sufficient evidence that they paid money for emergency repairs and met all of the requirements of sections 33(1) and 33(3) of the Act, which apply and state:

Emergency repairs

33(1) In this section, "emergency repairs" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;**
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;**
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.**

[Emphasis added]

I have reached this finding as I find the "ant problem" is not an emergency repair under the definition of the Act and that the tenants failed to provide supporting evidence that there were emergency repairs as defined above, and made at least 2 attempts to telephone the landlord and then given the landlord reasonable time to make the repairs. As a result, I dismiss the tenants' claim for emergency repairs due to insufficient evidence **without leave to reapply**, due to insufficient evidence. Therefore, I find that full April 2021 rent is owing as it was due on April 1, 2021 and the tenants did not vacate until April 13, 2021. Accordingly, I find the landlord has met the burden of proof and I award the landlord **\$1,600.00** in unpaid April 2021 rent as claimed.

Loss of rent – Based on the text described above from the landlord dated March 25, 2021, I find the landlord advised the tenants in writing that it was "ok" and "no problem with the lease" if the tenants broke their lease and as such, I find the landlord is not entitled to loss of rent now for May 2021. While the landlord may have regretted sending the text, I find it is binding as I find the tenants had the right to rely on what the landlord wrote in that text to the tenants. Therefore, I find the landlord has not met the burden of

proof for loss of May 2021 rent and dismiss this portion of the landlord's claim without leave to reapply, due to insufficient evidence.

As the landlord was successful with the portion of their application, I find the landlord is entitled to the recovery of their **\$100.00** filing fee and I grant that amount pursuant to section 72 of the Act. Given the above, I find the landlord has established a total monetary claim of **\$1,700.00**.

I find the tenants are not entitled to any compensation for emergency repairs due to insufficient evidence. I do not grant the tenants their filing fee as their application that proceeded had no merit.

As the landlord filed their application on April 25, 2021, and the written forwarding address was provided on April 15, 2021 by XpressPost via Canada Post, I find the landlord applied against the tenants' security deposit of \$800.00 within the 15-day timeline provided under section 38 of the Act.

As a result, **I authorize** the landlord to retain the tenants' full security deposit of \$800.00 in partial satisfaction of the landlord's claim. **I grant** the landlord a monetary order pursuant to section 67 of the Act for the balance owing by the tenants to the landlord in the amount of **\$900.00**.

Conclusion

The portion of the tenant's application that proceeded at this hearing for the cost of emergency repairs is dismissed without leave to reapply, due to insufficient evidence.

The tenants are not granted the filing fee as the portion of their claim that proceeded was not successful.

The landlord's claim is partially successful. The landlord has been authorized to retain the tenant's full security deposit of \$800.00 in partial satisfaction of the landlord's \$1,700.00 award. The landlord has been granted a monetary order pursuant to section 67 of the Act for the balance owing by the tenants to the landlord in the amount of \$900.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenants are reminded that they can be held liable for all costs related to the enforcement of the monetary order.

This decision will be emailed to both parties.

The monetary order will be emailed to the landlord only for service on the tenants.

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: July 28, 2021

Residential Tenancy Branch