



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPL, FFL, MNDCL, MNRL, MNDL

Introduction

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

- an Order of Possession for landlord's own use pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

At the beginning of the hearing, both parties confirmed that the tenancy had ended on May 31, 2021. Accordingly, the landlord's application for an Order of Possession was cancelled.

The landlord noted that their last name was not properly reflected on the application. As neither party was opposed, the landlord's last name was amended to reflect the proper spelling of their name.

The tenant confirmed receipt of the landlord's dispute resolution application ('Application') and amendment. In accordance with section 89 of the *Act*, I find that the

tenant was duly served with the Application and amendment. All parties confirmed receipt of each other's' evidentiary materials.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for Unpaid Rent?

Is the landlord entitled to a Monetary Order for damage to the unit, site, or property, money owed or compensation for loss under the Act, regulation or tenancy agreement?

Is the landlord entitled to recover the cost of the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy originally began as a fixed-term tenancy on February 1, 2020, and continued on a month-to-month basis after January 31, 2021. A copy of a written tenancy agreement and addendum was provided by the landlord for this application which notes that rent was set at \$1,500.00 per month, payable on the first of the month. The addendum notes that the tenant agrees to perform four hours of general yard maintenance per month, which include mowing lawn, raking leaves, and sweeping driveway in exchange for a \$100.00 rent reduction from the original advertised rent of \$1,600.00. The landlord had collected a security deposit in the amount of \$750.00 for this tenancy, which the landlord still holds. The landlord testified that no pet damage deposit was paid by the tenant despite the fact that tenant had unauthorized pets. The tenant moved out on May 31, 2021.

The tenant testified that they had provided a forwarding address to the landlord on June 4, 2021. The landlord testified that the address was not valid. The tenant testified that they were not aware that the address was not valid as they were residing in a vacation rental, and could not receive mail there and therefore had to use a friend's mailbox.

It is undisputed by both parties that the landlord had originally notified the tenant by way of text message that they wished to end the tenancy for landlord's use in December 2020 after the landlord decided to move into the home. Both parties participated in correspondence back and forth over finding a new place for the tenant. The landlord testified that they had realized that they had to give proper written notice on the proper

RTB form, and testified that they subsequently served the tenant with a 2 Month Notice for Landlord's Use dated February 23, 2021 in person when they went to visit the home on February 25, 2021. The tenant disputes that the landlord had ever served her this document. Both parties confirmed that the tenant was provided the required compensation of a month's free rent by the waiver of the rent for April 2021. The landlord testified that although the effective date was for April 30, 2021, the tenant did not move out until May 31, 2021, which resulted in significant expenses for the landlord as outlined in their claim. Both parties confirmed that the tenant did not pay any rent for May 2021.

The landlord requested the following monetary orders:

Item	Amount
Pet Damage	\$750.00
Overholding-May 2021	1,600.00
Lease Addendum Maintenance Failure	400.00
Garbage – travel	119.00
Garbage – time	112.50
Tipping Fees-June 1, 2021	18.00
Tipping Fees- June 2, 2021	21.00
Tipping Fees – June 15, 2021	16.00
Self Storage	367.50
Storage Unit	535.50
Storage Unit	340.20
Vehicle Storage	252.00
Stolen Paddle Board	1,100.00
Less Security Deposit Held	-750.00
Filing Fee	100.00
Total Monetary Order Requested	\$6,481.70

The landlord testified that they tried to assist the tenant obtain new housing, but the tenant failed to move out by the effective date on the 2 Month Notice. As a result of the overholding, the landlord had to pay for storage of their belongings and vehicle until the landlord was able to move in on July 15, 2021 due to the overholding and mess. The landlord submitted receipts for these costs. Furthermore, the landlord testified that the tenant left the home in unreasonably clean condition as depicted by the photos submitted in evidence. The landlord is seeking to recover the costs of removing this garbage. The landlord testified that both parties had a mutual agreement that the landlord would allow the tenant to perform 4 hours of labour each month for a \$100.00

rent reduction, which the landlord felt that the tenant did not perform the maintenance after the landlord informed the tenant in December 2020 that they were moving in. The landlord is seeking reimbursement of the \$100.00 rent reduction.

The landlord testified that the tenant never paid a pet damage deposit, but had pets in the home. The landlord is seeking losses in the amount of \$750.00 to cover the losses and damage caused by the tenant's pets.

Lastly, the landlord testified that their paddleboard is missing, and believes that the tenant took it. The landlord is seeking a monetary claim for the paddleboard as they believe that the tenant was the only party who could have taken it. The landlord felt that the tenant became vindictive after the landlord tried to end the tenancy.

Although the tenant does not dispute that they had moved out in May of 2021, and that they were provided with a month's free for April 2021, the tenant disputes having been served with an actual 2 Month Notice to End Tenancy. The tenant testified that they were forced out of the home without proper notice, and that the landlord never did any formal inspections, nor did the landlord provide the tenant with two opportunities to attend an inspection. The tenant testified that the landlord did not provide the tenant with any inspection reports.

The tenant disputes the damages and losses claimed, as well as the allegations about the paddleboard. The tenant testified that they went through extensive efforts to find a new place to live, and struggled due to limited funds. The tenant testified that they did their best to give vacant possession back to the landlord, but was under pressure to move out as quickly as possible

The tenant testified that the agreement of four hours per month was insufficient to maintain the property, which was the large. The tenant testified that they did perform the work as agreed upon for four hours per month as stipulated. The tenant also testified that during the winter months, work could not be performed to the same extent. The tenant testified that they were preoccupied with moving out in May of 2021, which would be the beginning of spring season work and maintenance. The tenant testified that they had kept the place beautifully before that time.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages

includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

I find that the monthly rent comprised of two parts--\$1,500.00 plus four hours of labour per month which both parties considered to be equivalent to a \$100.00 rent reduction. The landlord is seeking reimbursement of four months of work for the months of January 2021 through to April 2021 as the landlord believes that the tenant did not perform the required four hours as agreed upon. In light of the conflicting testimony, I find that the tenant provided a reasonable explanation for why the work did not appear satisfactory to the landlord. The tenant testified that four hours per month was insufficient for the size of the land to perform proper maintenance, and that due to weather constraints, the work was not completed to the landlord's satisfaction. I am satisfied that although the landlord's expectations were not met, I find that the landlord failed to provide sufficient evidence that the tenant did not perform the four hours of maintenance for the months of January 2021 through to April 2021, and therefore this portion of the landlord's application is dismissed without leave to reapply.

In consideration of the landlord's claim for May 2021 rent, I find it undisputed that the tenant moved out on May 31, 2021, and did not pay any rent for May 2021, nor was the tenant in possession of an order allowing the tenant to deduct or withhold that rent. I also find that the tenant admitted that they did not have adequate time to perform the agreed upon maintenance during that month as they were preoccupied with moving. Accordingly, I allow the landlord's monetary claim for the full \$1,600.00 of rent for May 2021.

The landlord is still in possession of the tenant's security deposit, and filed an amendment to their application to include a claim for losses on August 6, 2021. The tenant disputes that the tenant provided a valid forwarding address. Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit 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 return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "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." In this case I am not satisfied that the landlord was provided with a valid forwarding address, and I find that the landlord did file an application as required. I do not find that the tenant is entitled to compensation under section 38 of the *Act* of any contraventions of this section.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The landlord is also seeking a monetary order related to the tenant's failure to leave the rental unit in reasonably clean condition. The tenant testified that the landlord failed to provide two opportunities for an inspection, and provide the tenant with copies of written inspection reports.

Although the tenant's testimony is that they were not provided with a copy of the inspection report, the landlord still has the right to claim for losses or damage as noted in Residential Policy Guideline #17:

The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- *the landlord does not offer the tenant at least two opportunities for inspection as required (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or*
- *having made an inspection does not complete the condition inspection report.*

A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

- *to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;*
- *to file a claim against the deposit for any monies owing for other than damage to the rental unit;*
- *to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy;*
and
- *to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

The landlord filed a claim for the losses associated with garbage removal. In light of the testimony and evidence before me, I am satisfied that the tenant failed to leave the home in reasonably clean condition, and that the landlord had to remove the items left behind. I find that the landlord supported the losses claimed in their evidentiary materials. Accordingly, I allow the landlord to recover the tipping fees, and claims for time and travel associated with the disposal of these items.

The landlord is also claiming the equivalent of \$750.00 associated with pet damage. As noted above, the burden of proof is on the applicant to support the value of their claim. In this case, I am not satisfied that the landlord provided sufficient evidence to support that the tenant's pet(s) caused damage or losses as claimed in the amount of \$750.00, and I dismiss this portion of the landlord's application without leave to reapply.

In light of the evidence before me, I am not satisfied that the landlord had provided sufficient evidence to support that the tenant had taken or removed the paddleboard. I also dismiss this portion of the application without leave to reapply.

Lastly, the landlord is seeking reimbursement of the storage fees paid as the landlord was unable to move in by the effective date of the 2 Month Notice. The tenant disputes having been properly served with this 2 Month Notice, and feels that they were forced out. I have considered the evidence before me, and I find that the landlord has failed to provide proof of service of this 2 Month Notice on the tenant. Accordingly, I am not satisfied that the tenant was served with the 2 Month Notice in accordance with section 88 of the *Act*. I am not satisfied that it was due to any contravention of the *Act* on part of the tenant that necessitated that the landlord obtain storage of their items and vehicle. Accordingly, the landlord's claims for storage are dismissed without leave to reapply.

As the landlord was partially successful with their claim, I find the landlord is entitled to recover half of the cost of the filing fee for this application.

The landlord continues to hold the tenant's security deposit of \$750.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit of \$750.00 in partial satisfaction of the monetary orders granted.

Conclusion

I issue a Monetary Order in the amount of \$1,186.50 in the landlord's favour as set out in the table below:

Item	Amount
------	--------

May 2021 rent	1,600.00
Garbage – travel	119.00
Garbage – time	112.50
Tipping Fees-June 1, 2021	18.00
Tipping Fees- June 2, 2021	21.00
Tipping Fees – June 15, 2021	16.00
Less Security Deposit Held	-750.00
Filing Fee	50.00
Total Monetary Order	\$1,186.50

The landlord is provided with this Order in the above terms and the tenant must be served with a copy of 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.

As the tenant has moved out, the landlord withdrew their application for an Order of Possession.

The remainder of the landlord's monetary claims are 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: September 21, 2021

Residential Tenancy Branch