



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL-S, FFL; MNDCT

Introduction

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

- a monetary order for unpaid rent and for compensation under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for her application, pursuant to section 72.

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

- a monetary order for compensation under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67.

The landlord, the landlord's agent, and the two tenants, female tenant ("tenant") and "male tenant," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 93 minutes from 1:30 p.m. to 3:03 p.m.

All hearing participants confirmed their names and spelling. The landlord's agent and the tenant provided their email addresses for me to send a copy of this decision to them after the hearing.

The landlord confirmed that her agent, who is her daughter, had permission to speak on her behalf. The landlord's agent stated that the landlord owns the rental unit, and she provided the rental unit address.

The tenant confirmed that the male tenant is her son and he had permission to assist her at this hearing. She stated that the male tenant lived with her in the rental unit as a co-tenant, during this tenancy.

The landlord's agent and the tenant identified themselves as the primary speakers at this hearing.

At the outset of this hearing, I informed both parties that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules"). The landlord, the landlord's agent, and the two tenants all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. I informed both parties that I could not provide legal advice to them. Both parties confirmed that they were ready to proceed with this hearing, they did not have any objections, they did not want to settle both applications, and they wanted me to make a decision regarding both applications. Neither party made any adjournment or accommodation requests.

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.

The landlord's agent confirmed that the landlord amended her application on January 28, 2022, to reduce her monetary claim from \$3,106.91 to \$1,706.91. The tenant confirmed receipt of the landlord's amendment and evidence. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlord's amendment and evidence.

The tenant confirmed that the tenants amended their application on February 10, 2022, to reduce their monetary claim from \$7,900.00 to \$7,763.09. The landlord's agent confirmed receipt of the tenants' amendment and evidence. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' amendment and evidence.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to add the tenant's new legal surname "P," as the tenant confirmed it was recently changed from "F." I amend the tenants' application to include the full legal first name of the male

tenant, as confirmed by him during this hearing. I amend both parties' applications to include "lower" to identify the rental unit address. Both parties consented to these amendments during this hearing. I do not find any prejudice to either party in making these amendments.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for compensation under the *Act, Regulation* or tenancy agreement?

Is the landlord to retain the tenants' security deposit?

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

Are the tenants entitled to a monetary order for compensation under the *Act, Regulation* or tenancy agreement?

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 ended on August 15, 2021. Monthly rent in the amount of \$1,400.00 was payable on the first day of each month. A security deposit of \$700.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The landlord's agent stated that this tenancy began on February 15, 2019, as per the parties' written tenancy agreement. The tenant stated that the tenants moved some of their possessions into the rental unit, but the tenants did not start living at the rental unit until March 1, 2019. The landlord claimed that the tenants did not provide a written forwarding address or attend a move-out condition inspection with the landlord; the tenants did not dispute these facts during this hearing.

The landlord seeks a monetary order of \$1,706.91 and to recover the \$100.00 application filing fee. The landlord seeks \$1,400.00 for unpaid rent for the entire month of August 2021 and \$306.91 for unpaid utilities until August 15, 2021.

The landlord's agent testified regarding the following facts. The tenants provided notice on July 29, 2021, to move out on August 15, 2021, which is only two weeks, instead of the required one-month notice. The tenants left their notice in the landlord's mailbox; it was not given to the landlord in person. The landlord never asked the tenants to move out, whether verbally or in writing. No notice to end tenancy was issued by the landlord to the tenants for them to move out. The landlord had to clean the rental unit before new tenants moved in on January 1, 2022. The landlord was facing family health issues, so she was unable to re-rent the unit to new tenants until January 1, 2022.

During this hearing, both tenants agreed to pay half a month's rent of \$700.00 for the period from August 1 to 15, 2021, and \$306.91 for unpaid utilities, to the landlord. The tenants disputed the remainder of the landlord's application of \$700.00 for half a month's rent for the period from August 16 to 31, 2021, and for the recovery of the \$100.00 application filing fee.

The tenant testified regarding the following facts. The tenants moved out on August 15, 2021, so they should not have to pay the entire month of August 2021 rent to the landlord. The landlord told the tenants to move out, even though no notice to end tenancy was provided by the landlord and no fixed term end date was provided in the parties' written tenancy agreement. The landlord found new tenants to rent the rental unit. The tenants had to pay rent and a security deposit to their new landlord for their new place. The tenants gave notice to the landlord at the end of July 2021, to move out, but cannot recall the exact date that the notice was provided.

The male tenant testified regarding the following facts. The tenants tried to pay the landlord with a cheque for \$700.00 for half a month's rent for August 2021, but the landlord refused it. The tenants assumed that the landlord would use their \$700.00 security deposit for the August 2021 rent, but the landlord did not agree to do so. There were language barriers with the landlord since English is not her first language.

The tenants seek a monetary order of \$7,763.09 in their application. The tenants seek \$700.00 for half a month's rent paid to the landlord for February 2019 "for holding suite without occupancy," and \$2,863.09 for "emotional suffering, forced to move without cause, moving expenses," as per their amended monetary order worksheet. The tenants also seek \$4,200.00 for gas and hydro utilities for "payments made without

service,” as per their amended monetary order worksheet. The landlord disputes the tenants’ entire application.

The tenant stated the following facts. The tenants seek a return of \$700.00 in rent that they paid to the landlord for holding the rental unit without living there in February 2019. The tenants only moved in some of their belongings during the above time and began residing at the rental unit on March 1, 2019. The tenants seek \$2,863.09 for “emotional damages” and “moving costs” because the landlord forced the tenants to move out of the rental unit, without cause. The tenants went through a lot of stress from the landlord. The tenant’s father passed away in the hospital and the tenant was not present during that time. The tenants did not provide receipts for all their moving costs. The tenants provided some receipts for moving and storage and photographs of the tenant’s bank account statement and day planner. The tenants seek \$4,200.00 for gas and hydro utilities that they paid during this tenancy. The tenants did not have heat or electricity at all during this tenancy. The tenants had gas and hydro service during this tenancy, but it was intermittent and inconsistent. The tenants did not file their application to be “vindictive” against the landlord. The tenants did not plan to file an application, so they did not keep all of their receipts and documents and were unable to submit many of them for this hearing.

The landlord’s agent testified regarding the following facts. The tenants asked the landlord if they could “hold the suite without cost” and the landlord refused. The male tenant had his own apartment until March 2019. The landlord received half a month’s rent of \$700.00 from the tenants, as per the parties’ written tenancy agreement, for the tenants to move their belongings into the rental unit in mid-February 2019. The tenants are not entitled to a refund for this amount because they were holding and occupying the suite with their belongings even if they did not live there until March 1, 2019. The tenants lived at the rental unit for two years and four months. After the tenants signed the first tenancy agreement which lasted one year, the tenants requested a second tenancy agreement for an additional year and then stayed an extra four months after that. If the condition of the rental unit was “unfit” for the tenants, as they claimed, they could have moved out, but they requested a second tenancy agreement and stayed an extra four months after that.

The landlord’s agent stated the following facts. The landlord responded to the tenant’s repair issues within 48 hours, during this tenancy. Although there were language barriers with the landlord, as claimed by the tenants, there were three other people who assisted the landlord during this tenancy: the landlord’s agent, the landlord’s agent’s husband, and the landlord’s agent’s daughter. The landlord provided written

correspondence between the tenants and the landlord's above three representatives, during this tenancy. The landlord never asked the tenants to move out of the rental unit. The tenants claimed that they were under "stress" and "forced to move out" by the landlord because the landlord returned two of the tenants' rent cheques. The landlord returned the two cheques because they did not have the landlord's first full name on it, only her first initial. The tenants chose to move out and the landlord does not agree to pay for their moving expenses. It is not possible that the tenants did not have any heat or electricity during the entire tenancy, as they claimed, because the tenants remained there for two years and four months total.

Analysis

Credibility

I found the landlord's agent to be a more credible witness than the two tenants. The landlord's agent provided her testimony in a calm, candid, straightforward and consistent manner. She answered my questions directly and she did not argue with or interrupt me or the tenants, while we were speaking. Her testimony was consistent and did not change throughout this hearing. The landlord's agent admitted if facts were unfavourable to the landlord, such as when the landlord returned the tenants' two rent cheques and that the rental unit was not re-rented until January 1, 2022, due to the landlord's family health issues.

Conversely, the tenant provided her testimony in an upset, confusing, and inconsistent manner. Her testimony frequently changed throughout this hearing. She did not answer all of my questions directly, she became upset and argued when I asked her questions, and she frequently interrupted me, while I was speaking. I cautioned the tenant repeatedly about the above behaviour, during this hearing. The male tenant provided testimony that directly contradicted the tenant's testimony during this hearing. I repeatedly informed both tenants that their testimony was confusing and contradictory, throughout this hearing.

Landlord's Application

I award the landlord \$700.00 for rent from August 1 to 15, 2021, and \$306.91 for utilities until August 15, 2021. Both tenants agreed to pay the above amounts during this hearing.

Subsection 45(1) of the *Act* sets out how tenants may end a periodic tenancy:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) 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.

It is undisputed that this tenancy was a month-to-month tenancy, at the time that the tenants moved out. It is undisputed that the tenants vacated the rental unit on August 15, 2021. I accept the landlord's evidence that the tenants provided notice on July 29, 2021 to move out, as the tenant agreed that it was at the end of July, but she could not recall the exact date. I find that the tenants did not provide one months' notice to the landlord before moving out. As such, the landlord may be entitled to compensation for losses they incurred as a result of the tenants' failure to comply with the *Act*.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate a landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I find that the landlord failed to provide sufficient documentary evidence including copies of rent advertisements, to show how many advertisements were posted, when they advertised the unit for re-rental, what details were given in the advertisement, or how long the unit was advertised for. I find that the landlord failed to provide sufficient documentary evidence to indicate how many inquiries were made for re-rental, how many showings were done, and when they were done. I find that the landlord failed to provide a copy of the new tenancy agreement signed with the new tenant, showing when their tenancy began, how long the tenancy was for, and how much rent they were paying.

Further, the landlord did not indicate if or when any advertisements were posted for re-rental, if or when any inquiries were made, or if or when any applications were received from prospective tenants. The landlord did not state the length of the new tenancy or the rent payable under that new tenancy. The landlord did not reference many of their documents provided for this hearing.

The landlord had ample time of over six months, from filing this application on August 11, 2021, to this hearing date of February 25, 2022, to provide the above evidence but failed to do so.

I find that the landlord provided insufficient evidence to show that they were unable to re-rent the unit to a new tenant until January 1, 2022. The landlord indicated that due to her own family health issues, she was unable to find a new tenant to rent the unit until January 1, 2022, which is approximately 4.5 months after the tenants moved out on August 15, 2021. I find that the landlord failed to mitigate their losses and the landlord's health issues are out of the control of the tenants.

On a balance of probabilities and for the reasons stated above, I dismiss the landlord's application for half a month's rent loss of \$700.00 for the period from August 16 to 31, 2021, without leave to reapply.

As the landlord was only partially successful in her application, based only on what the tenants agreed to pay during this hearing, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenants.

The landlord continues to hold the tenants' security deposit of \$700.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' entire security deposit of \$700.00, in partial satisfaction of the monetary award.

I issue a monetary order for \$306.91 to the landlord against the tenants, for the balance due for utilities.

Tenants' Application

The following RTB *Rules* 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 the tenants did not properly present their evidence, as required by Rule 7.4 of the RTB *Rules*, despite having the opportunity to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*. During this hearing, the tenants failed to properly go through their claims and the documents they submitted.

This hearing lasted 93 minutes, so the tenants had ample opportunity to present their application, and they spoke for the majority of the hearing time. I repeatedly asked the tenants if they had any other information to add and if they wanted to respond to the landlord's submissions. I repeatedly asked the tenants about their claims, amounts, and evidence. I found the tenants' testimony to be confusing because they often contradicted each other and changed their testimony frequently during this hearing, as noted above.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenants 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 landlord 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 tenants 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 dismiss the tenant's entire application for \$7,763.09, without leave to reapply.

The tenants did not go through many of their documents submitted for this hearing and only referenced the documents that I specifically asked about during this hearing. They did not provide sufficient details or dates, or point me to specific documents, provisions, pages, or other such information, to support their application.

I find that the tenants are not entitled to a return of their half month rent payment of \$700.00 for the period from February 15 to 28, 2019. I find that the tenants agreed to pay this amount to the landlord for moving their belongings into the rental unit. Although the tenants may not have lived at the rental unit during this time, they had the option but chose not to do so. I find that the tenants were occupying the rental unit with their belongings and the landlord could not use the rental unit or rent it out to other tenants during this time. I find that the tenants failed to take action within a reasonable time for this claim that arose at the beginning of their tenancy. I find that the tenants' express actions show that they asked the landlord to hold the unit and store some of their belongings there without paying any costs, but the landlord refused and asked for the rent payment, which the tenants paid. I find that the tenants could have refused to move into the rental unit or refused to pay, if they disagreed with the cost. I also find that both tenants signed the parties' written tenancy agreement, which expressly states that the tenancy began on February 15, 2019 with rent of \$1,400.00 payable on the first day of each month. If the tenants disagreed with the tenancy start date, they could have refused to sign the tenancy agreement and refused to move into the rental unit, but they did not do either of the above.

I find that the tenants failed to provide sufficient documentary evidence in the form of invoices, receipts, estimates, or quotes to support their monetary claim of \$2,863.09 for moving expenses. The tenants provided a handwritten document where they have added up their own costs but have not provided receipts or invoices for all of the costs. The tenants did not explain or review this document during this hearing. They only referenced this document when I specifically asked about it. The tenants provided a blurry photograph of an invoice in the amount of \$135.45 for storage costs issued on September 1, 2021, where payment was made on August 31, 2021. This is after the tenants vacated the rental unit on August 15, 2021. Neither the names of the tenants, nor the rental unit address, are visible on the document. The photograph screenshot of the bank statement provided by the tenants does not indicate the account holder's name or who made the purchases for \$10.53 and \$395.97 on August 13, 2021. The tenants provided a mail forwarding invoice for \$91.14, but they have redacted most of the information from the document with a black marker and their payment receipt is not visible. I find that the tenants did not provide sufficient documentary or testimonial evidence regarding their moving expenses, such as the types, costs, dates, length, details, or other such information.

The tenants claimed that their emotional damages "could be determined by the Arbitrator," but they included this claim with their moving expenses amount of \$2,863.09, as per their amended monetary order worksheet. I informed the tenants

about this repeatedly during this hearing. I find that the tenants failed to provide sufficient documentary evidence in the form of medical records or other such documentation to show that they suffered “emotional damages” or “emotional suffering,” as a result of the landlord. I find that the tenants did not provide sufficient documentary or testimonial evidence regarding their emotional damages or suffering, such as the types, dates, length, details, whether they saw any medical professionals, whether they were diagnosed with any medical conditions, or other such information. The tenants did not provide wage loss records, missed job opportunity records, hospital records, or other such information to support their claim, as indicated in their written evidence. I find that the tenants are not entitled to any damages for emotional suffering.

I find that the tenants chose to move out of the rental unit voluntarily, on their own accord, so they are not entitled to moving expenses from the landlord. It is undisputed that the tenants were not served a notice to end tenancy by the landlord, requiring them to vacate the rental unit. It is undisputed that the tenants did not vacate the rental unit, due to a fixed term end date in a written tenancy agreement. Therefore, I find that the landlord did not request or force the tenants to vacate the rental unit. The landlord's agent denied any such request or coercion, whether verbally or written. I find that the landlord's return of the tenants' two rent cheques because it they did not contain the landlord's full legal first name, does not constitute a request or coercion to move from the rental unit.

I find that the tenants failed to reference any monetary breakdown or documents, regarding gas or hydro utilities, during this hearing, to support their claim for \$4,200.00. I find that they did not provide sufficient details, including dates, length, type, cost, or other such information. The tenants claimed that they wanted a refund of all utilities they paid during their tenancy. I find that the tenants paid for their gas and hydro utilities because they were using them throughout their tenancy. The tenants even agreed at this hearing, by way of their testimony, to pay for additional gas and hydro utilities of \$306.91 to the landlord, for the remainder of their tenancy ending on August 15, 2021, while they were residing at the rental unit. I find that the tenants would not have continued to pay for utilities to the landlord, if they had no service or intermittent service. I find that the tenants' express conduct of continuing to pay for utilities throughout their tenancy, to show that they were receiving proper gas and hydro services. I find that the tenants failed to provide sufficient evidence to show if or when they notified the landlord about problems with their utilities, that they did not want to pay for utilities, that they wanted reduced utility payments, or that they wanted all of their money back for utilities. I find that this claim arose over five months after the tenants moved out and the landlord filed a monetary application against the tenants first.

I find that this tenancy was approximately 2.5 years in length, from February 15, 2019 to August 15, 2021. During this hearing, the tenants did not dispute the landlord's submission that the tenants signed two tenancy agreements for one year each, and stayed longer than both years, requesting a new tenancy agreement after the first year of tenancy. The tenants filed their application on January 14, 2022, approximately five months after they vacated the rental unit on August 15, 2021, and after receiving the landlord's application for monetary compensation. I find that the tenants failed to take action within a reasonable time for damages they claimed occurred during and immediately after their tenancy. I find that the tenants' express actions show that they wanted to occupy the rental unit for over two years, of their own accord. I find that the tenants would not have done so if they were suffering emotional damages or if they did not have usage of any gas or hydro utilities for their entire tenancy.

Conclusion

I order the landlord to retain the tenants' entire security deposit of \$700.00, in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$306.91 against the tenant(s). Should the tenant(s) 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 tenants' 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: February 28, 2022

Residential Tenancy Branch