



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL, MNDL-S, FFL

Introduction

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

- a monetary order for compensation for unpaid rent, utilities, money owed, or monetary 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.

The tenant confirmed receipt of the landlords' application ('Application'). In accordance with section 89 of the *Act*, I find that the tenant duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed with the hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as requested for losses or money owed?

Is the landlord entitled to recover the filing fee for this application from the tenant?

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 fixed term tenancy originally began on April 1, 2020, and continued on a month-to-month basis after March 31, 2021. The tenancy ended on August 1, 2021. Monthly rent was set at \$2,200.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$1,100.00, which the landlord still holds.

The landlord submitted the following monetary claims:

Item	Amount
Loss of August 2021 due to less than 30 day's notice	\$2,200.00
Unpaid utilities -April 2020 to June 24, 2021	1,613.51
Unpaid utilities- June 25, 2021 to August 1, 2021	130.74
Painting & cleaning invoice	1,550.00
Invoice for rubbish removal	150.00
Light Bulbs (receipt provided)	49.25
Total Monetary Order Requested	\$5,693.50

The landlord testified that that the tenant gave notice on July 6, 2021 that they would be moving out on August 1, 2021. The landlord testified that they were unable to fill the vacancy for August 2021 as the home was eventually sold. The landlord testified that they had not served the tenant with a 2 Month Notice to End Tenancy, and the tenant had decided to move out. The tenant does not dispute that this was the case, but testified that they did not have a choice as the landlord was selling the home, and due to the lack of availability of housing, the tenant was concerned about finding a new place to live, and having the funds to do so. The tenant testified that they required the security deposit to secure new place, and was concerned about the uncertainty of staying once the home was sold. The tenant also testified that they were subject to multiple showings of the home. The tenant testified that they could not afford to pay rent for two places, and does not dispute that that they did not pay any rent for August 2021.

The landlord is also seeking a monetary order for unpaid utilities which the landlord testified was \$150.00 per month plus an adjustment every 12 months, or upon termination of the tenancy. The landlord submitted a copy of the tenancy agreement with included an addendum with additional terms which stated the following under #4.

Utilities: "The Tenant is responsible for the heat and electricity costs of the rental unit which is 65% of the whole house bill. The tenant shall pay \$150 per month. This amount will be adjusted based on the actual cost every 12 months or one month before the termination of the tenancy whichever comes first.". The tenant does not dispute that they had receive this addendum, but feels that the landlord had extinguished their right to collect the additional payment above the \$150.00 per month that was paid by the tenant. The tenant testified that the landlord failed to notify the tenant of any arrears or amounts owed, or adjustments until six days before moving out, 16 months into the tenancy. The tenant testified that they do not have the means to pay such a large lump sum, and was under the assumption that the landlord would have provided an adjustment at the 12 month mark, but did not.

The landlord is also requesting a monetary order for the tenant's failure to leave the home in reasonably clean and undamaged condition, and for failing to replace burnt out lightbulbs. The landlord submitted invoices for these items. The landlord testified that the tenant failed to attend the move-out inspection despite the fact that both parties had agreed on a time and date. The landlord testified that the home was last repainted by the previous owner in 2016, and portions were re-painted in March of 2020. The landlord called a witness in the hearing, RH, who performs maintenance for the landlord. RH testified that there were numerous holes in the wall, many of which were patched and sanded, but not painted. RH testified that painting was necessary due to the number of holes and patches. The landlord testified that these holes were from the shelving that the tenant had installed, and removed.

The tenant does not dispute that they had failed to attend the move-out inspection as agreed to, stating that due to the nature of the tenant's on-call job, they were unable to attend. The tenant disputes that the home was freshly painted upon move-in, and testified that they had paid a professional cleaning to attend and clean one hour every Friday.

The tenant testified that they had hung shelving due to the limited storage, which they tenant had removed as they were on a fixed-income, and needed the shelving for their new place. The tenant testified that they had sanded and patched the holes, but did not paint.

The tenant does not dispute that they had left some items behind as they had run out of time, and were moving with multiple kids. The tenant also does not dispute that they did not replace all the lightbulbs as they felt many had died at the beginning of the tenancy.

Analysis

Sections 44 and 45 of the *Residential Tenancy Act* states the following about how a tenancy may end:

How a tenancy ends

- 44** (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];
 - (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
 - (ii) section 46 [*landlord's notice: non-payment of rent*];
 - (iii) section 47 [*landlord's notice: cause*];
 - (iv) section 48 [*landlord's notice: end of employment*];
 - (v) section 49 [*landlord's notice: landlord's use of property*];
 - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
 - (vii) section 50 [*tenant may end tenancy early*];
 - (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
 - (c) the landlord and tenant agree in writing to end the tenancy;
 - (d) the tenant vacates or abandons the rental unit;
 - (e) the tenancy agreement is frustrated;
 - (f) the director orders that the tenancy is ended;
 - (g) the tenancy agreement is a sublease agreement.
- (2) [Repealed 2003-81-37.]
- (3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Tenant's notice

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.

(2)A tenant may end a fixed term 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,

(b)is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c)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.

(3)If a landlord has failed to comply with a material term of the tenancy agreement and 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.

(4)A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

I find that the tenant did not end this tenancy in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor was the tenant served with a 2 Month Notice to End Tenancy for Landlord's Use under section 49 of the *Act*. Although I sympathize with the tenant as to why they ended the tenancy in the manner they did, the tenant still clearly ended the tenancy in a manner that contravenes section 44 and 45 of the *Act*. I must now determine whether the landlord had mitigated their losses as required by section 7(2) of the *Act*.

Residential Tenancy Policy Guideline #5 addresses a landlord's duty to minimize loss and states the following:

Loss of Rental Income

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
2. re-rent the unit as soon as possible.

Although the landlord testified about the difficulty of re-renting a home for August 2021 when the home was already sold, I am not satisfied that the landlord had provided sufficient evidence to support their efforts or attempts to do so. The onus is on the claimant to support that they took reasonable steps to mitigate the losses claimed, which in this case I find was not satisfied by the landlord. Accordingly, I dismiss the landlord's monetary claim for loss of rent for the entire month of August 2021. As the tenant failed to move out by July 31, 2021, and did not pay any rent for August 1, 2021, I allow the landlord a monetary claim for the one day in the amount of $(\$2,200.00/31)$ \$70.97.

I have considered the landlord's claims for utilities. I find that the tenancy agreement clearly states that the amount would be adjusted to reflect the actual amount owing every 12 months, or one month before the termination of the tenancy whichever comes first. In this case, the landlord waited 16 months, which the tenant argued was past the 12 month period, which waived the tenant's obligations to pay any additional amount over the \$150.00 per month paid. I find that the legal principle of estoppel may apply in this case. Estoppel is a legal doctrine that holds that one party must be strictly prevented from enforcing a legal right to the detriment of the other party if the first party has established a pattern of failing to enforce this right, and the second party has relied on that conduct and has acted accordingly. To return to strict enforcement of their right, the first party must give the second party notice (in writing) that they are changing their conduct, and are now going to strictly enforce the right previously waived or not enforced.

In consideration of the evidence and testimony before me, although the landlord was 4 months late in requesting the outstanding utility adjustment, I do not find that the legal principle of estoppel applies in this case. I find that the tenancy agreement clearly stated that the landlord would adjust the amount every 12 months, or a month before termination, whichever came first. Although the landlord was late 4 months before making this adjustment and request, I am not satisfied that this constituted a "pattern of failing to enforce this right". I find that the landlord had missed the first 12 month interval by only 4 months, and I do not find that missing this first lump sum adjustment extinguished the landlord's right to collect this amount. Although I understand the hardship the tenant expressed in having to make a lump sum payment of the

adjustment, I find that both parties had already understood that a lump sum payment would be made every 12 months. I do not find that 4 additional months would have changed the fact the tenant was aware that an adjustment would be made to reflect the actual amount owing, which in this case is 65% of the total utility bill. Accordingly, I find that the landlord is entitled to a monetary order for the outstanding utilities.

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.

Residential Tenancy Policy Guideline #1 states the following about the tenant's responsible for replacement of lightbulbs:

LIGHT BULBS AND FUSES

1. The landlord is responsible for:
 - making sure all light bulbs and fuses are working when the tenant moves in.
 - replacing light bulbs in hallways and other common areas like laundry and recreational rooms; and
 - repairing light fixtures in hallways and other common areas like laundry and recreational rooms.
2. The tenant is responsible for:
 - Replacing light bulbs in his or her premises during the tenancy,
 - Replacing standard fuses in their unit (e.g. stove), unless caused by a problem with the stove or electrical system, and
 - Making sure all fuses are working when he or she moves out, except when there is a problem with the electrical system.

I am satisfied that the tenant failed to replace lightbulbs during this tenancy, and accordingly, I allow the landlord's monetary claim for the replacement of these lightbulbs.

I am also satisfied that the tenant did not dispute that they failed to remove all of their belongings, which caused the landlord a monetary loss. Accordingly, I allow the landlord's monetary claim for removal of these items.

The tenant does not dispute that they had installed shelving, and then removed them, causing some holes to the walls, which required patching. The tenant testified that they had patched and sanded these walls, but did not re-paint.

Residential Tenancy Policy Guideline #1 states the following:

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

In this case, I find that the tenant had clearly attached items to the wall, which caused damage when they were removed. Although the tenant did make efforts to repair this damage, I find that the tenant failed to complete the repairs by re-painting the wall. I find that this is clearly shown by the photo submitted in evidence. I find that the landlord had no choice but to repaint the wall due to these patches, and accordingly, I allow the landlord's monetary claims for the repairs and painting.

Lastly, the landlord filed a monetary claim for cleaning. Although the tenant testified to having paid for regular professional cleaning of the rental unit, I find that the landlord had provided sufficient evidence in the form of photos, a move-in and move-out inspection report, and an invoice to show that the tenant failed to leave the rental unit in reasonably clean condition, as required by the Act. Accordingly, I also allow this portion of the landlord's monetary claim.

As the landlord's application had merit, I allow the landlord to recover the filing fee for this application.

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

Conclusion

I issue a \$2,564.47 Monetary Order in favour of the landlord as set out in the table below.

Item	Amount
Overholding—August 2022 rent	\$70.97
Unpaid utilities -April 2020 to June 24,	1,613.51

2021	
Unpaid utilities- June 25, 2021 to August 1, 2021	130.74
Painting & cleaning invoice	1,550.00
Invoice for rubbish removal	150.00
Light Bulbs (receipt provided)	49.25
Filing Fee	100.00
Less Security Deposit Held	-1,100.00
Total Monetary Order	\$2,564.47

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.

The remainder of the 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: March 22, 2022

Residential Tenancy Branch