



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding John Howard Society of the Thompson
Region and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Tenant: LRE, OLC, CNL-4M, MNDCT, OLC
Landlord: MNDCL-S, FFL

Introduction

This was a cross application hearing that dealt with two tenant applications pursuant to the *Residential Tenancy Act* (the *Act*). The first application for dispute resolution filed on January 13, 2022 is for:

- an Order to restrict or suspend the landlord's right to enter, pursuant to section 70; and
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62.

The second application for dispute resolution, also filed on January 13, 2022 is for:

- cancellation of the Four Month Notice to End Tenancy, pursuant to section 49;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62.

This hearing also dealt with the landlord's application for dispute resolution filed on January 24, 2022, pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The tenant and the property manager attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The property manager called the housing and tenant relations manager and

the maintenance manager as witnesses. The housing and tenant relations manager and the maintenance manager affirmed to tell the truth.

Both parties confirmed their email addresses for service of this decision and order.

Preliminary Issue- Service

The tenant testified that he personally served the landlord at the landlord's office with both tenant applications for dispute resolution within three days of the Residential Tenancy Branch supplying the dispute resolution materials to the tenant. The property manager testified that the landlord received the above documents from the tenant on or around that time. I find that the landlord was served with the tenant's applications for dispute resolution in accordance with section 89 of the *Act*.

The tenant testified that the only evidence he served on the landlord was a one-page word document which he personally served on the landlord two weeks ago. No proof of service documents were entered into evidence. The property manager testified that no evidence was received from the tenant. The tenant submitted 34 documents to the Residential Tenancy Branch for consideration. I find that the tenant has not proved, on a balance of probabilities, that any evidence was served on the landlord as no proof of service documents were entered into evidence. The tenant's evidence is therefore excluded from consideration.

The property manager testified that the tenant was served at the address for service provided verbally by the tenant over the phone on January 22, 2022. The tenant testified that he provided the landlord with his forwarding address verbally on January 22, 2022. The property manager testified to the forwarding address provided by the tenant on January 22, 2022. The above address was not disputed by the tenant.

The property manager testified that the tenant was served with the landlord's application for dispute resolution and evidence via registered mail on February 9, 2022. A Canada Post receipt stating same was entered into evidence. The tenant testified that he did not receive the landlord's application for dispute resolution. The tenant testified that the address he provided as his forwarding address is a hotel that he only stayed at for four days. The tenant testified that for the next two weeks after he moved out of the hotel he checked with them to see if any mail was received and they told him it was not. The

tenant did not update his address for service on either application for dispute resolution. The tenant testified that he is currently residing in a homeless shelter.

If the address for service of a party changes, the party is required to file an amendment to provide an updated address for service and to serve the opposing party with a copy of the amendment. I find that the landlord was entitled to rely on the address for service provided verbally by the tenant because an updated address for service was not provided by the tenant when he moved out of the hotel and the tenant did not amend his applications to update his forwarding address. I find that the tenant was deemed served with the landlord's application for dispute resolution and evidence on February 14, 2022, five days after the documents' registered mailing, in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue- Claims No Longer Applicable

Both parties agree that the tenant was removed from the subject rental property by bailiffs on January 17, 2022, pursuant to an Order of Possession granted by the Residential Tenancy Branch in a previous application between the parties. The previous application pertained to a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of the subject rental property (the "Four Month Notice"). The file number for the previous decision is located on the cover page of this decision.

As this tenancy has already ended, the tenant's claims for

- an Order to restrict or suspend the landlord's right to enter, pursuant to section 70; and
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62,

are no longer live issues. The above claims are therefore dismissed without leave to reapply.

I find that tenant's application to cancel the Four Month Notice is res judicata as this matter was decided in a previous hearing.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in February of 2017 and the tenant moved out on January 17, 2022. The subject rental property is subsidized, and the tenant's portion of monthly rent is \$375.00 which was paid by the Ministry. The tenant paid a security deposit of \$500.00 which the landlord has retained. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant testified that the landlord did not complete a move in condition inspection report with him at the start of the tenancy. The property manager testified that a move in condition inspection report was completed but there is no record of it in the file. The landlord testified that a move out condition inspection of the subject rental property was not completed because the tenant was not compliant with the bailiff and the police were called and it took over 1.5 hours to get the tenant out.

The tenant testified that pursuant to the Four Month Notice, the landlord was required to give him one month's rent, which the landlord did not do. The property manager testified that January 2022's rent was returned to the Ministry and not the tenant because the Ministry paid for it. The landlord entered into evidence a rent refund receipt in the amount of \$375.00 for January 2022's rent.

The tenant testified that because a move in condition inspection did not take place, the landlord is required to return his security deposit.

Both parties agree that the landlord served the tenant with the previous Decision and Order of Possession and that the tenant then filed for Review Consideration on January 11, 2022. The tenant's application for Review Consideration was dismissed and the previous Decision was upheld in a Review Consideration decision dated January 11, 2022. The tenant testified that around that time he received the Review Consideration Decision from the Residential Tenancy Branch. The property manager testified that she personally handed the tenant a copy of the Review Consideration Decision on January 12, 2022, this was not disputed by the tenant.

The tenant testified that he didn't move out after he received the Review Consideration decision because he thought he had until the end of January 2022 to move out because the original Four Month Notice was effective at the end of a month, not part way through the month.

The property manager testified that because the tenant did not move out in accordance with the Order of Possession served on him, the landlord had to hire a bailiff to remove the tenant. The property manager entered into evidence an invoice from bailiff for the January 17, 2022 eviction totalling \$3,099.99. The property manager testified that the landlord is seeking to recover the above loss from the tenant.

The property manager testified that the bailiffs brought movers with them and that shortly after they arrived the bailiffs informed the landlords that they had to pull the movers out of the subject rental property because the subject rental property and its contents were contaminated with human feces, drugs and needles. The property manager testified that the landlord had to hire bio hazard cleaners to decontaminate the subject rental property and dispose of the contaminated items in the subject rental property.

The landlord entered into evidence an invoice from a bio-hazard cleaning company in the amount of \$2,967.67. The invoices states in part:

- Dispose of tenant contents
 - To package and dispose of tenant contents with potential sharps and drug hazard
- HEPA Vacuuming
 - To HEPA vacuum the entire unit

- Wet Clean
 - NOTE: Due to finish on the ceiling, feces clean up on ceiling may leave residual staining.
- Anti-Microbial Treatment
 - To apply an anti-microbial solution
 - NOTE: This is a liquid solution that requires dwell time in order to effectively address the contamination. Surfaces will be wet.
- Haul Debris including dump fees
 - To package, handle, transport and dispose of the hazardous waste.
- NOTES
 - This quote is for the safe removal, packaging, transportation and disposal of hazardous waste and the clean up of the entire unit for potential drug contamination. The intent of this quote is to make the unit safe for contractors to come in and do renovations. This includes:
 - Disposal of all contents from the unit including contents found in cabinets
 - Three step cleaning of unit for sharps and potential drugs

The housing and tenant relations manager testified that the bailiff asked her to come into the subject rental property on January 17, 2022 and showed her needles, pipes, white powder and human feces in the subject rental property. The housing and tenant relations manager testified that she took some photographs of the subject rental property before she left. The photographs were entered into evidence and show:

- kitchen counters piled high with personal possessions, garbage and recycling,
- kitchen counters with white residue, and the kitchen sink piled high with dirty dishes,
- brown marks on bedroom ceiling,
- heaps of clothing piled high in the closet,
- Bare mattress with unknown items scattered across it,
- Living room with floor covered in garbage, possessions and debris, and
- Bathroom showing the bathtub used for storage.

The property manager testified that the bailiff speculated that the white powder seen was crystal methamphetamine.

The housing and tenant relations manager testified that it was difficult to see in the unit because it was full of clothing and furniture and the materials made it difficult to walk into the bedroom.

The maintenance manager testified that on January 17, 2022 he attended at the subject rental property and witnessed:

- tons of clothing on the floor, so much that he could barely make his way through the unit,
- the bed was filled with clothes and various items he did not feel comfortable talking about, but included fecal residue on items,
- the bed had a sex contraption with spots of feces on it, the bed, ceiling and floor,
- closet full of clothes, baseball gear and tools,
- bathtub full from the bottom to the top with furniture,
- storage room full of broken air conditioners- a mess,
- under cabinets were old onions and rags,
- the unit was in horrible condition

The tenant testified that:

- he doesn't use needles and is clean,
- he has a narcan kit in case someone else in the building overdoses,
- the marks on the ceiling are not feces,
- the white powder was not drugs,
- his kids come over every weekend,
- the sex toy on the bed is his girlfriend's vibrator which he modified.

Analysis

Tenant's Application

Based on the testimony of both parties I find that the landlord served the tenant with the Four Month Notice in 2021, pursuant to section 49 of the *Act*.

Section 51(1) of the *Act* sets out the compensation owed to a tenant if a section 49 Notice to End Tenancy was served on the tenant. Section 51(1) of the *Act* states:

51 (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

I find that pursuant to section 51(1) of the *Act*, the tenant was entitled to receive one month's rent in the amount of \$375.00, from the landlord. The property manager testified that January 2022's rent was returned to the Ministry who paid it. I accept the property manager's above testimony as evidenced by the refund receipt in evidence; however, I find that this rent refund does not comply with section 51(1) of the *Act*. Section 51(1) of the *Act* states that the tenant is entitled to receive the equivalent of one month's rent from the landlord. I find that in returning the January 2022 rent money to the Ministry, the tenant did not receive the one month's free rent, which is meant to compensate the tenant for moving out and expenses associated with that move. I find that while the landlord acted in good faith, the landlord did not comply with section 51(1) of the *Act* and owes the tenant \$375.00 pursuant to section 51(1) of the *Act*.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 24(2) of the *Act* states that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not offer the tenant two opportunities to complete the condition inspection. Pursuant to section 17 of the *Residential Tenancy Act Regulations* (the "Regulations"), the second opportunity must be in writing.

The property manager testified that a move out condition inspection report was completed with the tenant; however, no copy was in the tenant's file and the landlord did not provide evidence of requests, in writing, for the completion of the move in condition inspection report. The tenant testified that the landlord did not complete a move in condition inspection report with him. Responsibility for completing the move out inspection report rests with the landlord. I find, on a balance of probabilities, that a move in condition inspection report was not completed because the landlord has supplied no evidence to support the property manager's testimony that it was completed, and the tenant asserts the opposite.

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-in condition inspection report, I find that the landlord's eligibility to claim

against the security deposit and pet damage deposit for damage arising out of the tenancy is extinguished, in accordance with section 24(2) of the *Act*.

Security Deposit Doubling Provision

I find that the landlord was sufficiently served, for the purposes of this *Act*, with the tenant's forwarding address on January 22, 2022 because both parties confirmed that the tenant's forwarding address was given and received on that date.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

Section C(3) of Policy Guideline 17 states that unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the *Act*.

In this case, while the landlord made an application to retain the tenant's security deposit within 15 days of receiving the tenant's forwarding address, the landlord is not entitled to claim against it due to the extinguishment provisions in section 24 of the *Act*. Therefore, the tenant is entitled to receive double their security deposit in the amount of \$1,000.00.

Landlord's Application

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that the tenant was served with the previous decision and order of possession between January 7, 2022 (the date of the previous decision) and January 11, 2022 (the date the tenant applied for Review Consideration) because the tenant confirmed receipt of the previous decision and Order of Possession from the landlord and could not have filed for Review Consideration if the original decision was not received. I accept the property manager's undisputed testimony that the Review Consideration Decision was personally served on the tenant on January 12, 2021 and that the tenant refused to move out.

The tenant testified that he thought he had until the end of January 2022 to leave the subject rental property but this was not the case. The Review Consideration Decision upheld the previous decision, including the two-day Order of Possession issued by the Residential Tenancy Branch on January 7, 2022. The Order of Possession very clearly stated that the tenant had two days to move out. I find that the tenant failed to move out until bailiff's forced him out, five days after receipt of the Review Consideration Decision.

I find that the tenant's failure to comply with the Order of Possession issued pursuant to section 55 of the *Act*, resulted in the necessity of the landlord to hire a bailiff to remove him. I find that the landlord has proved the value of this loss by providing the bailiff invoice in the amount of \$3,099.99. I find that the landlord acted reasonably in hiring a bailiff to enforce the Order of Possession granted by the Residential Tenancy Branch. Pursuant to section 67 of the *Act*, I award the landlord the cost of the bailiff fees totalling \$3,099.99.

The property manager testified that the landlord had to hire a biohazard cleaning company to clean the subject rental property because the movers brought by the bailiff would not move the tenant's possessions due to the drug and feces contamination in the unit. The tenant testified that he was clean, did not do drugs and that his unit did not have fecal contamination.

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the firsthand testimony of the maintenance manager, housing and tenant relations manager, the photos entered into evidence and the notations on the bio hazard cleaning invoice, I find that the subject rental property was contaminated with fecal matter and may have been contaminated with drugs. I find that the subject rental property was in poor condition with garbage, recycling, clothes and other items piled throughout the subject rental property.

I find that it was reasonable of the landlord to hire the biohazard cleaning company to clean the subject rental property for the safety of those who entered it. I find that the tenant breached section 37(2)(a) of the *Act* by failing to leave the subject rental property clean when he vacated the unit. I find that the landlord suffered a loss in the amount of \$2,967.57 for the biohazard cleaning which was proved by the invoice entered into evidence. Pursuant to section 67 of the *Act*, I award the landlord the cost of the biohazard cleaning in the amount of \$2,967.57.

As the landlord was successful in their application for dispute resolution, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Residential Tenancy Branch Policy Guideline #17 (PG #17) states:

Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order.

Pursuant to PG 17, the tenant's monetary awards will be set off against the landlord's monetary awards.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Bailiff fees	\$3,099.99
Biohazard cleaning fees	\$2,967.57
Filing fee	\$100.00
Less one month's rent	-\$375.00
Less doubled security deposit	-\$1000.00
TOTAL	\$4,792.56

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: April 12, 2022

Residential Tenancy Branch