Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNRL, FFL
For the tenant: MNDCT, MNSD, FFT

Introduction

This hearing dealt with a cross application. The landlord's application pursuant to the Residential Tenancy Act (the Act) is for:

- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee, under section 72.

The tenant's application pursuant to the Act is for:

- an order for the landlord to return the pet damage deposit (the pet deposit), pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee, under section 72.

The hearing on February 25 was adjourned and reconvened on March 31, 2022. This decision should be read in conjunction with the interim decision arising out of the February 25, 2022 hearing.

Both parties attended both hearings. Landlord JW was represented by advocate KR (the landlord). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearings the attending parties affirmed they understand it is prohibited to record the hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000."

Preliminary Issue – Service of the landlord's application

The tenant confirmed receipt of the landlord's application and evidence (the landlord's materials). The landlord confirmed receipt of the tenant's response evidence.

Based on the testimonies offered by both parties, I find the landlord served the landlord's materials and the tenant served the response evidence in accordance with section 89(1) of the Act.

Preliminary Issue – Tenant's application

The notice of hearing dated March 01, 2022 indicates the tenant is PT and the landlord is JW.

The landlord confirmed receipt of the March 01, 2022 notice of hearing and the evidence (the tenant's materials).

Based on the testimonies offered, I find the tenant served the tenant's materials in accordance with section 89(1) of the Act.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. an authorization to recover the filing fee?

Is the tenant entitled to:

1. an order for the landlord to return the pet deposit?
2. a monetary order for loss?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the landlord's and tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the applicants' obligation to present the evidence to substantiate their application.

Both parties agreed they entered into a fixed-term tenancy from September 01, 2019 to June 30, 2020. Monthly rent of $2,200.00 was due on the first day of the month. At the outset of the tenancy a security deposit of $2,200.00 and a pet deposit of $500.00 were collected and the landlord holds both deposits in trust. The tenancy agreement dated August 2019 was submitted into evidence. It indicates the rental unit is the "main house".

The landlord affirmed the tenant vacated the rental unit on January 31, 2020. The tenant stated he vacated the rental unit on January 15, 2020.

The tenant submitted a text message sent to a neighbour on January 13, 2020: "We may be back a couple of times if we missed anything but I'll let you know! We are paid until the end of January."

The tenant authorized the landlord to retain the security deposit. The tenant did not authorize the landlord to retain the pet deposit.

The landlord confirmed receipt of the tenant's notice to end tenancy on November 02, 2019 (the November 02, 2019 email):

> I would like to inform you that we are ending our tenancy come this February because the agreements in our contract have been broken.
> The place is being over run with spiders, which have bitten my wife and children, and ants which crawl on us at night. They are everywhere I have attached photos. Also the place was not properly cleaned when we arrived. Your whole family walked inside and out with your shoes on all summer yet you didn't even take the time to clean the carpets before we took over tenancy or clean the bathrooms thoroughly. There was noticeable body hair and the toiler still had stool left in it […]
> **But the breach of contract and the point that is really frustrating is neither [redacted for privacy] once mentioning that the household had shared access and that someone would have keys and access my families household at any time. Nothing against MA, she's a nice person but I have been feeding my children in underwear and had her walk in on us…not once in the months leading up to us taking tenancy did you mention the fact that the laundry was shared and that the other tenant had access to our home with a key. This was only first mentioned on the first day of our tenancy […] once JW walked us around the place. It left us with no alternative which I find misleading. Even the day before tenancy when we did a walk around it wasn't mentioned…under our understanding a student lived in the back of the house and had her own self**

> **contained unit. I had many conversations and email correspondence and never once was that mentioned…even in additional details section in the agreement it isn't stated which is a breach of our agreement.**
>
> (emphasis added)

The tenant testified he served the forwarding address via email on March 05, 2020:

> Landlord: please provide your forwarding address by Friday 6th March at 4pm so that we can serve you with documentation pertaining to your contravention of the lease. Tenant: Please provide me with the tracking number for your documents…I would like to make sure we don't want anytime resolving this. IF you would require an alternate delivery address just let me know…I eagerly await this challenge.

The landlord confirmed receipt of the tenant's forwarding address in writing on January 15, 2021.

The landlord submitted his application on August 05, 2021. The tenant submitted his application on December 01, 2021.

The landlord is claiming for loss of rental income from February 01 to June 30, 2020 in the total amount of $11,000.00 ($2,200.00 per month).

The landlord said the rental unit was empty until July 2020, when the landlord occupied it. The landlord stated he tried to re-rent the rental unit but it was not possible because of the pandemic. Later the landlord testified he did not try to re-rent the rental unit.

The tenant said that someone was occupying the rental unit, as the lights were on. The tenant affirmed the landlord did not try to re-rent the rental unit.

The tenant is claiming cleaning expenses in the amount of $500.00, as the rental unit was not clean when the tenancy started. The tenant stated the rental unit was filthy, there was food in the refrigerator and on the kitchen counter, and the bathrooms were not clean. The tenant testified his wife CK cleaned the rental unit for 5 to 10 hours. The tenant submitted a $500.00 cleaning invoice issued by CK on September 01, 2019:

> Description: clean entire kitchen including all windows and counters, dust and wipe down the whole house, clean all windows. Clean bathrooms of pubic hair and urine stains and sanitize all areas. Vacuum mop whole house, remove all perishable foods from fridge and storage areas including leftovers. Sanitize.

The tenant submitted a notarized letter signed by CK dated November 12, 2021:

> I was a professional cleaner by trade which can be confirmed by CRA tax filings. I would have invoices at least $750 for a 3-bedroom full house move out clean in that state that [rental unit's address] was left in.

The landlord said the rental unit was not dirty when the tenancy started. The landlord authorized the tenant to deduct $200.00 from the rent payment on September 12, 2019 for cleaning expenses, but the tenant did not deduct any amount from the rent payments.

Both parties agreed the rental unit was a 2,500 to 3,000 square feet 3-bedroom house.

The tenant is claiming compensation for an overdraft fee in the amount of $48.00. The tenant emailed the landlord on December 07, 2019:

> Please do not try to deposit January's Rent check I have issued a stop payment at my bank. The funds will not clear and you will be change an NSF fee.
> The check has been canceled because you already have a full months rent due to an overcharged deposit. Please use the full deposit for January's rent.

The tenant submitted into evidence a bank statement indicating a NSF charge in the amount of $48.00 on January 06, 2020.

The landlord affirmed he deposited the cheque for the rent of January 2020 because the tenant was occupying the rental unit.

The tenant is claiming moving costs in the amount of $2,000.00. The tenant stated the landlord did not inform that the rental unit had a tenant (MA) occupying an illegal rental suite next to the tenant's rental unit. MA shared the laundry and the utilities with the tenant, MA could enter the rental unit to use the laundry. The tenant only learned that he shared the laundry and utilities with MA after the tenancy started.

The landlord testified he informed the tenant about MA occupying the rental suite. Later the landlord said he did not inform the tenant about MA, but the tenant was aware of this situation.

The tenant submitted into evidence a document (the zoning document) indicating the rental unit is classified as a single family residential property and a handwritten letter issued by the landlord named “who’s who” stating that MA is the ‘back room renter’.

The tenant affirmed he moved out because MA caused a fire hazard in the rental unit, as MA maintained electronic equipment plugged in her rental suite when she was travelling.

The landlord stated the tenant did not complain about a possible fire hazard during the tenancy and the tenant moved out because he purchased a house.

The tenant is claiming compensation for the payment of gas bills in the amount of $602.56. The tenant testified the gas bill was under CK’s name for both the rental unit and the illegal suite. The tenant said he paid the total amount of $1,205.12 for gas from September 01, 2019 to January 15, 2020 and he supposes MA is responsible for half of this amount.

The tenant submitted an email from Fortis BC:

> Connection: September 27, 2019: $13.65
> Bill on November 16, 2019: $354.29. Payment on December 06, 2019: $367.94
> Connection on January 07, 2020: $13.65
> Bill on January 28, 2020: $406.57. Payment on February 21, 2020: $420.22
> Bill on January 15, 2020: $416.96
> Bill on February 28, 2020: $603.54

The landlord affirmed he does not know if the tenant and MA had separate gas bills and he did not explain to the tenant that the tenant and MA shared the utilities. The landlord assumed that the tenant and MA reached an agreement about the payment of the utilities, as the tenant did not report to the landlord any issues related to the payment of utilities.

The tenant is claiming compensation for loss of quiet enjoyment and harassment in the amount of $2,500.00, as the landlord harassed the tenant, the landlord did not inform that MA shared the utilities and the laundry with the tenant and there was a fire hazard in the rental unit because of MA.

The landlord stated there was no fire hazard and that the tenant had a good relationship with MA. The landlord testified the only complaint submitted by the tenant during the tenancy was regarding the cleanliness of the rental unit when the tenancy started.

The tenant emailed the landlord on January 12, 2020:

> Tenant: On another note I have emailed you many times about the cleanliness of the place when we arrived and about MA having access, spiders and bites on top of ending my tenancy months ago and not once have you even had the courtesy to even respond to me.
> Landlord: Please be advised that I am not in agreement with the early termination of your lease.
> Tenant: you did not list the apartment as a shared tenancy. MA having access to our suite is a material breach of the contract.

The tenant emailed the landlord on June 21, 2020: "… you never told me about her, I had to find out from [landlord] on our first day of tenancy and you created friction in my marriage…"

CK stated in the November 12, 2021 letter:

> We were never made aware that MA was entering our home until the first day of the tenancy September 01, 2019, by [landlord]. I am a very private person, having her enter our kitchen unannounced made the tenant and I uncomfortable and created a few arguments.

The landlord submitted into evidence a monetary order worksheet indicating a claim of $11,000.00. The tenant submitted a monetary order worksheet indicating a claim of $5,650.56.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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 the case is on the person making the claim.

Loss of rental income

Based on the landlord's more convincing testimony and the January 13, 2020 text message, I find the tenant vacated the rental unit on January 31, 2020.

Based on the tenancy agreement, I find the tenant was aware the tenancy was for a fixed term from September 01, 2019 to June 30, 2020, and the tenant ended the tenancy early on January 31, 2020, contrary to section 45(2)(b) of the Act:

> (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
> Iis 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.
>
> (emphasis added)

Based on the testimony offered by both parties, I find that due to the tenant's failure to pay rent until the end of the fixed term tenancy agreement on June 30, 2020, the landlord incurred a loss of rental income from February 01 to June 30, 2020 in the amount of $11,000.00 ($2,200.00 per month x 5 months).

Residential Tenancy Branch Policy Guideline 3 sets conditions for loss of rental income claims. It states:

> Where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement (section 7(1) of the RTA and the MHPTA). This can include the unpaid rent to the date the tenancy agreement ended and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement.

Further to that, Policy Guideline 5 provides:

> 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.
>
> For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.
>
> If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.

I find the landlord's testimony about trying to re-rent the rental unit was not convincing. I find the landlord failed to prove, on a balance of probabilities, that he tried to re-rent the rental unit after the tenant moved out.

I find the landlord did not take the mandatory steps to mitigate his damages, as the landlord did not try to re-rent the rental unit.

Thus, I dismiss the landlords' claim for compensation for loss of rental income.

Cleaning expenses

Section 32(1) of the Act states:

> A landlord must provide and maintain residential property in a state of decoration and repair that
> (a)complies with the health, safety and housing standards required by law

Residential Tenancy Branch Policy Guideline 1 states:

> The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property.
> […]
> At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.

Based on the tenant's convincing testimony, the letter signed by CK and the invoice, I find the landlord breached section 32(1) of the Act by not cleaning the rental unit when the tenancy started and the tenant incurred a loss because of the landlord's breach.

I find the tenant's testimony about the number of hours needed to clean the rental unit was vague. The invoice does not indicate for how many hours the tenant cleaned the rental unit. I find the tenant failed to prove, on a balance of probabilities, that he suffered a loss of $500.00.

Based on the landlord's testimony, I find the tenant suffered a loss of $200.00.

I award the tenant compensation of $200.00 for cleaning expenses.

Overdraft fee

Section 26 states the tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act.

The tenant vacated the rental unit on January 31, 2020, as referenced in the topic 'loss of rental income'.

Per section 26 of the Act, the tenant had to pay rent of $2,200.00 on January 01, 2020.

I find the tenant failed to prove, on a balance of probabilities, that the landlord breached the Act.

I dismiss the tenant's claim for compensation for the overdraft fee.

Moving costs

The tenant ended fixed-term tenancy early, contrary to section 45(2)(b) of the Act, as referenced in the topic 'loss of rental income'.

The tenant could have submitted an application for dispute resolution regarding the issues with tenant MA.

I find the tenant failed to prove, on a balance of probabilities, that the landlord breached the Act.

I dismiss the tenant's claim for compensation for moving costs.

Gas bills

Residential Tenancy Branch Policy Guideline 1 states:

> 1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable5 as defined in the Regulations.
> 2.If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

I find the landlord's testimony about the gas bills was not credible.

Based on the tenant's convincing testimony, I find the tenant paid the gas bills for the rental unit and for MA's rental suite.

Per Residential Tenancy Branch Policy Guideline 1, the landlord should have the gas bill shared by the two rental unit's under his name.

The Fortis BC email submitted by the tenant is confusing, as it does not indicate the gas bills are for the rental unit. Furthermore, the Fortis BC email indicates one connection fee on September 27, 2019, another connection fee on January 07, 2020 and there is one bill dated January 15 and another bill dated January 28, 2020. I also note that the tenant's testimony about the share of the bill that MA should pay was vague ("he supposes MA is responsible for half of this amount"). I find the tenant failed to prove, on a balance of probabilities, that he suffered a loss in the amount of $602.56.

As the tenant failed to prove the amount of the loss, I dismiss the tenant's claim for compensation for gas bills.

Loss of quiet enjoyment and harassment

Section 28 of the Act states:

> A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

> **(a)reasonable privacy;**
> **(b)freedom from unreasonable disturbance;**
> **(c)exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29** [landlord's right to enter rental unit restricted];
> (d)use of common areas for reasonable and lawful purposes, free from significant interference.
>
> (emphasis added)

Residential Tenancy Branch Policy Guideline 6 states:

> **A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.**
> Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.
> […]
> Compensation for Damage or Loss
> A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16**).**
>
> (emphasis added)

I find the landlord's testimony about informing the tenant that MA shared the laundry and utilities with the tenant was contradictory and not convincing.

The tenancy agreement does not mention that the tenant will share utilities or the laundry with tenant MA. The zoning document indicates the rental unit is classified as a single family property.

Based on the tenant's convincing testimony, the November 02, 2019 email not answered by the landlord, the who's who letter, the November 12, 2021 letter, the January 12, 2020 and June 21, 2020 emails, I find the landlord breached sections 28(a), (b) and (c) of the Act by not informing the tenant that he would share the laundry and

the utilities with tenant MA. I further find the tenant suffered a loss of his right of quiet enjoyment because of the landlord's non-compliance with the Act.

I accept the tenant's evidence that the interference caused by the landlord to the tenant's quiet enjoyment of the rental unit was substantial, frequent, and ongoing. The landlord did not address the specific tenant's statements in his response.

Based on the tenant's testimony, I find the tenant failed to prove, on a balance of probabilities, that the landlord harassed him and that there was a fire hazard in the rental unit.

In consideration of the quantum of damages, I refer again to Residential Tenancy Branch Policy Guideline 6:

> **In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.**
> A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.
>
> (emphasis added)

I find the tenant was able to live in the rental unit but was significantly deprived of his right to live peacefully because tenant MA was allowed by the landlord to share the laundry with the tenant and the landlord did not inform the tenant about the shared laundry and utilities.

In view of the circumstances, I find it is reasonable to award the tenant compensation in the amount of $2,000.00.

Pursuant to sections 7 and 67 of the Act and considering Residential Tenancy Branch Policy Guideline 6, I award the tenant compensation for loss of quiet enjoyment in the amount of $2,000.00.

Pet Deposit

Section 38(1) of the Act requires the landlord to either return the deposits in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

Based on the March 05, 2020 emails, I find the tenant did not serve the forwarding address on March 05, 2020.

I accepted the landlord's testimony that he received the forwarding address in writing on January 15, 2021.

The tenant authorized the landlord to retain the $2,200.00 security deposit. The landlord retained the pet deposit and submitted the application on August 05, 2021.

Residential Tenancy Branch Policy Guideline 17 states:

> Unless the tenant has 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 does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

In accordance with section 38(6)(b) of the Act, as the landlord received the forwarding address on January 15, 2021 and only submitted his application on August 05, 2021, the landlord must pay the tenant double the amount of the pet deposit.

Under these circumstances, I find the tenant is entitled to a monetary award of $1,000.00 (double the pet deposit of $500.00).

Over the period of this tenancy, no interest is payable on the landlord's retention of the pet deposit.

For the purpose of educating the landlord, I note that under section 19(1) of the Act, a landlord is not permitted to accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. The value of the security deposit accepted by the landlord was unlawful.

Filing fee and summary

The landlord must bear the cost of the filing fee, as the landlord was not successful.

As the tenant was partially successful, I find that the tenant is entitled to recover the $100.00 filing fee.

In summary:

Item	Amount $
Cleaning expenses	200.00
Loss of quiet enjoyment	2,000.00
Pet deposit	1,000.00
Filing fee	100.00
Total monetary award	**3,300.00**

Conclusion

I dismiss the landlord's claim without leave to reapply.

Pursuant to sections 38, 67 and 72 of the Act, I grant the tenant a monetary award in the amount of $3,300.00.

The tenant is provided with this order in the above terms and the landlord must be served with this order as soon as possible. Should the landlord 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 05, 2022

Residential Tenancy Branch