Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: MNDL-S, MNRL, MNDCL, FFL
For the Tenant: MNDCT, MNSD, FFT

Introduction

The Landlord filed an Application for Dispute Resolution on September 27, 2021 seeking compensation for monetary loss to them, for damage they allege was caused by the Tenant, and recovery of unpaid rent. Additionally, they are seeking reimbursement of the Application filing fee. On April 5, 2022 they amended their Application.

The Tenant filed their own Application on February 23, 2022 for the return of the security deposit, compensation for monetary loss to them, and recovery of the filing fee. With the Landlord's Application already in place, the Tenant's Application was crossed with that of the Landlord.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on April 21, 2022. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary Matter – the Landlord's Application

The Landlord presented that they sent notice of their Application to the Tenant via registered mail. The Tenant confirmed they received this document in that method, as well as via email from the Landlord.

The Landlord acknowledged they provided additional evidence to the Residential Tenancy Branch for this hearing on April 7, 2022 which is one day after that specified in the *Residential Tenancy Branch Rules of Procedure* Rule 3.14. That Rule sets out that documentary evidence that is intended to be relied upon at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing. On the cover page of their April 4, 2022 submission, the Landlord presented this "Delay in submission of evidence is secondary to illness due to Covid, evidence/physician documentation to be submitted this week upon availability from physician."

The Tenant confirmed that they received this documentary evidence from the Landlord on April 13, 2022.

I find the Landlord did not provide this evidence in accordance with the timeline set out in Rule 3.14. Rule 3.17 provides that an arbitrator may or may not consider that evidence, depending on whether the party can show to the arbitrator that it was new and relevant evidence, and that it was not available at the time their application was filed.

The updated evidence the Tenant provided to the Residential Tenancy Branch on April 7, 2022 via upload to the electronic submission system consists of the Landlord's updated monetary claim, in line with their amended Application. This adds specific monetary amounts for unpaid rent, specific information on plumbing and construction work, and the cleaning company hired for post-move-out cleaning. Also, the Landlord added estimates totalling $452.30 "Damages remaining to be complete with estimates $452.3 remaining."

I note the Landlord filed their Application initially on September 27, 2021. The Residential Tenancy Branch provided the Notice of Dispute Resolution to the Landlord on October 5, 2022 via email. This is over six months in advance of the hearing on April 21, 2022. The Landlord proffered the onset of Covid as a reason why they delayed submission of this evidence. They did not submit documentation attesting to this as they stated on the cover page of their submissions dated April 4, 2022.

I find the Landlord did not show with sufficient reasons why this evidence was not available at the time they made their Application in September. Similarly, there is not sufficient evidence to show that extenuating circumstances prevented a timelier submission of evidence. This was left until very close to the hearing date; therefore, I find this unreasonably prejudiced the Tenant in the preparation of their evidence and

their cross-Application. The Tenant did not have ample time to prepare evidence to counter that submitted by the Landlord very close to the hearing despite the six-month time gap.

For these reasons, I decline to consider the Landlord's evidence submitted in April 2022. This includes consideration of rent amounts owing, damages leading to plumbing and construction work, cleaning company costs, and estimates they provided. My consideration of the Landlord's Application and evidence provided in line with the Rules of Procedure is limited to what they submitted with their original Application.

In response to the Landlord's Application, the Tenant also submitted materials to the Residential Tenancy Branch on April 19, 2022. This is two days before the hearing date. By Rule 3.15, a Respondent's evidence must be received by the Applicant and the Residential Tenancy Branch not less than seven days before the hearing. In line with the considerations above, I give no consideration to this evidence of the Tenant, which contains one statement from witnesses prepared on April 18, 2022.

Preliminary Matter – the Tenant's Application

The Tenant provided that they served the Notice of their Application to the Landlord in person on March 4, 2022. The Landlord confirmed they received this. They provided evidence for their claim with their Application on February 23, 2022.

The Landlord prepared a response to the Tenant's evidence and submitted that to the Residential Tenancy Branch on April 20, 2022. This was one day before the scheduled hearing. As above, with Rule 3.15 I give no consideration to this response evidence. In the hearing, the Landlord stated: "anything submitted yesterday, just disregard". I find this was an acknowledgement of the late submission past the timeline set out in the Rules.

Issues to be Decided

Is the Landlord entitled to compensation for damage caused by the Tenant, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 67 of the *Act*?

Is the Tenant entitled to the return of the security deposit, pursuant to s. 38 of the *Act*?

Is the Tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 67 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement, and the Tenant provided a copy of the first page thereof. The tenancy started on February 14, 2021, set for a fixed term to expire on May 1, 2022. The agreement specified that the Tenant must vacate, and both parties initialled that section of the agreement.

The Tenant paid $1,800 per month in rent. They paid a security deposit of $900. Of note, the agreement specified that the unit was newly renovated. A two-page addendum was attached to the agreement.

The Tenant described signing a Mutual Agreement to End the Tenancy document, for September 15, 2021. On their Application, the Tenant provided this was the tenancy end date.

The Tenant described how the bathroom fan stopped working in August 2021 and an electrician made that replacement. The plumber identified the source of the difficulty as a toilet leak from the unit upstairs. When made aware, the Landlord suggested plastic covering for the Tenant's affected area in their rental unit bathroom, and drywall replacement. The Tenant noted there was still damages to be repaired after the fan replacement, making this known to the Landlord by email on August 24, 2021.

In the hearing the Landlord confirmed that the Tenant notified them of the issue with the bathroom fan in early August. On the electrician's initial visit on August 9th, there was no specific note of leakage. According to the Landlord, the Tenant let them know of more leakage on August 25th, and when the Landlord wanted to enter the unit to

inspect, the Tenant would not agree to that. On August 28th, a plumber changed the upstairs unit toilet; that same plumber went downstairs and identified water damage to be repaired. The Tenant at that time stated that no one was to enter the unit and insisted on leaving instead of allowing the Landlord's entry. The Landlord wanted to at least have the affected area covered; however, they were not able to enter the rental unit. The Landlord presented in the hearing that they were not allowed entry from August 28th, through to the end of the tenancy on September 15th.

The Tenant submitted that the issue of persistent mould in the bathroom space because of leakage forced them – out of immediate concern for their health – to stay in a hotel for three nights. The hotel was some distance away from the rental unit and this imposed the costs of mileage, and extra groceries because the Tenant did not have use of a kitchen at the hotel. These dates were nights of August 28, 29, 30, 2021.

The Landlord responded to this in the hearing to state there was no indication or request from the Tenant about the need to stay in a hotel. The Landlord did offer an alternative location to the Tenant; however, the Tenant refused this because that was too far for them.

The Tenant contacted the municipality to inform them of what they felt was a health hazard in the rental unit. The record of this, as obtained by the Tenant through an access-to-information request, shows the record of their call on August 28. The immediate concern as noted was:

> Ceiling is sloped due to pooling water that is located near an electrical switch. There is also black mold. The roof is soft to touch and the plumber said that between the leak is between the wall and the kitchen above. An extension was added to the basement. The extension was done under permit.
>
> Landlord advised. [They] recommended putting plastic over the area and the option of ending the lease early. The [Tenant] is pregnant with a 5 year old. The Tenants have been there for 6 months only. Please contact tenant for access as the home owner is very uncooperative.

The notes within the report re: inspection visit state: "Site visit revealed water damaged Drywall in the kitchen and bathroom ceiling of the unauthorized basement suite."

The municipality sent the notice of its findings to the Landlord on September 21, 2021, based on the inspection visit on September 2. They noted "water damage to the drywall (areas of approximately 1' x 1') of the bathroom ceiling and the kitchen ceiling (in southwest corner) in the unauthorized basement suite." They gave the Landlord 60

days to locate and repair the source of the leaks and repair the water-damaged drywall, noting a future re-inspection.

In the hearing, the Landlord described this report from the municipality as not referring specifically to mould.

In their evidence, the Landlord provided a completed Condition Inspection Report. In the hearing, the Landlord stated that the Tenant was present for the final meeting on September 26; however, police presence was required at that meeting at the Landlord's behest. The Condition Inspection Report notes a move-in inspection date of February 27, 2021; however, no move-out inspection date is listed. The Report contains extensive notations, summarized on the final page:

> Missing fixture in kitchen (missing hose & spray) & bathroom shower head/hose full unit cleaning, replacing bathroom window screen, repair & trims, hole in wall & damaged ledges and window/wall trims
>
> Note: tenant agreed to cleaning/repairs in handwritten note

The Tenant's signature on the final page indicates that they do not agree that the report is accurate, this due to "extensive water damage and mold requires proper cleaning and PPE from approved company. Report contains false damages."

The Landlord also provided a handwritten note from the Tenant. Dated September 26, the Tenant stated "damage from the toilet in bathroom + kitchen is not the tenant responsibility. Tenant is not liable for bathroom + kitchen damage." Further:

> Condition Inspection Report. It is agreed upon that a 1-foot piece of trim is missing in the living room, a ceiling dent should be patched in the smaller room and a hole from the door handle due to a lack of door stopper (main door). Fridge & stove to be cleaned when a cleaning company comes to the suite.

In the hearing, the Tenant noted they added a water line to the kitchen sink specifically when they moved in, as shown in the Condition Inspection Report. Further, they only unscrewed the shower head, leaving a very minor job to replace that. They acknowledged minor drywall deficiencies, noting the low ceiling in the rental unit and no door stopper which caused the door to swing wide and damage the wall behind.

the Landlord's claim for compensation

In their original Application, the Landlord claimed $800 total for damages from the Tenant. They noted the rental unit was fully renovated in December 2020, prior to this tenancy. They listed:

- cleaning cost ($260 as offered by the Tenant);
- missing kitchen/shower hose/nozzle;
- gouges in walls/ceiling/door/cabinetry
- two broken/missing pieces of trim
- broken window screen
- brown smear on window ledges needing paint.

In their amendment, the Landlord changed this $800 amount to $767.30. Breaking this amount down, they provided that $315 was the cost of plumbing and construction work, and "damages [that] remain to be complete with $452.30 costs remaining". They noted in their amended Application that photos and receipts were provided in their updated evidence.

They added an amount for unpaid rent at $500, being separate $100 amount for damage to tools and camping items; and $400 for a rent amount withheld by the Tenant for landscaping work they completed on the property. The Tenant provided that the $400 of work was "mutually agreed upon" through text messages; however, these did not appear in the evidence. The Tenant provided that the additional $100 was withheld from rent for an amount of time that they spent cleaning up items in a storage room because of their deck clean-up that started leaking water into the storage room.

On their amended Application, the Landlord also set out the amount of $458.10, being that paid for the cleaning company hired to do the move out clean up after the Tenant left.

The total of the Landlord's claim, as set out on the amended Application, is $1,725.40.

the Tenant's claim for compensation

On their Application, the Tenant noted their claim for loss of use of the kitchen and bathroom from the upstairs toilet leak on August 24. They indicated their own insurer "verbally verified loss of use coverage and was told the deductible would be waived, but it was not." They claim for the related expenses as well as the costs of moving. This

was a hotel for 3 nights "while the plumber fixed leak and ceiling dried out." Further: "The presence of water leakage near electrical switches and black mold prompted temporary stay in hotel while plumber fixed leak."

The Tenant itemized their claim on a worksheet, to indicate "Loss of use and moving expenses", as follows:

#	Items	$ claim
1	fuel	43.48
2	moving truck expense	133.49
3	rental car	141.95
4	rental car fuel	8.50
5	hotel 3 nights – Langley	645.15
6	supermarket – food	8.48
	supermarket – food	84.13
	supermarket – food	31.47
	supermarket – food	16.73
6	restaurant	19.12
	Total	**1,132.50**

The Tenant also provided receipts for their expenses as listed.

The Tenant also claims for the return of the $900 security deposit amount. On the Application, they provided they did not clean upon leaving "as water damage and mold were present in the kitchen & bathroom and I was 7 months pregnant." They also stated the owner and their son arrived and prevented the Tenant from wiping down surfaces within the rental unit. They offered to finish the cleaning at the time of the move-out inspection; however, "the Landlord was hostile and unnecessarily called the police to be present."

In the hearing the Tenant provided that they attempted to schedule final condition inspection meeting with the Landlord for the final day of the tenancy on September 15. They ended up leaving the keys for the Landlord at the rental unit, along with a note giving their forwarding address. An image of that appears in the Landlord's evidence, attached as a photo to their message to the Tenant on September 22. In that note to the Tenant, the Landlord noted a missing hose by the kitchen sink, and "shower plumbing was uninstalled and damaged left in the bathroom sink."

The total amount of the Tenant's claim, including the security deposit amount, is $2,032.50.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide enough evidence to establish the following four points:

- That a damage or loss exists;
- That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- The value of the damage or loss; **and**
- Steps taken, if any, to mitigate the damage or loss.

To determine first the Landlord's eligibility for compensation, I carefully examine the evidence they presented for each item, to establish whether they have met the burden of proof.

the Landlord's claim for compensation

The *Act* s. 37(2) requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

In regard to the $315 cost of plumbing and construction, as set out on their April 5, 2022 amended Application, there is insufficient evidence to show the Landlord paid this amount. As a result, I cannot determine what costs were incurred and for what reason within the rental unit. I excluded the bulk of the Landlord's evidence from consideration because of the reason set out in the preliminary section above. I dismiss this piece of the Landlord's claim for compensation for damages within the rental unit, with leave to reapply.

The Landlord gave the amount of $452.30 in their amended Application, this was "Damages to be complete with estimates $452.30 costs remaining." As above, if the Landlord provided evidence for this in their April 2022 amended Application, that evidence did not receive consideration in this hearing. I therefore dismiss this piece of their claim, with no other reference to items or the reasons thereof in their earlier

provided evidence. In this instance the Landlord did not prove there was a valid claim for damages in the rental unit.

When the Landlord applied, they provided a booking confirmation for October 6, 2021 for the amount of $308.50. This is some kind of electronic receipt referring to 6.5 hours of home cleaning. There is no identification of the rental unit so I cannot cross-reference the scheduled work to any lack of cleaning from the Tenant here. Also, the Landlord provided this evidence to the Residential Tenancy Branch on October 4, 2021, prior to that scheduled work date. It is not identified that this work was completed, and because the Landlord amended the amount claimed for this work (i.e., to $458.10) the weight of this piece of evidence is negated.

On their original Application, the Landlord referred to a showerhead that the Tenant allegedly removed. A photo of this is in their evidence submitted with their Application. I accept the Tenant's evidence on this point; they stated it was a relatively simple matter of replacing that showerhead manually. The Landlord presented a receipt showing a sales amount; however, a separate notation is on that receipt and the amount of $100 is nowhere indicated. I make no award for this obscure evidence item.

The Landlord has established the need for cleaning within the rental unit, and I find the Tenant acknowledged that where they stated they did not complete cleaning upon their move-out. There was some evidence of the Tenant later trying to take this up and complete cleaning on the inspection day; however, in the Tenant's version of events they were blocked from completing this. I find the Tenant did not complete cleaning as required under the Act by the date of their move out on September 15, 2021. I also find their note of September 26 stands as proof of the need for adequate cleaning that they did not accomplish by the tenancy end date. For this, I find the amount of $300 is appropriate compensation to the Landlord.

The Landlord claimed $500 for rent amounts owing from the Tenant for previous rent reductions. These apparently are rent amounts withheld by the Tenant for the purposes of work they accomplished on the property. Regardless of whether there was an agreement in place (for which neither the Landlord nor the Tenant provided evidence), the Landlord did not provide evidence that any rent amounts were incomplete for any month in which the Tenant resided at the rental unit. There is not even a reference to the calendar months involving these reductions in the Landlord's amended Application. With no evidence that reductions even occurred, I dismiss this piece of the Landlord's claim, with leave to reapply should the Landlord still seek to pursue these amounts.

Because the Landlord was largely unsuccessful in their Application, I find they are not eligible for reimbursement of the Application filing fee. I dismiss this piece of their Application, without leave to reapply.

the Tenant's claim for compensation

The Tenant claimed for food, accommodation, and travel for the short time period they were out from the rental unit while repairs were undertaken within the rental unit. There was no evidence of an agreement; there is also no evidence of mitigation on their part by consideration of other options. I find the existence of mold was not proven to them at that point, neither by visiting electricians, plumbers, or municipality officials. I find in total the hotel stay was not warranted. I am not satisfied of the urgency of the situation to require a move to a hotel. The Tenant was present when the municipal official conducted their inspection, and the municipality only noted damage to the drywall, not the existence of mold.

I find other anomalies in the Tenant's proffered evidence for this claim:

- the largest food receipt is dated August 25, 2021 – this predates any work undertaken in the rental unit, nor related to any need to stay elsewhere
- another food receipt is dated August 27, for items (sugar and whipped cream) not related to any meal needed outside the home
- another food receipt is dated August 9 which is a date not linked to events anywhere in the Tenant's testimony or evidence
- a receipt dated August 29 shows snack items and other household items, not explained as to the need when away from the rental unit
- the single restaurant receipt in the evidence is dated September 1, and this presumably occurs after the Tenant returned to the rental unit on that date
- the Tenant did not present on the need for a rental car – I am not satisfied that need stems from the situation at the rental unit, given the car rental occurred on September 1 – 2, presumably when the Tenant had returned to the rental unit
- the Tenant added $133,49 to their claim for the moving van used when they moved out – this cost concerns the end of the tenancy, and the Landlord is in no way liable for the costs borne by the Tenant on their own choice to end the tenancy as is shown in the evidence. This does not stem from any breach of the *Act* by the Landlord.
- a gas receipt dated September 11 is outside the timeline proffered by the Tenant as their need to be out from the rental unit.

In sum, given the Tenant did not present sufficient evidence on the need for their hotel stay, I dismiss the Tenant's claim for compensation of money owed in its entirety, without leave to reapply. I find there was no urgent need for those accommodations and travel, and the Tenant presented no evidence to show they minimized the expenses in those circumstances.

Regarding the security deposit, the *Act* s. 38(1) states:

> 1) . . .within 15 days after the later of
> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,
> the landlord must do one of the following:
> (c) repay. . . any security deposit . . .to the tenant
> (d) make an application for dispute resolution claiming against the security deposit

I find the tenancy ended on September 15, 2021. I accept that the Tenant provided their forwarding address to the Landlord at that time even though it is not recorded in the Condition Inspection Report. The Landlord properly filed their Application for a claim against the deposit amounts on September 27, 2021; this is within 15 days as the *Act* requires.

I grant the Landlord $300, offset from the security deposit amount. The Landlord must return the remainder to the Tenant. I grant the Tenant a Monetary Order for that amount to ensure the return of the balance to them.

The return of the filing fee is discretionary, based on the success of an applicant in the dispute resolution process. Because the Tenant was for the most part unsuccessful in their Application, I dismiss their claim for reimbursement of the Application filing fee without leave to reapply.

Conclusion

Pursuant to s. 38 of the *Act*, I grant the Tenant a Monetary Order in the amount of $600 as set out above. I provide this Monetary Order in the above terms and the Tenant must serve the Monetary Order to the Landlord as soon as possible. Should the Landlord fail to comply with the Monetary Order, the Tenant may file it in the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: May 9, 2022

Residential Tenancy Branch