



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HEATLEY STREET APARTMENTS
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNRT, MNDCT, FFT (Tenant)
MNDCL-S, FFL (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross applications for dispute resolution filed by the parties.

The Landlord filed their application March 30, 2021 (the “Landlord’s Application”). The Landlord applied as follows:

- For compensation for monetary loss or other money owed
- To keep the security deposit
- For reimbursement for the filing fee

The Tenant filed their application August 10, 2021 (the “Tenant’s Application”). The Tenant applied as follows:

- For return of double the security and pet damage deposits
- To be paid back for the cost of emergency repairs made during the tenancy
- For compensation for monetary loss or other money owed
- For reimbursement for the filing fee

This matter came before me February 28, 2022, and was adjourned. An Interim Decision was issued March 01, 2022, and should be read with this decision.

The Agent for the Landlord appeared at the February 28, 2022 hearing and appeared late at the April 07, 2022 hearing. The Tenant appeared at both hearings. I explained the hearing process to the parties. I told the parties they are not allowed to record the

hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Service was addressed in the Interim Decision.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?
4. Is the Tenant entitled to return of double the security and pet damage deposits?
5. Is the Tenant entitled to be paid back for the cost of emergency repairs made during the tenancy?
6. Is the Tenant entitled to compensation for monetary loss or other money owed?
7. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started May 25, 2020, and was for a fixed term ending May 31, 2021. Rent was \$1,575.00 per month due on the first day of each month. The Tenant paid a \$787.50 security deposit and \$787.50 pet damage deposit.

Tenant's Application

The Tenant sought the following compensation:

Item	Description	Amount
1	Rent March 25-31, 2020	\$304.85
2	Emergency repair	\$150.00
3	Security deposit x 2	\$1,575.00
4	Pet damage deposit	\$787.50
5	Rent for March 2021	\$1,575.00
6	Moving costs	\$604.69
7	Filing fee	\$100.00
	TOTAL	\$5,097.04

#1 Rent March 25-31, 2020 \$304.85

The Tenant sought this amount because they moved into the rental unit early and paid the pro-rated rent amount for March 25-31; however, the rental unit was not ready to live in. The Tenant testified that their storage locker was not available during this time, the buzzer to the rental unit did not work, cabinets and faucets were loose and there was no privacy in the rental unit due to an uncovered window looking out into a common hallway. The Tenant referred to an email in evidence listing the issues with the rental unit upon move-in.

#2 Emergency repair \$150.00

The Tenant testified that the entire bathroom flooded due to an issue with the shower floor upon move-in. The Tenant testified that the Landlord did nothing to repair the issue so they repaired the shower so they could use it because otherwise it flooded the bathroom and living room. The Tenant testified that the Landlord never completed the proper repair of the shower and never reimbursed the Tenant for the costs of their temporary fix.

#3 Security deposit x 2 \$1,575.00***#4 Pet damage deposit \$787.50***

The Tenant testified that they moved out of the rental unit March 15, 2021. The Agent testified that the Tenant had possession of the rental unit until March 31, 2021.

The Tenant advised that they received the original amount of the pet damage deposit back from the Landlord. The Agent testified that the pet damage deposit was returned to the Tenant March 30, 2021. The Tenant did not know when they received the pet damage deposit back. The written submissions of the Tenant state that they received the pet damage deposit April 08, 2021.

The parties agreed the Tenant provided the Landlord with their forwarding address in writing on March 16, 2021.

The parties agreed the Landlord did not have an outstanding Monetary Order against the Tenant at the end of the tenancy and the Tenant did not agree to the Landlord keeping the security deposit.

The parties agreed they did move-in and move-out inspections.

#5 Rent for March 2021 \$1,575.00

The Tenant sought rent for March back on the basis that they spent most of the month trying to relocate to a home that was safe and comfortable for them because the rental unit was neither. The Tenant submitted that they are asking for this because they gave notice to an agent for the Landlord February 26, 2021 via text message and assumed this was sufficient. The Tenant testified that they did not feel comfortable telling the agents for the Landlord that they were moving out of the rental unit and that they wanted a safe place to go before letting the Landlord know they were moving.

#6 Moving costs \$604.69

The Tenant testified that they are claiming the costs associated with hiring movers because they did not feel safe moving by themselves due to harassment from staff of the Landlord as well as violence and intimidation from other tenants in the building. The Tenant testified that an agent for the Landlord stood in the hall intimidating the Tenant on the day they moved out.

Reply by Agent

The Agent appeared at the second hearing late and therefore replied to a statement the Tenant provided at the end of their submissions on the specific claims being made. The Agent testified as follows. The Landlord responded to the Tenant's complaints at move-in about the deficiencies in the rental unit. The issues listed by the Tenant at move-in were handled by the Landlord immediately. The Landlord emailed the Tenant June 10, 2020, in relation to the repairs being handled and received no response. The Landlord thought the issues had been dealt with. In relation to the window into the common hallway, the Tenant could have put up a curtain if they had privacy concerns. The Landlord addressed complaints, such as noise complaints, when received from the Tenant.

Landlord's Application

The Landlord sought the following compensation:

Item	Description	Amount
1	Loss of April rent	\$1,575.00
2	Difference in rent for May	\$75.00
3	Admin hours @ 7 hours	\$210.00
4	Filing fee	\$100.00
	TOTAL	\$1,960.00

#1 Loss of April rent \$1,575.00

#2 Difference in rent for May \$75.00

The Agent testified that the Tenant failed to provide proper legal notice to end the tenancy and therefore the Landlord is seeking loss of rent for April. The Agent submitted that the Tenant breached the one-year term in the tenancy agreement. The Agent testified that they heard the Tenant was planning to move out of the rental unit in March and sent the Tenant a letter about this. The Agent referred to a March 01, 2021 email in evidence. The Agent testified that they heard back from the Tenant March 09, 2021, about the Tenant ending the tenancy. The Agent testified that they responded to the Tenant and then did not hear from the Tenant until they saw the Tenant moving out of the rental unit. The Agent testified that they did not receive proper notice ending the tenancy from the Tenant until March 15, 2021.

The Agent testified that the Landlord lost rent for April due to the Tenant's breach of the tenancy agreement. The Agent testified that the rental unit was posted for rent in March. The Agent testified that the Landlord lost \$75.00 in rent for May because the rental unit was re-rented for May 01, 2021, for \$75.00 less in rent. The Agent referred to the new tenancy agreement in evidence for rent at \$1,500.00 per month.

The Tenant testified that they first provided notice of ending the tenancy to an agent for the Landlord by phone. The Tenant testified that they then provided notice via text message to the same agent on March 01, 2021. The Tenant testified that they sent a letter ending the tenancy on March 16, 2021, via email.

The Tenant acknowledged they ended the fixed term tenancy early and submitted that section 45(3) of the *Act* applies.

I asked the Tenant if they provided the Landlord a breach letter in accordance with section 45(3) of the *Act* and RTB Policy Guideline 08 and the Tenant acknowledged they did not provide a letter setting out specifically that the Landlord had breached a material term of the tenancy agreement.

The Tenant disputed that the Landlord lost April rent and testified that someone they knew from the building moved into the rental unit April 01, 2021, and another individual moved in May 01, 2021.

The Tenant disputed that the Landlord posted the rental unit for rent in March.

The Tenant disputed that they owe the Landlord \$75.00 for loss of rent for May and submitted that it was the Landlord's choice to re-rent the unit for less rent. The Tenant testified that the person who moved into the rental unit May 01, 2021 was not a new tenant to the building and could have paid full price for the rental unit.

In reply, the Agent testified that the Landlord did mitigate their loss and posted the rental unit for rent for April 01, 2021 because the Tenant's notice ending the tenancy was for March 31, 2021. The Agent also submitted that the requirements under section 45(3) of the *Act* and RTB Policy Guideline 08 in relation to ending the tenancy were not met by the Tenant.

#3 Admin hours @ 7 hours \$210.00

The Agent relied on term 9 of the addendum to the tenancy agreement for this amount. The Agent testified that this claim is for the fees associated with having to re-rent the unit including employee hours.

The Tenant did not make further submissions about the administrative fees sought.

Documentary evidence

Both parties submitted documentary evidence which I have reviewed and will refer to below as necessary.

Analysis

Pursuant to rule 6.6 of the Rules, it is the applicant who has the onus to prove their claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Security and pet damage deposits

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to security and pet damage deposits if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Based on the testimony of the parties, I find the Tenant participated in move-in and move-out inspections and therefore did not extinguish their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the *Act* because extinguishment only relates to claims for damage to the rental unit and the Landlord has not claimed for damage to the rental unit.

I accept that the Tenant moved out of the rental unit March 15, 2021, because this is supported by the moving invoice in evidence. I find the tenancy ended March 15, 2021 for the purposes of section 38(1) of the *Act*.

Based on the testimony of both parties, I accept that the Tenant provided the Landlord with their forwarding address March 16, 2021.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenant's forwarding address in writing to repay the security and pet damage deposits or file a claim against them. Here, the Landlord had 15 days from March 16, 2021, to repay the security and pet damage deposits or file a claim against them.

I accept that the pet damage deposit was returned to the Tenant March 30, 2021, because the Landlord submitted a copy of the cheque showing this. I find the Landlord complied with section 38(1) of the *Act* in relation to the pet damage deposit and therefore the Tenant is not entitled to return of double the pet damage deposit.

The Landlord filed the Application March 30, 2021, within time. I find the Landlord complied with section 38(1) of the *Act* in relation to the security deposit and therefore the Tenant is not entitled to return of double the security deposit.

Compensation

Section 7 of the *Act* states:

7 (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.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

Tenant's Application

#1 Rent March 25-31, 2020 \$304.85

I accept that there were issues with the rental unit when the Tenant moved in as I find these are documented in emails sent by the Tenant to the Landlord. I do not find that the documentary evidence supports that the Landlord attended the rental unit and fixed the issues set out in the email in a timely manner. I am satisfied the Tenant has shown breaches by the Landlord of section 32 of the *Act* in relation to maintaining the rental unit, section 28 of the *Act* in relation to the Tenant's right to quiet enjoyment and the tenancy agreement which included storage. I am satisfied the Tenant experienced some loss in relation to the breaches. I am not satisfied the Tenant should be awarded the full amount sought because they were able to live in the rental unit despite the issues noted in their email. I award the Tenant half the amount sought being \$152.00 which I find reasonable given the issues experienced by the Tenant at the start of the tenancy.

#2 Emergency repair \$150.00

I decline to award the Tenant this amount because the Tenant has not submitted receipts or invoices showing they spent \$150.00 to address the shower leak issue and therefore the Tenant has failed to prove the amount or value of the loss.

#3 Security deposit x 2 \$1,575.00

#4 Pet damage deposit \$787.50

These claims have been addressed above.

#5 Rent for March 2021 \$1,575.00

Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenant was required to pay rent while living in the rental unit. The Tenant acknowledged they lived in the rental unit until March 15, 2021, and therefore the Tenant is not entitled to rent for this period back. Further, the Tenant gave notice ending the tenancy effective March 31, 2021, and therefore was required to pay rent up until this date. I acknowledge that the Tenant raised issues with the tenancy; however, I am not satisfied based on the evidence provided that the issues raised should result in the return of rent for March of 2021.

#6 Moving costs \$604.69

I decline to award the Tenant moving costs for two reasons. First, the Tenant ended the tenancy and therefore chose to move, the Landlord did not force the Tenant to move. I acknowledge that the Tenant has outlined issues they experienced during the tenancy; however, I do not accept based on the evidence provided that the issues amount to the Tenant being forced to move versus choosing to move. Second, moving costs are rarely awarded because they are costs tenants will incur at some point. I do not find this situation to be one where the Tenant should be awarded moving costs due to the Landlord's behaviour or actions during the tenancy.

#7 Filing fee \$100.00

Given the Tenant was partially successful in their claim, the Tenant is awarded reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Landlord's Application

#1 Loss of April rent \$1,575.00

#2 Difference in rent for May \$75.00

Section 45 of the *Act* states:

(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.

RTB Policy Guideline 08 states:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

The Tenant was not permitted to end the tenancy before May 31, 2021, unless section 45(3) of the *Act* applied. I do not accept that section 45(3) of the *Act* applied because I find the Tenant did not provide the Landlord a breach letter as required by section 45(3) of the *Act* and RTB Policy Guideline 08. The Tenant acknowledged they did not provide the Landlord a breach letter in accordance with RTB Policy Guideline 08. I do not find that the correspondence submitted shows that the Tenant did provide the Landlord a breach letter in accordance with RTB Policy Guideline 08.

The Tenant was not permitted to end the tenancy before May 31, 2021. There is no issue that the Tenant did end the tenancy for March 31, 2021, prior to the end of the fixed term. I find the Tenant breached section 45(2) of the *Act* and the tenancy agreement.

The Agent testified that the Landlord lost April rent due to the Tenant's breach; however, the Tenant disputes this and has provided documentary evidence showing someone else lived in the rental unit prior to May 01, 2021. The Landlord has not provided compelling evidence to show the rental unit remained empty until May 01, 2021, and therefore I am not satisfied the Landlord has proven the loss claimed.

In relation to May rent, I do not find that the Landlord has provided compelling evidence showing the rental unit could not be re-rented for the same rent amount and that they had to accept less rent to mitigate their loss. Given this, I am not satisfied the Landlord is entitled to compensation for \$75.00 for May.

#3 Admin hours @ 7 hours \$210.00

Term 9 of the addendum to the tenancy agreement states:

8. Breaking of the fixed term lease incurs costs. For advertising and lost rent. Which is equal to half of one month's rent.

Here, the Landlord is not seeking half of one month's rent. The Landlord is seeking \$210.00 as compensation for the hours it took to re-rent the unit. I have already accepted that the Tenant breached section 45(2) of the *Act* and the tenancy agreement by ending the tenancy early. I accept that the Landlord had to re-rent the unit earlier than they would have had the Tenant not breached the *Act* and tenancy agreement and thus incurred costs due to the Tenant's breach. I accept that the cost associated with re-renting the unit was \$210.00 because the Landlord submitted a handwritten account of this. I find the cost claimed reasonable and award the Landlord \$210.00.

#4 Filing fee \$100.00

Given the Landlord was partially successful in their claim, the Landlord is awarded reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

The Tenant is entitled to the following compensation:

Item	Description	Amount
1	Rent March 25-31, 2020	\$152.00
2	Emergency repair	-
3	Security deposit x 2	\$477.50
4	Pet damage deposit	-
5	Rent for March 2021	-
6	Moving costs	-
7	Filing fee	\$100.00
	TOTAL	\$729.50

The Landlord is entitled to the following compensation:

Item	Description	Amount
1	Loss of April rent	-
2	Difference in rent for May	-
3	Admin hours @ 7 hours	\$210.00
4	Filing fee	\$100.00
	TOTAL	\$310.00

The Landlord can keep \$310.00 of the security deposit pursuant to section 72(2) of the *Act* and must return the remaining \$477.50 to the Tenant. In total, the Landlord must pay the Tenant \$729.50 and the Tenant is issued a Monetary Order in this amount pursuant to section 67 of the *Act*.

Conclusion

The Tenant is issued a Monetary Order for \$729.50. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it 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 *Act*.

Dated: May 16, 2022

Residential Tenancy Branch