



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on March 7, 2022, and June 7, 2022. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties were present at both the hearings and provided affirmed testimony. The Tenants confirmed receipt of the Landlord's application, evidence, and amendment. The Landlord confirmed receipt of the Tenant's evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters – Jurisdiction

The Landlord filed two applications as part of this proceeding. The first application was filed to recover money lost due to damage to the rental unit and for rental loss after the Tenants moved out. This application will proceed, and the merits will be discussed below. However, the second application (to recover unpaid rent and utilities of \$1,600.00) filed by the Landlord, also set to be heard today, is dismissed, in full, without leave for the following reasons.

I cannot re-hear, change or vary a matter already heard and decided upon as I am bound by the earlier decision, under the legal principle of *res judicata*. *Res judicata* is a

rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

I note the Tenants previously filed an application last year, and a hearing was held, to decide whether the Tenants are entitled to recover rent and utility overpayments made throughout the tenancy. A decision was rendered on June 7, 2021, regarding the same two issues in the Landlord's secondary application for utilities and December 2019 rent. At the previous hearing, the arbitrator made several determinations regarding what monthly rent and utility payments were. The arbitrator also made findings regarding utility pre-payments for the period of January – May 2019, and determined what was owed. Further, the arbitrator made determinations regarding what rent was paid, and what was owed from December 1, 2019 – September 30, 2020. I find both of the issues on the Landlord's secondary application have already been decided upon, and I find I am unable to re-hear these matters, pursuant to the principle of *res judicata*. The previous arbitrator already determined, in great detail, what utility and rent amounts were due throughout that period of the tenancy, and issued a monetary order for those amounts.

The Landlord's first application will proceed, as it involves a claim for damage to the rental unit, which has not yet been heard or decided upon, as well as a claim for rental loss for a period of time after the tenancy ended (which was not a period that was covered under the previous arbitration). The previous arbitration only determined what rent was due up until the date the Tenants moved out, at the end of September 2020.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent and utilities or for damage or loss under the Act?
- Is the Landlord entitled to retain all or a portion of the Tenants' security and pet deposit in partial satisfaction of the monetary order requested?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

A copy of the tenancy agreement was provided into evidence, which shows that monthly rent was set at \$1,000.00 per month, and was due on the first of the month. The most recent tenancy agreement was for a 1-year fixed term, starting on December 1, 2019, ending on November 30, 2020. The Landlord collected a security deposit in the amount of \$400.00. The Landlord no longer holds this amount, as it was dealt with in a previous

hearing. The Landlord explained that the Tenants suddenly moved out on September 30, 2020, without giving any advance written notice and without doing an inspection.

More specifically, the Landlord stated that the Tenant never sent any messages or notice in writing to indicate when they would be moving out. The Landlord explained that she lived above the rental unit, and she didn't know the Tenants were moving out until they knocked on her door at 10:00 pm on the night they moved out, September 30, 2020. The Landlord stated that she went downstairs at that time, and it was too dark and too late to do a proper inspection at that time, so she suggested it be done the following day. However, it does not appear there was any definitive conversation or time arranged for when the inspection would occur. The Tenants did not return to the rental unit.

The Landlord is seeking to recover \$2,000.00 in rental losses because the Tenants left before the end of their fixed term. The Landlord explained that they could not re-rent the unit until March 2021 due to the mess the Tenants left behind. The Landlord explained that they are also seeking \$650.00 for the repair costs to restore the rental unit after the Tenants left.

The Landlord provided a copy of the receipt for the cleaning costs, dated January 6, 2021, for \$650.00. This invoice indicated that it was for cleaning the "moldy wall", repair and paint damaged wall, clean the moldy plastic strips in the bathtub and reapply the glue, and clean the stove. The Landlord provided a couple of photos taken at the end of the tenancy, showing the stove area, a mouldy area on the wall beside the toilet, some moldy areas where the shower wall meets the bathtub, and some minor wall damage near the shower.

The Tenants provided copies of text messages. However, all of these text messages are in a foreign language and are not translated. The Tenants stated that the text messages indicate that the Landlord was aware the Tenants would be moving out as early as July 2020. The Tenants also stated that they told the Landlord via text message (weChat) "sometime in September" that they would be moving out at the end of the month. However, the Landlord denies that the text messages say this and asserts that she was not given any proper clear written notice from the Tenants.

The Tenants stated that the rental unit was left in a reasonably condition, and when a brief walkthrough was done on the evening of September 30, 2020, no issues were raised.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

I find it important to note the following portion of the Act:

Tenant's notice

45 (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.

First of all, I find there is insufficient evidence that the Tenants provided written Notice to the Landlord that they would be moving out. I do have assigned the text messages very little weight, as they are not translated. There is also insufficient evidence that the Landlord and the Tenant mutually agreed to end the fixed term lease early. Further, even if the Tenants could demonstrate they provided written Notice to the Landlord that they would be moving out at the end of September 2020, they were not legally entitled to end the tenancy prior to the end of the fixed term which lapsed on November 30, 2020. I find the Tenants breached the tenancy agreement and the Act in this regard.

I note the Landlord is seeking 2 months' rent (to the end of the fixed term) as the unit remained empty for that period of time. However, I am not satisfied the Landlord sufficiently mitigated her rental revenue losses. There is no evidence as to when the Landlord reposted the ad for re-renting the unit. Further, the Landlord provided a cleaning invoice from January 2021, which was over 3 months after the Tenants moved

out. I find there is insufficient evidence that the Landlords sufficiently mitigated her rental losses, and I decline to award the recovery of lost rent for October and November of 2019.

Next, I turn to the Landlord's claim to recover cleaning fees and repairs in the amount of \$650.00. I note there is no condition inspection report completed, as the tenancy ended rather abruptly at the end of September. The Landlord provided a few photos taken at the end of the tenancy. With respect to the portion of this invoice that pertains to damage to the tub area and the wall, I find there is insufficient evidence that this damage was not pre-existing, and that it was caused by the Tenants. There is no documentary evidence showing the condition of that part of the wall before the tenancy started. With respect to the part of the invoice that pertains to cleaning (range and mold on walls), I find the Tenants are liable for some of this. Regardless of the condition of the rental unit at the start of the tenancy, the Tenants are still required to leave the rental unit in a reasonably clean manner, as per section 37 of the Act:

Leaving the rental unit at the end of a tenancy

37 (1)*Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.*

(2)*When a tenant vacates a rental unit, the tenant must*

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I find the Tenants breached section 37(2)(a) of the Act by not wiping mold off the walls in the bathroom, and for not properly cleaning the stove area. However, the amounts for these items is not separated out under the above noted invoice of \$650.00, so determining the value of the Tenants' liability is difficult.

An arbitrator may award compensation in situations where establishing the value of the damage or loss is not as straightforward:

"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I award the Landlord a nominal award of \$200.00 for the above item. The remainder of the claim is dismissed, without leave.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful with the application, I order the Tenants to repay one of the filing fees paid by the Landlord in the amount of \$100.00. This amounts to a \$300.00 monetary order in the Landlord's favour.

Conclusion

The Landlord is granted a monetary order in the amount of **\$300.00**, as specified above. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 07, 2022

Residential Tenancy Branch