



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S MNRL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order in the amount of \$2,775.00 for unpaid rent or utilities, for damages to the unit, site or property, to retain the tenants' security deposit towards any amount owing, and to recover the cost of the filing fee.

An agent for the landlord, KH (agent), the tenant and the father of the tenant, KN (support) attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any concerns regarding the service of documentary evidence or their opportunity to review documentary evidence or the application.

Preliminary and Procedural Matters

At the outset of the hearing the parties confirmed their email addresses. The parties confirmed their understanding that the decision would be emailed to both parties. In addition, the tenant was advised that they could not make a counterclaim through the submission of evidence on the landlord's application. As a result, should the tenant wish to make a claim against the landlord, they must file their own application and serve that application on the landlord.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenants' security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of a tenancy agreement was submitted in evidence. A fixed-term tenancy began on October 8, 2021 and was scheduled to convert to a month-to-month tenancy after December 31, 2021. Monthly rent was \$2,500.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$1,250.00 at the start of the tenancy, which has accrued no interest under the Act, and which the landlord continues to hold.

The landlord's monetary claim of \$2,775.00 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Loss of November 2021 rent	\$2,500.00
2. Cleaning fee	\$175.00
3. Filing fee	\$100.00
TOTAL	\$2,775.00

Regarding item 1, the tenant confirmed that they gave notice that they would be vacated the rental unit on October 26, 2021 due to bed bugs and returned the keys on October 31, 2021. The tenant admitted that they did not pay November 2021 rent. The landlord stated that they were able to re-rent the rental unit for the same monthly rent as of December 1, 2021 and as a result, are not claiming for December 2021 rent. The tenant claims the tenancy was frustrated and ended due to frustration, which I will address later in this Decision.

The landlord submitted the following maintenance request history from the tenant's mother, LN. The history is in reverse date order as noted below. All personal information for LN has been redacted to protect privacy:

Status History for Item 413498

11/23/2021 12:12 PM by
Comment hidden from resident
Completed

11/15/2021 9:12 AM by
In Progress

11/15/2021 9:12 AM by
Comment hidden from resident

11/14/2021 2:43 PM by [REDACTED]

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11/12/2021 2:28 PM by
Comment hidden from resident

11/12/2021 1:48 PM by [REDACTED]

New

Please see attached.

10/27/2021 11:27 AM by
Completed

10/26/2021 12:00 PM by
In Progress

Thank you for letting us know, you will be responsible of paying the next moth rent and your deposit will not be return because you're braking the lease.

10/26/2021 11:52 AM by [REDACTED]

D [REDACTED] will be moving out on Oct. 31. We are terminating our contract with under the advisement of A [REDACTED]. The bed bug situation still has not been resolved and you have seen the videos of the bugs. Please return our damage deposit promptly after move out on Oct. 31.

10/22/2021 9:42 AM by [REDACTED]

New request regarding bed bugs- not completed!!!

10/21/2021 7:01 PM by [REDACTED]

New

Not completed- D [REDACTED] was doing laundry again and came across ANOTHER bed bug/ we contacted ACE and they said it could take up to 3 weeks for them to be gone. She is going to a hotel AGAIN tonight and we will be contacting you tomorrow am and you NEED. To move her to a new place. Expect a call from us in the morning.

10/21/2021 3:01 PM by

Completed

10/18/2021 4:48 PM by [REDACTED]

Can send more pics and prescriptions if needed

10/18/2021 4:46 PM by [REDACTED]

10/18/2021 4:45 PM by [REDACTED]

10/18/2021 3:53 PM by

In Progress

Hello [REDACTED] Could you please send me a video and pictures. We will help you with this situation.

10/18/2021 3:49 PM by [REDACTED]

New

Set a priority of "Normal"

Went to Dr. Today and they said I have been bit by bed bugs. Require a new mattress and attention to this matter ASAP- please

As indicated above, the tenant first wrote to the landlord regarding bed bugs on October 18, 2021 and that on October 21, 2021, the bed bug first treatment was completed. The agents stated that 3 weeks after October 21, 2021 was supposed to be the second bed

bug treatment; however, the tenant gave notice that they were vacating on October 26, 2021 and returned the keys on October 31, 2021.

Regarding item 2, the landlord has claimed \$175.00 for cleaners who the agents admitted may have prematurely attended the rental unit to clean before the tenant vacated the rental unit. As a result, I will address this item later in this Decision.

Regarding their written forwarding address, the tenant stated that they faxed their written forwarding address to the landlord on November 10, 2021. The landlord filed their application on November 15, 2021, which is within the 15-day timeline under section 38 of the Act.

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Item 1 – I will first deal with the tenant's allegation that the tenancy was frustrated. RTB Policy Guideline 34 – Frustration states the following:

A contract is frustrated where, **without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.**

The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. **Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms.**

A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into. **A party cannot argue that a contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission.**

The Frustrated Contract Act deals with the results of a frustrated contract. For example, in the case of a manufactured home site tenancy where rent is due in advance on the first day of each month, if the tenancy were frustrated by destruction

of the manufactured home pad by a flood on the 15th day of the month, under the Frustrated Contracts Act, the landlord would be entitled to retain the rent paid up to the date the contract was frustrated but the tenant would be entitled to restitution or the return of the rent paid for the period after it was frustrated.

[emphasis added]

Given the above, a common example of a frustrated tenancy would be where a fire made the rental unit uninhabitable and that nobody is to blame for the fire. I disagree with the tenant that bed bugs resulted in the tenancy being frustrated. While the tenant may have been **frustrated**, I find that bed bugs does not meet the high burden of proof for a tenancy being frustrated. As a result, I am not persuaded by the tenant's claim that the tenancy was frustrated. As a result, I find the tenant breached section 45(2) of the Act which applies and states the following regarding fixed-term tenancies:

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.**

As a result, I find the earliest the tenant could have ended the tenancy was December 31, 2021 and that the tenant is liable for November 2021 rent of \$2,500.00, which I grant to the landlord. I find the tenant breached section 26 of the Act which applies and states:

Rules about payment and non-payment of rent

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.

[emphasis added]

I find the tenant failed to provide sufficient evidence that they had a right under the Act to deduct any amount of November 2021 rent. Furthermore, the tenant should have given the landlord a reasonable opportunity to correct any issues with the bed bugs,

which I find the tenant failed to do by given their notice that they would be vacating the rental unit 5 days after the first bed bug treatment.

Regarding item 2, I find the agent prematurely had cleaners attend the rental unit due to their own admission during the hearing. As a result, I find the tenants are not liable for the premature cleaning costs. As such, I find the landlord has not met the burden of proof for this item and it is dismissed, without leave to reapply, due to insufficient evidence.

As the landlord's claim is partly successful, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee pursuant to section 72 of the Act. Therefore, I find the landlord has established a total monetary claim of **\$2,600.00**.

As the landlord continues to hold the tenant's \$1,250.00 security deposit and pursuant to sections 38 and 67 of the Act, I grant the landlord authorization to retain the tenant's full \$1,250.00 security deposit including \$0.00 in interest, in partial satisfaction of the landlord's monetary claim. Pursuant to section 67 of the Act, I grant the landlord a monetary order for the balance owing by the tenants to the landlord in the amount of **\$1,350.00**.

I caution the tenants not to breach section 26 and 45(2) of the Act in the future.

Conclusion

The landlord's claim is partly successful.

The landlord has established a total monetary claim of \$2,600.00. The landlord has been authorized to retain the tenant's full security deposit including \$0.00 in interest of \$1,250.00 in partial satisfaction of the landlord's monetary claim pursuant to sections 38 and 67 of the Act.

The landlord is granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of \$1,350.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenant has been cautioned as noted above.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenant.

The tenant is reminded that they can be held liable for all costs related to enforcement of the monetary order.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 4, 2022

Residential Tenancy Branch