Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

The Landlord seeks the following relief from the *Residential Tenancy Act* (the "*Act*"):

- An order pursuant to s. 67 for monetary compensation;
- An order pursuant to s. 67 to compensate for damages to the rental unit; and
- Return of its filing fee pursuant to s. 72.

The Landlord advances its monetary claims against the security deposit.

G.C. and S.C. appeared as agents for the Landlord. S.D. appeared as the Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Issues to be Decided

1) Is the Landlord entitled to compensation for money owed by the Tenant?
2) Is the Landlord entitled to monetary compensation for damages to the rental unit caused by the Tenant?
3) Is the Landlord entitled to the return of its filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on September 1, 2021.
- The Landlord obtained vacant possession of the rental unit on December 31, 2021.
- Rent of $2,975.00 was due on the first day of each month.
- The Landlord holds a security deposit of $1,600.00 in trust for the Tenant.

A copy of the tenancy agreement was put into evidence. The agreement indicates that the tenancy was for a fixed term ending on February 28, 2022. The tenancy agreement further indicates that the Tenant was responsible for paying hydro when it came due.

G.C. testified that the Tenant gave written notice by way of email on December 11, 2021 of his intention to vacate the rental unit at the end of December 2021. A copy of the Tenant's email dated December 11, 2021 was put into evidence by the Landlord and states the following:

> I just wanted to update you that we are ready to move to a new rental house on January first. I know we must pay the rent of January and we will. I appreciate if you could find tenants for the month of January. It financially helps us alot (sic).

The Landlord and the Tenant provide email correspondence from December 2021 within their evidence. The Landlord's evidence includes an email dated December 20, 2021 in which G.C. indicates that a new tenant had been secured for January 22, 2022 and requested that the Tenant pay pro-rated rent until that date. The Tenant indicated in a response email dated December 20, 2021 that he and his family would move out of the rental unit a day or two before the new tenant moved in on January 22, 2022.

The Landlord seeks the prorated rent until January 22, 2022, which in its materials it calculates to be $2,015.32.

The Tenant denies responsibility for January 2022 rent and directed me to an email from G.C. dated December 24, 2021 which is reproduced in his evidence. In the email, G.C. is said to have said “If you leave no later than 31 December, you will not have to pay January’s rent and I will arrange to get the keys, Fobs, etc. from you.” G.C. testified at the hearing that he had no recollection of sending the email.

G.C. testified that the Tenant failed to pay the final hydro bill. The Landlord’s evidence includes a screenshot of the account information only showing that the hydro cost up to December 30, 2021 was $297.00. The Landlord seeks payment of this amount, and I was advised by G.C. that the Tenant was provided a copy of the hydro statement during the move-out inspection.

G.C. testified to being notified by the Tenant on December 20, 2021 of a water issue within one of the bedrooms of the rental unit. The Landlord’s agent further testified that someone attended the rental unit on December 21, 2021. The Landlord’s agent described the issue as one of excess condensation on the subject window and sill. The Landlord’s evidence includes photographs of the affected area.

G.C. alleges that the condensation led to mould and required both remediation and repair. G.C. testified that a remediation company attended the rental unit on December 22, 2022 and found that there was high humidity within the rental unit. The Landlord’s evidence includes a letter from the remediation company providing its opinion that the water was attributable to “sustained high humidity” and that “no source of external water loss was found” and the “moisture was not from external intrusion”.

A dehumidifier was installed first by the remediation company, then by the Landlord’s agent after the Landlord purchased a dehumidifier. G.C. testified that the Landlord purchased a dehumidifier as the Tenant raised issue with the noise from the dehumidifier provided by the remediation company. G.C. argued that the cost of purchasing the dehumidifier was cheaper than renting a unit from the company for 10 days and alleges that the Tenant turned off the noisier dehumidifier provided by the remediation company.

G.C. testified that the dehumidifier operated until the Tenant moved out. I was advised that the humidity levels within the rental unit dropped and the condensation was gone on December 31, 2021.

The Landlord argues that the condensation and associated damage caused by the condensation are attributable by the Tenant and/or the other occupants. G.C. argues that Landlord has owned the rental unit since 2007 and indicates that there were no issues with respect to water in the rental unit before the Tenant took occupancy. I was further advised by G.C. that the current occupant has had no issue with respect to condensation or leaking from the window in question.

The Landlord's evidence includes a monetary order worksheet, which indicates that the cost of retaining the remediation company was $735.00, the dehumidifier cost was $369.02, and the cost of repainting the areas that were damaged was $325.50. The Landlord's agent confirmed these costs were incurred and directed me to invoices for these amounts within the Landlord's evidence.

The Tenant denies responsibility for the water or the associated damage. The Tenant indicates that the amount of water in the rental unit is likely attributable to a leak from elsewhere. The Tenant further argued that the rental unit door had a door sweep, which acted as a seal to prevent air flow and increasing the level of humidity. The Tenant emphasized that he and his family made normal use of the rental unit.

The parties confirmed that the Tenant provided his forwarding address on January 4, 2022 and that none of the deposit has been returned to the Tenant.

The Landlord provides a copy of the move-out inspection report dated December 31, 2021. It is signed and dated by the parties, though the Tenant indicates that he did not agree with the report listing that the "landlord just planed to get our deposite (sic) for the damage we were suffer from. Some problems they mention has been pre-existed".

Analysis

The Landlord seeks monetary orders for compensation and damage to the rental unit and advances these claims against the security deposit.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Dealing first with the water damage to the rental unit, ss. 32(2) and 32(3) of the *Act* impose an obligation on tenants to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access and to repair damage to the rental unit or common areas that are caused by their actions or neglect or by a person permitted on the residential property by the tenant. Section 37(2) of the *Act* imposes an obligation on tenants to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the rental unit or the residential property.

I place significant weight on the opinion of the remediation company that the water damage was caused by excess humidity within the rental unit and that there was no water leak from external sources. This corresponds with the Landlord's photographs, which clearly shows excess condensation across the window, which is consistent with humidity build-up within the rental unit.

The remediation company's invoice outlines that the "fans in bathroom seem to be not working properly". Neither party provided submissions on whether the bathroom fan was functioning properly. The Tenant argued that the rental unit has poor ventilation. The remediation company's invoice suggests that the bathroom ventilation fan was not working properly. However, the move-out condition report indicates that the ceiling fan in the bathroom was in good condition. Though the Tenant did not agree with the report, he did not specifically cite that he disagreed with the assessment that the ceiling fan was not in good condition.

Section 21 of the Regulations provides that a condition inspection report completed in accordance with the *Act* and Regulations is evidence of the state of the rental unit when the inspection was conducted unless the landlord or tenant has a preponderance of evidence to the contrary. The move-out inspection report clearly indicates that the

bathroom ceiling fan was in good working order. Though the Tenant did not agree that the report fairly described the state the rental unit, the disagreement was generalized in nature and largely centres on the dispute regarding the source of the water build-up along the window in the one bedroom. The Tenant did not specifically cite that he disagreed with the assessment that the bathroom fan was in good condition within the move-out report, nor did the Tenant argue that the fan did not work at the hearing. Based on the undisputed assessment of the bathroom fan within the move-out report, I find that it was in working order on December 31, 2021.

The Landlord's agent testified that the rental unit has been owned since 2007 and that there have been no water issues before the Tenant's tenancy. Most importantly, the Landlord's agent testified that the current tenant has not had issue with water build-up on the affected window. On a balance of probabilities, I find that it is more likely than not that the Tenant caused the excess humidity within the rental unit through his or his family's activity. The fact that only one window was affected suggests that the occupants of that room either left their blinds drawn or failed to clean the condensation as it built up. I find that the excess humidity caused the mould and water damage within the rental unit. I further find that in doing so the Tenant breached his obligation under ss. 32 and 37 with respect to the water damage.

The Landlord submits invoices for the remediation company, dehumidifier, and the cost of repairing the areas affected by mould. I find that the Landlord has quantified its claim with respect to the cost of the remediation company ($735.00) and the cost of repairing the areas affected by mould ($325.50), that these costs were incurred and could not have been mitigated under the circumstances.

The Landlord's evidence was that it was cheaper to purchase a dehumidifier than it was to rent it from the remediation company. Though I accept that this may be true, I do not believe it would be appropriate for the Landlord to be compensated for purchasing an asset it has retained. Retaining the dehumidifier has value both in terms of current and future use but also as an asset that can be sold. Should the Tenant compensate the Landlord for the purchase of the dehumidifier and the Landlord retain the dehumidifier, the Landlord would essentially be double compensated for the asset it retained. I do no permit the Landlord's claim with respect to the purchase of the dehumidifier.

I find that the Landlord has established its claim for compensation for damage to the rental unit in the amount of $1,060.50 ($735.00 + $325.50).

I have little difficulty in finding that the Tenant breached his obligation to pay hydro as required under the tenancy agreement. The Landlord's evidence quantifies the loss at $297.00 through a December 30, 2021 estimate of usage from the utility provider. I find that Landlord has established its claim for compensation for the hydro costs in the amount of $297.00.

Looking next at the Landlord's claim for prorated January 2022 rent, this was a fixed term tenancy, which means the notice could only have been effective on February 28, 2022 as per the tenancy agreement and s. 45(2). The Tenant's email of December 11, 2021 did not comply with the notice requirement of s. 45(2) (or s. 45(1) for that matter). The Tenant gave notice that they would vacate the rental unit by January 1, 2022. The December 11, 2021 email clearly demonstrates he was alive to the risk that he would be required to pay rent for January 2022 if the Landlord could not find another tenant.

The dispute regarding the water within the rental unit came to light between the December 11, 2021 notice to vacate and the Landlord's offer on December 24, 2021 to waive its claim to January 2022 rent should the Tenant vacate on December 31, 2021. In response to the Landlord's offer, the Tenant's evidence includes the following email dated December 24, 2022:

> I believe this is 100% your fault and I explained it before. On the other hand I agree to end this discussion and give our families to enjoy the rest of the holiday. This is my suggestion. We can do one of the following options. We don't mind which option you choose....you must decide what is best for your family:
>
> 1 - For this one we need to trust each other. I ignore everything happened to me and my family. My family will continue scarification till the last day. We move out on December 31st. We sign an agreement that the thing happened here was not anybody's fault (You'll be sure that I will not follow up). You will do the inspection on December 31st at 12:00 pm. We will sign the inspection form. (The apartment is in good shape like the day we entered). I will get the deposit a moment after signing the inspection (I need that money to spend it for my family and clean their bad memory). Although the apartment is clean, you have almost $500 cleaning fee with yourself to spend if you need. Due to the bad memory, if I see the inspection is not based on good willing I will not go further and I will switch to the second option.

> 2 - For this one we let the RTB process to solve this disagreement. We stay here to make sure nobody can change the facts. You or I will open a file and send our evidence and wait for their judgment. In this period I do not mind if you do not support us with your responsibilities. I'll share the cases with you (like the previous email) if you think you should not do them I will do it and add the cost on your account. This is applicable as far as the bedroom is livable. If after future rain the bedroom is not livable we move out on your cost.

I find that the Tenant took a high-handed approach with respect to the dispute regarding the water within the rental unit. He gave notice to vacate on January 1, 2022, which he clearly knew breached the minimum notice requirements under s. 45. Despite choosing this date himself, he then unilaterally changed his move-out date to a day or two before January 22, 2022. Finally, he threatened not to move out at all unless the Landlord agreed to a general waiver with respect to the water damage, that the Landlord return the security deposit in full, and threatened to unilaterally overhold the rental unit if the move-out inspection did not meet with his approval.

I find that the Tenant did not explicitly accept the Landlord's offer to vacate on December 31, 2021, rather he provided a counteroffer with a series of conditions. I further find that the Tenant's counteroffer contained a threat to breach his obligation to vacate the rental unit, essentially to overhold, without legal right to do so. Essentially, the Tenant threatened to breach his legal obligation to vacate if the Landlord did not agree to his demands. It would be unconscionable, in my view, to give effect to a settlement in which a party obtains a promise upon threat of taking actions that are not sanctioned in law.

I find that there was no agreement by the Landlord to waive its right to claim rent for January 2022 as the Tenant did not explicitly accept the Landlord's offer of December 24, 2021.

Given that there was no settlement on this issue, I find that the Tenant breached the notice requirements under s. 45(2). The Landlord took reasonable steps to find another tenant and mitigated its damages. I find that the Landlord suffered the lost rental income for January 2022, which the Landlord calculated to be $2,015.32 based on the new tenant's occupancy on January 22, 2022. I find that the Landlord is entitled to lost rental income of $2,015.32 for January 2022.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38. Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit within the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit.

Policy Guideline #17 states the following with respect to the retention or the return of the security deposit through dispute resolution:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on:
    - a landlord's application to retain all or part of the security deposit; or
    - a tenant's application for the return of the deposit.

    Unless the tenant's right to the return of the deposit has been extinguished under the *Act*. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

The parties confirmed that the Tenant provided their forwarding address on January 4, 2022. Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Landlord filed its application on January 12, 2022. Accordingly, I find that the Landlord filed its application within the 15 days permitted to it under s. 38(1) of the *Act* such that the doubling provision of s. 38(6) does not apply.

I have turned my mind to the circumstances of the move-in and move-out inspection and whether either parties' right to the security deposit has been extinguished. However, ss. 24 or 36 apply is not relevant under the circumstances.

Policy Guideline #17 states the following:

9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:
    - to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;

- to file a claim against the deposit for any monies owing for other than damage to the rental unit;
- to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and
- to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

Regardless of whether the Landlord's right to claim against the security deposit for damages to the rental unit has been extinguished, Policy Guideline #17 is clear that the Landlord retained the right to claim against the security deposit for monies owing other than damage to the rental unit. The Landlord did so under the circumstances. Further, the amount ordered exceeds the total deposit held, such that whether the Tenant's right to the return of the deposit is extinguished is not relevant either.

I direct that the Landlord retain the security deposit of $1,600.00 in partial satisfaction of the amount owed by the Tenant. I note that the security deposit does not comply with s. 19 of the *Act* in that it exceeds ½ a month's rent payable under the tenancy agreement. The Landlord is ***cautioned*** to correct its practice with respect to the amount it request from tenants for deposits.

The Landlord was largely successful in its application. I find that it is entitled to the return of its filing fee. I order pursuant to s. 72(1) of the *Act* that the Tenant pay the Landlord's $100.00 filing fee.

Taking the above into account, I find that the Landlord is entitled to the following monetary order:

Item	**Amount**
Damage to the rental unit	$1,060.50
Unpaid Hydro	$297.00
Prorated rent for January 2022	$2,015.32
Landlord's filing fee	$100.00
Less the security deposit to be retained	-$1,600.00
Total	**$1,872.82**

Conclusion

Pursuant to ss. 38, 67, and 72 of the *Act*, I order that the Tenant pay **$1,872.82** to the Landlord.

It is the Landlord's obligation to serve the monetary order on the Tenant. If the Tenant does not comply with the monetary order, it may be filed with 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: August 24, 2022

Residential Tenancy Branch