



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT, MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with cross applications filed by the parties. On June 30, 2021, the Tenant made an Application for Dispute Resolution seeking a Monetary Order for double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On October 14, 2021, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking to apply the security deposit towards that debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was the final, reconvened hearing from the original Dispute Resolution hearing set for January 17, 2022. The original hearing was adjourned as per an Interim Decision dated January 17, 2022, and then subsequently adjourned again as per an Interim Decision dated April 7, 2022. The final, reconvened hearing was set down for a hearing July 22, 2022, at 11:00 AM.

The Tenant and co-tenant L.W. attended the final, reconvened hearing. The Landlord attended the final, reconvened hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were

also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

All parties confirmed service of the Notice of Hearing packages at the original hearing.

In addition, the Tenant advised at the original hearing that his documentary evidence was served by registered mail on December 23, 2021, and the Landlord confirmed that she received this package. Based on this undisputed testimony, I have accepted the Tenant's documentary evidence and will consider it when rendering this Decision.

The Landlord advised at the original hearing that her evidence was served to the Tenant by registered mail on October 20, 2021, but she did not check to see if the Tenant could view the digital evidence pursuant to Rule 3.10.5 of the Rules of Procedure. The Tenant confirmed that this evidence was received; however, he did not attempt to view the digital evidence as it was his belief that the documents were already before him. Based on this undisputed testimony, despite the Landlord not complying with Rule 3.10.5, as the Tenant had sufficient time since the original hearing to view the digital evidence, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

As an aside, and as noted in the Interim Decision dated January 17, 2022, the Tenant did not amend his Application pursuant to Rule 4.1 of the Rules of Procedure to address further claims for monetary compensation. As such, the only claims that will be considered are the ones noted in his original Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a return of double his security deposit?
- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?

- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy was started on August 14, 2014, that rent was established at an amount of \$1,250.50 per month, and that it was due on the first day of each month. A security deposit of \$550.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The parties also agreed that the Landlord served a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") on or around September 26, 2020 because "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit." The effective end date of the tenancy was noted on the Notice as November 30, 2020.

The Tenant disputed this Notice, and a hearing was set down for December 10, 2020 (the relevant file number is noted on the first page of this Decision). However, while the Tenant was entitled to remain in the rental unit until a Decision was rendered after the December 10, 2020 hearing, it was determined through the course of these hearings I had with the parties that the tenancy ended prior to a Decision being made on the matter. While the Landlord was not entirely forthright, she eventually acknowledged that she would have been penalized, based on the conditions of the sale of the rental unit, if she did not return vacant possession to the purchaser of the property on December 1, 2020. To avoid this penalty, she took matters into her own hands and illegally took over possession of the rental unit on or around November 23, 2020, without first obtaining an Order of Possession or a Writ of Possession.

All parties agreed that a move-in inspection report was conducted on August 1, 2014. The Landlord confirmed that she did not provide the Tenant with a Notice of Final Opportunity to Conduct a move-out inspection; however, this is a moot point as it was evident that the Landlord illegally took possession of the rental unit back.

The Tenant advised that he provided his forwarding address on November 24, 2020, by email and the landlord confirmed that she received this in or around November or December 2020. As well, she testified that she accepted this email as a valid forwarding address for the Tenant.

In addition to a return of double the security deposit, the Tenant is seeking compensation in the amount of **\$291.00**, which is calculated as the pro-rated amount of rent from November 23, 2020, the day the Landlord illegally took possession of the rental unit back, until the end of the month. At the original hearing, he stated that he did not pay any rent for the month of November 2020 due to the compensation owed on the Notice; however, he did not receive this whole month's compensation that he was entitled to as the Landlord took possession of the rental unit back prior to November 30, 2020. He referenced documentary evidence submitted to support this position.

The Landlord made submissions attempting to suggest that the Tenant moved out of the rental unit on November 23, 2020; however, as it was confirmed in the July 22, 2022 hearing that the Landlord acknowledged taking over possession of the rental unit when she was not legally permitted to, there was no point reproducing her submissions from the January 17, 2022 hearing. As an aside, based on the Landlord's obvious untruthfulness, this causes me to question her credibility on the whole.

As submissions for the Tenant's claims were already addressed, the April 7 and July 22, 2022 hearing focussed on the claims in the Landlord's Application. The Landlord's claims have been laid out below in the same order and description as noted on her Monetary Order Worksheet.

1) Repair labour

The Landlord advised that she was seeking compensation in the amount of **\$225.00** for the cost to repair broken kitchen cabinets that she asked the Tenant to repair two years ago. This claim was also for the repair of a broken bedroom door. She stated that this amount is to cover the cost and hours of the carpentry work her husband spent making the repairs. She testified that he spent "maybe three hours" on these repairs, but she was not sure exactly how much time was spent. She referenced the documentary evidence submitted to support her position.

The Tenant advised that he was denied the opportunity to fix any damage in the rental

unit as the Landlord took possession of the rental unit illegally and is now attempting to charge him for any repairs.

2) and 3) Labour repair and repair

The Landlord advised that she was seeking compensation in the amounts of **\$25.00** and **\$35.00** for the costs to repair a toilet tank and a light cover. However, she did not make any submissions with respect to these claims.

4) Replacement cost Ikea

The Landlord advised that she was seeking compensation in the amount of **\$199.00** because the Tenant broke hinges on a closet that was seven years old. She stated that this amount was the cost to replace the closet. However, she submitted that the closet was not new at the start of the tenancy, and she did not submit any documentary evidence to prove how much she purchased this old closet for. She referenced her documentary evidence provided to corroborate her claims of damage.

The Tenant advised that he was denied the opportunity to fix any damage in the rental unit as the Landlord took possession of the rental unit illegally and is now attempting to charge him for any repairs.

5) Equal to or more

The Landlord advised that she was seeking compensation in the amount of **\$100.00** for the cost to replace a radiator cover; however, she did not make any submissions with respect to this claim.

6) Over due

The Landlord advised that she was seeking compensation in the amount of **\$1,378.44** for the unpaid rent that was owing during the COVID pandemic state of emergency period of time. She testified that the Tenant was in arrears \$4,001.50 as of October 1, 2020, and paid back \$2,623.16 from December 2020 to May 2021 as part of a payment plan. Therefore, the amount being claimed is what is still currently outstanding; however, she had difficulty referencing specific documentary evidence of payments made by the Tenant.

The Tenant confirmed that he was in arrears \$4,001.50 as of October 1, 2020, and that he made payments from December 2020 to April 2021 as per the payment plan established. Therefore, as of May 1, 2021, he still owed the Landlord \$1,500.50. However, from this amount, he deducted \$291.76 because he believed he was owed this amount back from the Landlord as the pro-rated amount of rent owed from November 2020 due to the Notice. He then deducted a further \$1,100.00 from this amount owing as he had already awarded himself the doubling of the security deposit. After these arbitrary deductions, he calculated that he owed the Landlord \$108.74, but he then added \$13.34 to this amount for a pro-rated amount of utilities, and made one final payment to the Landlord of \$122.08 for the remaining monies owed to her.

7) Jan.2021 to Jun.30,2021

At the final reconvened hearing, the Landlord advised that she was seeking compensation in the amount of **\$600.00** for the cost of storing the Tenant's property for six months. She stated that she owned a share of this storage facility, so she does not have a receipt for this cost. She submitted that she emailed the Tenant about the costs of this storage, but the Tenant ignored this completely. She claimed that the property was valued at less than \$500.00, but she stored it anyways. She stated that she sent two notices and that her lawyer sent one notice to the Tenant to claim his property, but the Tenant refused to collect it. As such, she disposed of this property at the end of June 2021 by throwing it into "other people's garbage cans" and by simply leaving the furniture in the "back alley". She referenced the documentary evidence submitted to support her position with respect to what property was left behind.

The Tenant advised that he posted a sign informing the Landlord not to enter the rental unit; however, the Landlord removed this property illegally, prior to the tenancy ending. Therefore, the storage costs are the Landlord's responsibility. He stated that he sent an email to the Landlord on December 3, 2020 requesting photos of his property, as well as asking her how he could retrieve important items, but the Landlord ignored him. He testified that he sent an email to the Landlord's counsel on December 10, 2020, requesting how he could obtain his property, but he did not get a list or photos of his property until months later. He did receive an email in February 2021 from the Landlord's counsel informing him to retrieve his property. As well, he did eventually get a list of his items that were stored, but the list did not include his important items.

L.W. advised that any property left behind was not abandoned and that they informed the Landlord of this. She stated that the Landlord illegally went into the rental unit, took

their property, stored it, refused to provide information about this property, and then disposed of it.

8) Rented vehicle

The Landlord advised that she was seeking compensation in the amount of **\$189.00** for the cost of renting a large vehicle to transport the Tenant's property to the storage facility. She referenced the documentary evidence submitted to support the cost being claimed.

The Tenant advised that he never asked the Landlord to remove or store his property; therefore, the Landlord should be responsible for this cost. As well, he testified that as per a document submitted as part of the Tenant's evidence, the Landlord stated that she would not remove any property. Despite this, she elected to enter the rental unit illegally and remove his property, contrary to the *Act*.

L.W. reiterated that they asked the Landlord not to touch their property, and that the Landlord stated in an email dated November 20, 2020, that she would not remove any property from the rental unit. As such, this cost should be on the Landlord.

9) 8 hr x \$30/hr

The Landlord advised that she was seeking compensation in the amount of **\$240.00** for the cost of eight hours of the Landlord's and her husband's time spent packing and loading the Tenant's property, on November 26, 2020. She did not have an invoice or any other documentary evidence to support this cost.

L.W. repeated that the Tenant should not be responsible for this cost as the Landlord was not permitted to do what she did.

10) Storage, part of Dec

The Landlord advised that she was seeking compensation in the amount of **\$105.00** for the cost of temporary storage of the Tenant's property in a dumpster. She referenced the receipt submitted as documentary evidence to support this cost.

L.W. reiterated that the Landlord was never asked to store the Tenant's property in a dumpster, so the Tenant should not be responsible for this cost.

11) U-Haul rental

The Landlord advised that she was seeking compensation in the amount of **\$81.49** for the cost of renting a vehicle to take the Tenant's property from the temporary storage in the dumpster to the storage facility. She stated that she did this with her husband, and that it took them three trips for a total of eight hours. She then stated that the earlier claim of \$189.00 was for the cost to load the Tenant's property into the dumpster and to store it there for two weeks. She claimed that she did not state that she would not remove and store the Tenant's property. She claimed that she asked the Tenant what he would pay the Landlord for her to do this.

The Tenant did not have any new submissions with respect to the Landlord's claims.

12) DQ bin dump fee

The Landlord advised that she was seeking compensation in the amount of **\$225.23** for the cost of disposal of the Tenant's property. She referenced the pictures and the invoice submitted as documentary evidence to corroborate this claim.

The Tenant did not have any new submissions with respect to the Landlord's claims.

13) Cleaning

The Landlord advised that she was seeking compensation in the amount of **\$225.00** for the cost of cleaning the rental unit and bringing it back to a re-rentable state. She stated that the rental unit was left filthy, including feces and urine that was left behind. She cited the invoice submitted as documentary evidence to support the cost of this claim.

The Tenant did not have any new submissions with respect to the Landlord's claims.

14) and 15) Fortis gas and BC Hydro

Finally, the Landlord advised that she was seeking compensation in the amounts of **\$13.34** and **\$7.60** for the costs of the pro-rated gas and hydro utilities that the Tenant owed from November 1 to November 23, 2020. While she could not directly point me to her documentary evidence to support these claims for utilities owed, she stated that the Tenant owed 45% of these utilities as per the tenancy agreement.

The Tenant advised that he had paid for these utilities already as part of his December 2020 payment, and he referenced the documentary evidence submitted to support this submission.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receive the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, I am satisfied that the Tenant provided his forwarding address by email to the Landlord on November 24, 2020. As well, I am satisfied that the Landlord received this as she acknowledged this, and confirmed that she understood that this was the Tenant's forwarding address. As the Landlord did not return the deposit in full or claim against it until October 14, 2021, I am satisfied that the Landlord failed to comply with the *Act* and the doubling provisions apply to the security deposit. Therefore, I grant the Tenant a monetary award in the amount of $\$550.00 \times 2 =$ **\$1,100.00**.

Regarding the Tenant's claim for compensation in the amount of \$291.00, the consistent and undisputed evidence is that the Landlord served the Notice, which required the Landlord to compensate the Tenant in the amount of one month's rent. Furthermore, as it is undisputed that the Landlord illegally took over the rental unit contrary to the *Act*, the Tenant was not compensated the full month's rent owed to him based on the Notice. As such, I grant the Tenant a monetary award in the amount of **\$291.00** to satisfy this debt.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines

that when a party is claiming for compensation, “It is up to the party who is claiming compensation to provide evidence to establish that compensation is due”, that “the party who suffered the damage or loss can prove the amount of or value of the damage or loss”, and that “the value of the damage or loss is established by the evidence provided.”

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenant fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

Furthermore, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also turn to a determination of credibility. I have considered the parties’ testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

I also find it important to note that both parties, and in particular the Landlord, submitted an exorbitant amount of evidence, and neither party was able to sufficiently or reliably point me to the documentary evidence that would support their claims. I found neither party to be particularly clear or knowledgeable about the specific details of their cases to provide satisfactory, fulsome, or persuasive testimony.

Furthermore, as an aside, the Landlord’s claims will not be addressed in the order on her Monetary Order Worksheet. For ease of reference, I have grouped together specific claims to address them in a more easily understandable and logical format, as these groupings appear to be substantially related to each other.

With respect to claims 2, 3, and 5, as the Landlord did not make any submissions on these issues, these are dismissed without leave to reapply.

Regarding claims 1, 4, 7, 8, 9, 10, 11, 12, 13, I note that these are all costs that the Landlord claims to have incurred as a result of having to repair damage to the rental unit, having to clean the rental unit, and for having to remove and store the Tenant's property. However, I find it important to note that the consistent and undisputed evidence is that the Landlord acknowledged that she took over possession of the rental unit prior to obtaining an Order of Possession, which is in direct contravention of the *Act*.

Furthermore, it was clearly evident that she elected to do so because she believed it was better to take this illegal approach to ending the tenancy as compared to facing the consequences of having to pay a penalty to the purchaser of the property for not providing vacant possession of the rental unit by December 1, 2020. As the Landlord intentionally and deliberately contravened the *Act* in this manner, the Landlord denied the Tenant the opportunity to repair, clean, and remove property from the unit prior to giving up vacant possession of the rental unit. As such, I do not find it reasonable that the Landlord could then be justified in attempting to claim against the Tenant for these issues when it is possible that the Tenant could have rectified all of these issues prior to the tenancy ending in accordance with the *Act*. Consequently, I dismiss these claims in their entirety.

As an aside, I find it important to emphasize that the Tenant disputed the Notice and had a hearing scheduled for December 10, 2020 to determine whether the Notice was valid and whether or not the tenancy would end. However, it was Landlord who decided that the tenancy was over when in fact, based on the dispute, it could have been determined that the Notice was not valid, and that the tenancy would have simply continued. The Landlord is cautioned that she could potentially face additional claims for compensation or aggravated damages, or even an administrative penalty from the Compliance and Enforcement Unit of the Residential Tenancy Branch, due to this intentional, deliberate, and egregious breach of the *Act*.

Finally, with respect to claims 6, 14, and 15, the consistent and undisputed evidence appears to indicate that the Tenant was still in arrears some amount of unpaid rent. The Landlord's position was that \$1,378.44 was still outstanding, whereas the Tenant's position was that \$1,500.50 was outstanding up to this same point in time.

The Tenant appears to have arbitrarily decided, of his own accord, that he should have been awarded the remainder of November 2020 pro-rated rent. In addition, the Tenant also pre-emptively awarded himself double the security deposit. The Tenant then

elected to deduct these self-awarded amounts from the rent arrears of \$1,500.50 owed to the Landlord. As well, he appeared to add \$13.34 to the difference for utilities, and then paid the Landlord an amount of \$122.08.

If I subtract what the Tenant paid to the Landlord (\$122.08) from what he claimed was owed (\$1500.50), I get an amount of \$1,378.42, which is essentially the amount that the Landlord is claiming for unpaid rent. I note that the amounts are off by a few cents, but it was apparent that neither party was very accurate with their accounting. Regardless, it appears in my view that the amount of rent outstanding was essentially consistent from both parties; however, the amount of rental arrears actually paid by the Tenant to the Landlord of only \$122.08 was due to the Tenant reducing the entire amount of rent owed because of an award he already decided that he was entitled to.

I fully reject the manner with which the Tenant arbitrarily decided to award himself compensation under the *Act*, and then deduct it from outstanding arrears owed to the Landlord. The Tenant is cautioned from making such decisions himself in future tenancies as actions such as this could potentially jeopardize his tenancy or even lead to an investigation and/or administrative penalty from the Compliance and Enforcement Unit of the Residential Tenancy Branch.

Regardless, from my review of the evidence presented before me, I have already determined that the Tenant is granted \$1,100.00 for the doubling of the security deposit and \$291.00 for the pro-rated balance of compensation owed based on the Notice. As it appears as if the Tenant has already awarded himself these amounts, a monetary award will not be issued to the Tenant. Furthermore, as it appears as if the Tenant then paid the Landlord the remaining balance owing of \$122.08, I am satisfied that the rental arrears matter owed to the Landlord has been settled. As such, I dismiss the Landlord's claim for \$1,378.42 in its entirety.

As a note, there may be a discrepancy in a matter of cents with the calculation of monies owed; however, conducting a forensic accounting of the parties' debts is not under the purview of my jurisdiction. I have done my best to determine the amounts owing as accurately as possible based on the inconsistent and contrary submissions made by the parties. Moreover, and as noted above, both parties, and in particular the Landlord, submitted an exorbitant amount of evidence, and neither party was able to sufficiently or reliably point me to the documentary evidence that would support their claims. This would be another reason for any minor inconsistencies in the calculations of monies owing. I emphasize that it is not within the purview of my jurisdiction to comb

through the parties' documentary evidence to piece together their claims and/or arguments for them.

Finally, with respect to the Landlord's claims of \$13.34 and \$7.60 for utilities owed, I note that the burden of proof is on the Landlord to substantiate these claims. While both parties made contradictory submissions about these amounts, I am not satisfied that the Landlord sufficiently corroborated these amounts as owing, on a balance of probabilities. As such, I dismiss these claims in their entirety.

While the Tenant was successful in his claim, I note that the Tenant had already arbitrarily awarded himself the amounts of \$1,100.00 and \$291.00 and deducted that from what was owed to the Landlord. As the Tenant has already been compensated for these amounts, a Monetary Order will not be issued to the Tenant. Furthermore, as the Tenant already granted himself, on his own accord, these monies in contravention of the *Act*, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for his Application.

Moreover, as I have determined that the Landlord was not successful in her claims, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for her Application.

Conclusion

As these awards offset each other, neither party is provided with a Monetary Order.

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 5, 2022

Residential Tenancy Branch