Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, MNDL, FFL

Introduction

On February 2, 2021, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On February 26, 2021, the Landlord amended her Application seeking to increase the amount of monetary compensation pursuant to Section 67 of the *Act* and seeking to apply the security deposit towards this debt pursuant to Section 38 of the *Act*.

This hearing was the final, reconvened hearing from the original Dispute Resolution hearing set for June 4, 2021. The original hearing was adjourned as per an Interim Decision dated June 4, 2021, and then subsequently adjourned again for various other reasons as per Interim Decisions dated September 27, 2021, June 27, 2022, and August 5, 2022. The final, reconvened hearing was set down for September 8, 2022, at 1:30 PM.

Both the Landlord and the Tenant attended the final, reconvened hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, neither party 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, the parties 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 package at the original hearing. In addition, service of the Landlord's evidence was confirmed and as a result, the Landlord's evidence was accepted and considered when rendering this Decision.

Moreover, the Tenant's evidence was not served pursuant to the timeframe requirements of Rule 3.15 of the Rules of Procedure (the "Rules"). As the original hearing required being adjourned, I determined that the Landlord would have ample opportunity to review the Tenant's documentary evidence. As such, this documentary evidence was accepted and considered when rendering this Decision. However, the Tenant did not comply with Rule 3.10.5 of the Rules, and as the Landlord was not able to view the Tenant's digital evidence, this evidence was excluded and will not be considered when rendering this Decision.

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 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 started on June 1, 2020, as a one-year fixed term tenancy agreement ending on May 31, 2021. However, the tenancy ended when the Tenant gave up vacant possession of the rental unit on February 12, 2021. Rent was established at an amount of $1,200.00 per month and was due on the first day of each month. A security deposit of $600.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The parties also agreed that a move-in inspection report was conducted on May 31, 2020, and that a move-out inspection report was conducted on February 12, 2021. As well, the Tenant provided a forwarding address in writing to the Landlord on February 11, 2021, by registered mail, and the Landlord confirmed that she received this on February 18, 2021.

In addition, all parties agreed that the Landlord served a One Month Notice to End Tenancy for Cause (the "Notice") on January 28, 2021, by posting it to the Tenant's door, and the Tenant confirmed that she received this. The Notice was served for the following reasons:

- The Tenant or a person permitted on the residential property by the Tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property,
  - seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant, or
  - put the Landlord's property at significant risk.

- The Tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the Landlord gives written notice to do so.

- The Tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property.

The effective end date of the tenancy was noted on the Notice as February 28, 2021. The Tenant confirmed that she did not dispute the Notice.

The Landlord advised that she was seeking compensation in the amounts of **$1,200.00** for February 2021 rent, **$1,200.00** for March 2021 rent, **$500.00** for liquidated damages, **$331.35** for the cost of utilities owed, **$52.30** for the cost to replace a blind, and **$70.00** for the cost to clean the rental unit. The Tenant confirmed that she understood the nature of the Landlord's claims.

With respect to the Landlord's claim in the amount of **$1,200.00** for February 2021 rent, the Landlord advised that she had received many complaints from neighbours about the Tenant, so the Notice was served. She referenced documentary evidence submitted to

support this position. She stated that she received an email from the Tenant on February 1, 2021, which indicated that she would be moving out and that she would not be paying February 2021 rent.

The Tenant advised that she emailed the Landlord on December 7, 2020, to address a mold issue in the rental unit and that the Landlord scheduled an inspection on December 10, 2020. However, the Landlord claimed that there was no mold found. The Tenant then emailed the Landlord on December 10, 2020, requesting that the Landlord address the mold issue within a few days, but the Landlord did not call a certified professional. On December 13, 2020, the Tenant hired a professional to assess the condition of the rental unit and she stated that according to the report, moisture was detected, and it was determined that the roof required replacement. She stated that the Landlord did not do anything to address this issue after receiving the report. She referenced the documentary evidence submitted to support this position.

She testified that she sent the Landlord a breach letter where she informed the Landlord of her belief of two breaches of a material term of the tenancy being: the mold issue, and a loss of quiet enjoyment. She stated that she provided a deadline of December 20, 2020, for the Landlord to rectify these breaches. She stated that she ended the tenancy because these breaches were not corrected by the Landlord; however, she did not give a date in her letter for when she would end the tenancy if these breaches were not remedied. She then stated that it was not physically possible to leave in January 2021, and that she could not financially pay for February 2021 rent.

The Landlord advised that the Tenant did email on December 7, 2020, about a possible mold issue, so she went to investigate and found no signs of mold. She sent the Tenant an email that night in regards to this, but the Tenant had already packed up half her property. She stated that she lent the Tenant an air purifier. She confirmed that the report from the professional, that the Tenant hired, noted that there was just “elevated moisture” detected. She testified that she hired her own professional on February 25, 2021, and there was no mold discovered. As well, she submitted that the Tenant called the municipality to inspect the rental unit and there was no sign of mold detected. In response to the Tenant’s submission of a doctor’s note dated December 11, 2020, she stated that the Tenant never made any complaints before this time. She referenced the documentary evidence provided to support her position.

Regarding the Landlord’s claim in the amount of **$1,200.00** for March 2021 rent, the Landlord advised that she had posted the rental unit online as available for rent on February 14, 2021, and she showed the unit from February 18, 2021, to the first week of

March 2021. However, the Tenant made many disparaging posts online accusing the Landlord of being a slumlord and that the rental unit was full of mold. She was forced to explain to new prospective tenants that there was no mold. She stated that she was finally able to re-rent the unit for April 1, 2021. She referenced the documentary evidence submitted to corroborate these claims.

The Tenant advised that it is only considered defamation if her allegations are untrue. She stated that she had her own mold report confirming the existence of mold, that the Landlord's report did not note the actual unit in that report, and that only two samples were taken in a "back room". She testified that the letter from the municipality indicated that the deck was determined to have deteriorated on April 30, 2020. She stated that her breach letter due to mold was dated December 22, 2020, but there was no date provided of when she would move out if the Landlord did not correct this alleged breach. She stated that her move out date of February 12, 2021, was a date that was convenient for her to get her affairs in order. She referenced the documentary evidence submitted to support her position.

The Landlord advised that she was seeking compensation in the amount of **$500.00** because the Tenant ended the fixed term tenancy early, and there was a liquidated damages clause in the tenancy agreement.

The Tenant did not make any submissions with respect to this claim.

With respect to the Landlord's claim in the amount of **$331.35** for the cost of utilities owed, she stated that the Tenant was responsible for 25% of utilities and hydro from October 2020 to February 12, 2021. She re-calculated the amounts owing and stated that she is only seeking **$266.92**. She cited the documentary evidence submitted to support these claims.

The Tenant advised that she contacted the Landlord about the utilities because it was shared between units, and the other tenants had extra occupants living there. She stated that she informed the Landlord of this on December 7, 2020, and the Landlord indicated that she would look into this issue. However, the Landlord did not, and she refused to lower the request for utilities. It is her belief that the requested utilities amount should be reduced to half.

The Landlord responded that she was willing to reduce the utilities initially because the previous tenants had paid extra; however, the new tenants only had three people living in the three-bedroom unit, with guests.

The Landlord advised that she was seeking compensation in the amount of **$52.30** for the cost of replacing a broken blind in the bedroom. She stated that this was newly purchased six months before the tenancy started, and the damage was noted on the move-out inspection report. She testified that she purchased a new blind to replace the broken on, and she referenced the invoice submitted to support this claim.

The Tenant advised that the Landlord did not submit proof of how old the blind was. Regardless, she stated that the blind was cheap, and that the small part of the blind that was broken was not done maliciously, but was accidental. It is her belief that this is simply wear and tear. As well, she noted that the receipt does not indicate that the purchase was for a blind.

Finally, regarding the Landlord's claim for compensation in the amount of **$70.00**, she advised that the Tenant did not clean the washing machine. As well, she notified the Tenant to clean a leak stain left by her vehicle on the driveway by December 18, 2020; however, the Tenant did not. She stated that the cleaning product for the driveway stain cost approximately $20.00, that the cleaning of the driveway stain took approximately one hour to remedy, at a cost of $35.00, and that the cleaning of the washing machine and dryer cost $15.00. She referenced her documentary evidence submitted to support these claims.

The Tenant questioned whether it was reasonable for the Landlord to clean and then charge the Tenant for these issues. She stated that it was raining on the day the Landlord informed her to fix the driveway stain. As well, the driveway is made up of a combination of pavement and dirt. She stated that the Landlord did not submit any proof of any requests to clean this area, and when the Tenant asked the Landlord for proof of this stain, the Landlord refused to provide it. She submitted that the Landlord's pictures of this issue are grainy and difficult to discern. Finally, she indicated that the Landlord did not check the washing machine at the move-out inspection, and if the Landlord missed it, then the Landlord should be responsible for this.

Analysis

Upon consideration of the testimony 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 23 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulations* (the "*Regulations*") outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenant have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit or pet damage deposit is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenant must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the inspection reports, as all parties agreed that a move-in and move-out inspection report was conducted, I am satisfied that the Landlord complied with the requirements of the *Act* in completing these reports. As such, I find that the Landlord has not extinguished the right to claim against the deposit.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenant's security deposit, 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 receives 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 consistent and undisputed evidence before me, given that the forwarding address in writing was deemed received on February 16, 2021, as the Landlord's amendment to claim against the deposit was made on February 26, 2021, I am satisfied that the Landlord made this Application to claim against the deposit within 15 days of February 16, 2021. As the Landlord has not extinguished the right to claim against the deposit, I find that the doubling provisions do not apply to the security deposit in this instance.

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?

Regarding the Landlord's claim for lost rent of $1,200.00 for February 2021, there is no dispute that the parties entered into a fixed term tenancy agreement from June 1, 2020 for a period of one year, ending on May 31, 2021. Yet, the tenancy effectively ended when the Tenant gave up vacant possession of the rental unit on February 12, 2021.

Section 44 of the *Act* sets out all of the ways a tenancy may end, and Section 45 stipulates that "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." As well, "A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*."

Section 52 of the *Act*, in turn, states that "In order to be effective, a notice to end a tenancy must be in writing and must

> (a) be signed and dated by the landlord or tenant giving the notice,
> (b) give the address of the rental unit,
> (c) state the effective date of the notice,
> (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
> (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
> (e) when given by a landlord, be in the approved form."

While the Tenant claimed to have ended the tenancy in accordance with the *Act* due to a breach of a material term of the tenancy, I note that she was unable to point directly to any documentation that satisfied the above requirements to end a tenancy in this manner. I note that she advised the Landlord of what she believed were breaches of a material term of the tenancy; however, she stated in the breach letter that, "Failure to address these concerns after the date of this letter will force me to end the tenancy agreement without notice." As per the above Sections of the *Act*, if the Tenant wants to end the tenancy due to a breach of a material term, the Tenant is required to give a notice to end the tenancy that has an effective end date. The Tenant is not permitted to end the tenancy due to a breach of a material term "without notice" as suggested by the Tenant.

I note that the Tenant emailed the Landlord on February 1, 2021, stating "When I have finished moving out of the suite, I will sent [sic] you my notice to end the tenancy agreement in writing and my forwarding address. Please be advised this is not my notice. I will be serving you notice to end the tenancy agreement on the grounds of the landlord's breach of the material terms of our tenancy agreement, as stated in the 'breach letter' sent on December 24, 2020 which gives me the right to end our tenancy agreement without notice." As already established above, the Tenant must provide a notice to end the tenancy that complies with the *Act*, and if the Tenant wanted to end the tenancy due to a breach of a material term, she would be required to do so in accordance with Section 52 of the *Act*, which would include a date that the tenancy

would end due to this breach. As she indicated that, “Please be advised this is not my notice.”, I can then reasonably infer that she had not given her notice to end the tenancy in accordance with the *Act* prior to this date.

Moreover, it is not clear to me why the Tenant would have waited until February 12, 2021, to give up vacant possession of the rental unit if the alleged breaches were so significant. Given that she stated that the reason she waited this long to leave was so that she could get her affairs in order, this causes me to place less weight on the significance of the alleged breaches. In addition, as the Tenant acknowledged that she could simply not pay afford to pay for February 2021 rent, I am further doubtful that a breach of a material term of the tenancy was truly why the tenancy ended.

Regardless, while it may have been the Tenant’s intention to end the tenancy due to a breach of a material term, I am not satisfied that she complied with the *Act* by providing a written notice that contained a specific effective end date of the tenancy should the Landlord not have complied with the Tenant’s breach letter.

Moreover, I find it important to note that the Landlord served a One Month Notice to End Tenancy for Cause on January 28, 2021, with an effective end date of February 28, 2021. As this Notice was not disputed by the Tenant, and as I am not satisfied that the Tenant served a notice to end her tenancy, that complied with the *Act*, prior to February 1, 2021, I find that the tenancy actually ended by virtue of the One Month Notice to End Tenancy for Cause. Consequently, I am satisfied that the Landlord is entitled to a monetary award in the amount of **$1,200.00** to satisfy the loss for rent owing for the month of February 2021.

With respect to the Landlord’s claim in the amount of $1,200.00 for March 2021 rent, there is no dispute that the parties entered into a fixed term tenancy agreement from June 1, 2020, for a period of one year, ending on May 31, 2021. Yet, the tenancy effectively ended when the Tenant gave up vacant possession of the rental unit on February 12, 2021.

I find it important to note that Policy Guideline # 5 outlines a Landlord’s duty to minimize their loss in this situation, and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Moreover, the Landlord must make reasonable efforts to re-rent the rental unit.

Based on the undisputed evidence before me, I accept that the Landlord posted the rental unit online as available for rent on February 14, 2021, and showed the rental unit.

However, given that the Tenant gave up vacant possession of the rental unit on February 12, 2021, I find it more likely than not that most prospective tenants would have already found a place to live for March 1, 2021, and that any prospective tenants would be looking for accommodation for a later date. Furthermore, I also accept that the Tenant likely contributed to the difficulty in re-renting the unit due to her online comments, despite her belief that this was not defamation, and that these actions were actually to her detriment.

Ultimately, I am satisfied that the Landlord made reasonable efforts to effectively mitigate this loss and that she re-rented the unit as quickly as possible. Therefore, I am satisfied that the Tenant is responsible for March 2021 rent as well. As a result, I grant the Landlord a monetary award in the amount of **$1,200.00** to satisfy this claim.

Regarding the Landlord's claim in the amount of $500.00 for the cost of liquidated damages, Policy Guideline # 4 states that a "liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement" and that the "amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into". This guideline also sets out the following tests to determine if this clause is a penalty or a liquidated damages clause:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

Based on the consistent, undisputed evidence before me, I am satisfied that there was a liquidated damages clause in the tenancy agreement that both parties had agreed to. I am also satisfied that the Landlord sufficiently justified her efforts to re-rent the unit and that this amount was a genuine pre-estimate of this loss. As such, I grant the Landlord a monetary award in the amount of **$500.00** to satisfy this issue.

With respect to the Landlord's claim in the amount of $266.92 for the cost of utilities owed, I have before me the tenancy agreement, which indicates that the Tenant was responsible for 25% of utilities and hydro. While there does appear to have been an ongoing dispute about utilities owed during the duration of the tenancy, as the tenancy agreement requires that the Tenant pay 25% of utilities and hydro, and as the amount

calculated is for a period of over three months for utilities, and approximately two months for hydro, I do not find that the claims would be indicative of being excessive consumption for one person. As such, I grant the Landlord a monetary award in the amount of **$266.92** to remedy this issue.

Finally, regarding the Landlord's claims for compensation in the amount of $52.30 for the cost of replacing a broken blind in the bedroom and $70.00 for the cost of general cleanup, I do not find that the Landlord has submitted sufficient or compelling evidence to establish the grounds for these claims. As such, I dismiss them without leave to reapply.

As the Landlord was partially successful in these claims, I find that the Landlord is entitled to recover the $100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these claims.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
February 2021 rent	$1,200.00
March 2021 rent	$1,200.00
Liquidated damages	$500.00
Utilities and hydro	$266.92
Recovery of filing fee	$100.00
Security deposit	-$600.00
Total Monetary Award	**$2,666.92**

Conclusion

I provide the Landlord with a Monetary Order in the amount of **$2,666.92** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order 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 *Residential Tenancy Act*.

Dated: September 28, 2022

Residential Tenancy Branch