Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the "Act"), for a monetary order for money owed or loss, , for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The tenant confirmed they received the landlord's evidence. The landlord stated that the tenant's evidence was sent by registered mail on September 9, 2022, and not received within the time period established by the Residential Tenancy Branch Rules of Procedures. The landlord stated that the tenant was served with their evidence back in February 2022 and this is an unreasonable delay.

In this case, I have reviewed the tenant's evidence which includes 5 pages written submission, unreadable text messages, photographs, and an email to the landlord. These were provided to the Residential Tenancy Branch on September 9, 2022, and sent to the landlord on the same day by registered mail. However, the tenant did not consider the provision that the documents sent by registered mail is not deemed served until 5 days after it was mailed, which was September 14, 2022. This was only six days before the hearing. Rule 3.15 states that the respondent's evidence must be received by the applicant no less that seven days before the hearing. I find the tenant failed to comply with Rule 3.15. Therefore, I find I must exclude the tenant's evidence.

Further, I note most of the evidence is unrelated to the landlord's claim and therefore would not be considered in any event.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for loss or other money owedt?
Is the landlord entitled to monetary compensation for damages?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on December 1, 2021, and was to expire on May 31, 2023. Rent in the amount of $2,100.00 was payable on the first of each month. The tenant paid a security deposit of $1,050.00 and a pet damage deposit of $1,050.00 The tenancy ended on or about January 31, 2022. The pet damage deposit has been returned to the tenant.

The landlord claims as follows:

a.	Cost of re-renting the premises	$ 450.00
b.	Change the locks	$ 81.72
c.	Heat inspection	$ 94.50
d.	Cost to repair damaged walls	$ 545.14
e.	Filing fee	$ 100.00
	Total claimed	**$1,271.00**

Cost of re-renting the premises

The landlord testified that the tenant breached the fixed term tenancy as they vacated the premises in January 2022. The landlord stated because of the breached of the tenancy agreement they suffered a loss as they had to find a new renter. The landlord stated they had three showings to find a new tenant. The landlord stated that these are cost they would normally pay if the tenant had complied with the fixed term; however, it was unreasonable for them to have to go through this process two months after the tenancy commenced. The landlord seeks to recover the cost of $450.00.

The tenant testified that December 2021, was a cold month and they had an extreme cold snap, and they could not get the heat above 17 degrees C even if they had the

thermostat set to 30 degrees C. The tenant stated with multiple space heaters it would not exceed 21 degrees C.

The tenant testified that the strata did have some come into their rental unit and they were informed that the heaters were working and that they should hang heavy curtains over the windows to reduce heat loss.

The tenant testified that they sent an email to the landlord at the end of December 2021 requesting that the repairs must be made within one week. The tenant stated that the repairs were not made so they gave notice ended the tenancy on January 10, 2022, and moved out on January 29 or 30, 2022.

The landlord testified that the strata had the boiler system inspected by a qualified person and the boiler was working fine and working as efficient possible. The landlord stated that they had also hired a qualified person to attend the rental unit on January 31, 2022, and they had determined that the heating system was operating correctly. Filed in evidence is an invoice showing that the heating system was inspection, a letter from the strata. Both show the heating system was working effectively.

I note the strata letter also provided suggestions to minimize the heat loss, such as insulating window with curtains. Curtains are not included in the rent under the tenancy agreement.

The landlord testified that since the tenant vacated, there has been no complaints from the new renter of any heat issues.

Change the locks

The landlord testified that the tenant did return the keys at the end of the tenancy. However, it is their practice to always have the lock changed after a tenant vacates. The landlord stated this would be a cost they would not have occurred until the fixed term ended.

Heat inspection

The landlord testified that the tenant claimed the heat in the rental unit was not adequately working and they hired a qualified person even after inspected by the strata,

to attend the rental unit to inspect the heaters. The landlord stated because the complaint was unfounded, they should be entitled to recover the cost.

Cost to repair damaged walls

The landlord testified that the rental unit was fully renovated before the tenant moved into the premises. The landlord stated that the tenant caused damage to the walls as there were at least 63 holes, from hanging shelving, TV's, with large nails or bolts and other items on the walls. The landlord stated that the tenant did patch some of the holes; however, they required sanding and because of the size of the holes and amount of the holes they had to repaint the walls.

The landlord testified that they paid the amount of $168.35 for paint, and $360.00 for the labour which they did on their own at a rate of $18.00 per hour for 20 hours and they purchased a towel rack to cover the holes in the bathroom as that was cheaper than filing, patching holes, and painting. The landlord stated that it is unreasonable that they would have to make all these repairs for a tenancy of two months. Filed in evidence are receipts for paint and photographs.

The tenant testified that they hung three TVs on the walls, and they had hung shelving using anchors and bolts. The tenant stated they did fill some of the holes. The tenant stated that they do not believe there were 63 holes left in the walls.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Cost of re-renting the premises

In this case, I first must determine if the tenant had the right to end the tenancy due to a breach of a material term of the tenancy agreement.

Section 45 (3) of the Act, state the following:

> 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.

Residential Tenancy Branch Policy Guideline (the “PG”)li 8 states in part the following;

> To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:
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> • that there is a problem;
> • that they believe the problem is a breach of a material term of the tenancy agreement;
> • that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
> • that if the problem is not fixed by the deadline, the party will end the tenancy.
>
> Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement , and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

While I accept the rental unit was at lower temperature than the tenant desired; however, this was during a cold month and an exceptional cold snap occurred. The strata had a qualified person to inspect the boiler system for the building and was found working as efficient as possible during this period.

While that may have not been satisfactory to the tenant; however, clearly with additional heating at this time, space heaters, the rental unit was able to reach a reasonable level at 21 degrees C. While I accept having space heaters was not convenient to the tenant this was temporary. I find the tenant has failed to prove that the rental unit was not incompliance with health and safety standards. Further, the tenant provided no

testimony that they followed the recommendations to avoid heat loss, such as hanging curtains.

While I accept the tenant notify the landlord that there was a problem in writing on December 31, 2021 and informed the landlord that the repair had to be made by January 7, 2022; however, I find this is not a reasonable time frame this was not an emergency repair, and the tenant did not put the landlord on notice that they would end the tenancy as required by PG 8.

Further, although the tenants had vacated by the time the landlord was able to have the heaters inspected for a second time, by their own qualified person at the end of January 2022, no repair was found to be needed. As the onus is on the tenant to prove a breach of a material term of the tenancy agreement, I find the tenant has failed to do so. I find the tenant breached the Act when they ended the tenancy earlier than the Act allowed.

In most tenancy agreements the parties would agree to liquidated damages if the fixed term is breached, this is a genuine pre-estimate of the cost of re-renting. As the tenancy agreement does not contain such a clause, I find I must consider the actual cost the landlord is claiming.

The landlord is claiming $450.00 for interviewing and showing the rental unit to three potential renters and a new renter was found, which release the tenant from further liability under the Act, loss of rent. I find the landlord is entitled to recover the amount claimed as this is a reasonable amount. Therefore, I find the landlord is entitled to recover **$450.00** for reasonable cost to re-rent the rental unit.

Change the locks

I find the landlord has failed to prove the tenant breached the Act. The tenant returned the keys to the landlord. I find it is a personal choice of the landlord to change the locks each time a tenant vacates. Therefore, I dismiss this portion of the landlord's claim.

Heat inspection

Although I accept the heat inspection was conducted because the tenant had concerns with the heating and those concerns were found to be unfounded. However, I find there was no breach of the Act by the tenant. Simply because a tenant reports a problem to the landlord and the landlord takes reasonable steps to address those concerns does

not mean the tenant is responsible for the costs. This was a onetime inspection, which was reasonable. Therefore, I dismiss this portion of the landlord's claim.

Cost to repair damaged walls

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

> **Leaving the rental unit at the end of a tenancy**
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> *37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear*.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case, the rental unit was painted before the tenant moved in. I accept the testimony of the landlord that damage was caused to the walls by the tenant using large bolts and hangers. The photographs provided by the landlord do show the tenant filled the holes; however, the holes and patches were both large and excessive and the wall would have had to be re-painted. I do not find this to be reasonable wear and tear. I find the landlord cost for paint or labour reasonable. Therefore, I grant the landlord the cost of painting the walls in the amount of **$545.14.**

I find that the landlord has established a total monetary claim of **$1,095.14** comprised of the above described amounts and the $100.00 fee paid for this application.

I order that the landlord retain the security deposit of **$1,050.00 i**n partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **$45.14**

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 29, 2022

Residential Tenancy Branch