Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MNDL-S MNRL-S FFL
For the tenants: MNDCT(DRI) FFT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution ("application") by both parties seeking remedy under the *Residential Tenancy Act* ("Act"). The landlord applied for a monetary order of $1,641 for unpaid rent/loss of rent, for damages to the rental unit, for authorization to retain all or part of the tenant's security deposit towards any amount owing, and to recover the cost of the filing fee. The tenants applied for a monetary order of $2,100, in which the details relate to disputing a rent increase and to recover the cost of the filing fee.

On April 22, 2022, the hearing commenced, and the hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. After 69 minutes the hearing was adjourned to allow more time to hear the evidence from the parties. An Interim Decision was issued dated April 22, 2022 ("Interim Decision"), which should be read in conjunction with this Decision. On September 6, 2022, the hearing reconvened and after an additional 51 minutes the hearing concluded.

During the hearing the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this Decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

The email addresses for both parties were confirmed during the hearing and the parties were advised that this Decision will be emailed to both parties.

Issues to be Decided

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

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on May 15, 2019 and converted to a month-to-month tenancy after November 30, 2019. Both parties stated that the tenant vacated the rental unit on September 5, 2021. The tenants paid a security deposit of $900 at the start of the tenancy, which the landlord continues to hold. The landlord claims the tenant provided no written notice that they were vacating the rental unit.

Evidence related to Tenants' Claim

The original tenancy agreement indicates a landlord, BD ("Previous Landlord"). Landlord MD (landlord) purchased the home from the Previous Landlord in July 2019. The landlord testified that the tenant was the first person to occupy the rental unit, which is a laneway home separate from the main house where the landlord resides. The landlord confirmed that they were the first to occupy the main house and that the tenancy agreement is for the detached laneway home (rental unit) which began about 2 months before the landlord purchased the main house.

The landlord writes in their written submission as follows in part:

> *Position: My husband ([redacted] and I never arbitrarily increased [redacted] rent to $1900 per month. As of December 1, 2019, and only after she gave me one month notice to vacate, we effectively entered a new RTA where it was agreed by all parties that the rent will be $1900 per month.*
> *Between December 1, 2019 – August 1, 2021, I always issued a cash receipt. Additionally, for a Covid-19 and other reasons, I collected only $1850 per month between the months of September 2020 – August 2021.*

Details

- My husband I purchased the House in July 2019.
- At the time of the purchase, the Laneway House was rented and there was a signed RTA dated May 15, 2019. The fixed term tenancy expired on November 30, 2019, and following that date, the tenancy defaulted to a month-to-month periodic tenancy.
- On or about October 2019 (near the expiration of the fixed term tenancy), Ms. [redacted] gave me a one month notice to vacate, albeit verbal (I lost my text messages).
- Immediately following her notice, I advertised the Laneway House for rent available as of December 1, 2019 for $2000 per month. I had a very good response and almost secured a new tenant.
- To my surprise and some time in November 2019, Ms. [redacted] informed me that she changed her mind about vacating and that she intended to stay until the end of the school year (June 2020).
- I was reluctant to agree to this new tenancy given the short notice. However, Ms. [redacted] pleaded several times to re-rent the Laneway House to her. I eventually agreed to rent the Laneway to Ms. [redacted] with new terms and conditions, namely, that the rent will be $1900 per month (note: reduced from $2000 I could have possibly collected).

To reiterate, my position is very simple. She gave me a one-month notice to vacate. Based off her notice, I posted an ad for the Laneway House. She pleaded a re-rent the Laneway House to her and I did with new terms and conditions, namely, that the rent would now be $1900 per month. This was voluntary and agreed by all parties. I issued cash receipts accordingly.

[Personal information redacted to protect privacy]

The landlord confirmed that they did not serve a Notice of Rent Increase on the tenant at any time during the tenancy. The landlord stated that they received a reference check call in October 2019 when the tenant was looking for a new rental unit. The landlord stated that as the tenant's verbal notice to vacate was for the end of November 2019 the landlord advertised the rental unit for $2,000 and being available for December 1, 2019. The tenant denies ever telling the landlord that they were moving.

The landlord testified that the tenant changed their mind in October 2019 and stated to the landlord that they wanted to continue their tenancy. The tenant confirmed that they agreed to $1,900 verbally with the landlord and both parties confirmed that a new tenancy agreement was not created or signed. The tenant stated that they could not afford $2,000 so the landlord agreed to $1,900 effective January 1, 2020. The tenant is seeking the return of the $100 rent increase for all 20 months from January 2020 to August 2021, inclusive, which is $2,000 plus the $100 filing fee.

Neither party provided any written evidence to support that any texts or emails or letters were ever exchanged to discuss a rent increase from $1,800 to $1,900. The tenants' position is that they were not aware of the rent increase sections of the Act and agreed to the $100 rent increase, which I will address later in this Decision.

Evidence related to Landlord's Claim

The landlord has claimed $650 for the loss of September 2021 rent between September 5-15, 2021 by indicating that the tenant only paid $300 for September 1-5, 2021. The landlord wrote the following in their written submission:

> **Rent**
> - The agreed rent for the Laneway House was $1900 per month on the 1st of every month.
> - This was a month-to-month tenancy.
> - Ms. [redacted] and her family vacated the Laneway House on or about September 4, 2021, without notice and to my detriment. I did not know her forwarding address or her whereabouts.
> - They also never paid full rent and as a result I was unable to collect rent for the month of September 2021 and therefore am collecting now.
>
> **Security Deposit**
> - The security deposit was $900.
> - Ms. [redacted] to my surprise and without notice, vacated the Laneway House on or about September 4, 2021.
> - I did not know her forwarding address or her whereabouts.
> - Shortly thereafter, I received a letter from her dated September 3, 2021 asking for the return of her deposit with a forwarding address (first time I knew her whereabouts).
> - I immediately (within 15 days) made a monetary claim and sent a letter to her stating that the garburator was irreparably damaged. I had to replace it and the cost was $891 excluding labour (Home Depot receipt).
>
> [Personal information redacted to protect privacy]

The texts submitted by the landlord indicate that the landlord agreed to September 15, 2022, as the effective date of the tenant vacating; however the landlord writes in their evidence "[Name of tenant] to my surprise and without notice, vacated the Laneway House on or about September 4, 2021."

The tenant stated that the landlord indicated they would be giving the tenant a 1 Month Notice, which the landlord denied. There was no 1 Month Notice to End Tenancy for Cause ("1 Month Notice") submitted for my consideration by either party. The landlord stated that the tenant did not provide anything in writing to the landlord with the

exception of a Mutual Agreement to End Tenancy that was not signed, which I will address later in this Decision.

The landlord testified that as of October 2021, when new tenants moved into the rental unit, the landlord now receives $2,200 from the new tenants.

Regarding damages, the landlord has claimed $891 for the cost to repair what the landlord describes as a leaking kitchen tap and sink. During the hearing, the landlord alleged that the tenant damaged the garburator in the kitchen. During the hearing, the video evidence from the landlord was excluded in full as the videos were not served on the tenant as required by the RTB Rules.

The landlord presented a photo, which the landlord described as showing a loose garburator and a loos pipe. The tenant responded to the photo by stating that the garburator was attached at the end of the tenancy, and that the landlord dismantled the garburator and then took a photo. The tenant also testified that the garburator was attached and working at the end of the tenancy and that by the time the tenants were cleaning the rental unit, the garburator was working just fine and that only on August 29, 2021, did the tenants notice a leak in the kitchen vegetable sprayer and notified the landlord via text. That text was submitted in evidence for my consideration.

The landlord presented a receipt from Home Depot dated September 6, 2021, which states in part the following:

7043 00005 34255 06/09/21 11:47 AM
SALE CASHIER MEGHNA

885612416551	Sous PD <A>	379.00
070798748347	MONOMAXWDWHT <A>	10.47
091712004882	STRN BSKT <A>	15.38
050375018322	Disposer <A>	389.00
681929	ECO FEE <A.U>	
EACH		2.50
	SUBTOTAL	796.35
	GST/HST	39.82
	PST/QST	55.74
	TOTAL	$891.91
XXXXXXXXXXXX1301	DEBIT	
		CAD$ 891.91

[reproduced as written]

The landlord testified that their husband did the labour work so there was no labour costs added to the landlord's claim. There was no incoming Condition Inspection Report submitted in evidence for my consideration. There was also no outgoing Condition Inspection Report submitted in evidence for my consideration.

The tenant testified that the home was not well built and referred to a photo in support of their testimony. The tenant said that in one photo, a baseboard heater can be seen installed right next to the cabinet door, and was installed so close to the cabinet door that it prevented the door from opening as otherwise it would hit the baseboard heater. In addition, the tenant testified that the electrical panel shown in another photo did not have a cover over it. The tenant claims that any damage was reasonable wear and tear and the tenant vehemently deny damaging the rental unit beyond reasonable wear and tear.

Although the landlord claims an outgoing inspection was requested, the tenant vehemently denied that the landlord asked for an inspection during the tenancy. The tenant reiterated that during the tenancy, the builder had to repair major roof issues on the main house and that quality of workmanship was an issue for both the main house and rental unit.

The landlord admitted that in 2021, their husband changed a bathroom faucet due to another leak. That leak was not attributed to the tenant, which I will address further in this Decision.

The tenant testified that the vegetable sprayer head could have been replaced without changing the entire tap of the kitchen sink. In support of their testimony the tenant submitted examples of replacement heads from Home Depot.

Analysis

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

Firstly, I afford no weight to an unsigned Mutual Agreement, as without signatures of the parties, I find that such a document is not legally binding on either party.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on both parties to provide sufficient evidence to prove their respective claims and to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the parties must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the other party did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Tenant's claim

During the hearing, the tenant confirmed that they agreed to $1,900 verbally with the landlord and both parties confirmed that a new tenancy agreement was not created or signed. The tenant is seeking the return of the $100 rent increase for all 20 months from January 2020 to August 2021, inclusive, which is $2,000 plus the $100 filing fee.

Although the tenants' position is that they were not aware of the rent increase sections of the Act and agreed to the $100 rent increase, I find that the tenant failed to exercise reasonable due diligence before agreeing to pay a $100 rent increase. In addition, section 7(2) of the Act, applies and states:

> **Liability for not complying with this Act or a tenancy agreement**
>
> **7**(2) **A** landlord or **tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act**, the regulations or their tenancy agreement **must do whatever is reasonable to minimize the damage or loss.**

I find this language mirrors part 4 of the 4-part test for damages or less described above. Given the above, I find the tenant failed to do what was reasonable to minimize their loss by waiting 20 months before doing reasonable due diligence to determine if the rent increase was in keeping with the rent increase provisions of the Act.

Furthermore, I find that *Estoppel* has occurred. *Estoppel* is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. In other words, in this case, the tenant established a pattern of paying the rent increase for 20 months. I find the evidence on a balance of probabilities shows that the tenant consented to the rent increase to be the proper amount and that they agreed to the rent increase after the tenant changed their mind in terms of vacating the rental unit. I find the tenant may not now try to strictly enforce their right under the Act for the past rent increase from $1,800 to $1,900 per month.

Given the above, **I dismiss** the tenants' application without leave to reapply due to insufficient evidence and the legal doctrine of *Estoppel.*

I do not grant the tenants' their filing fee as their claim has failed.

Landlord's claim

Regarding the loss of $650 for September 2021 rent between September 5-15, 2021, by indicating that the tenant only paid $300 for September 1-5, 2021, I find as follows.

Section 45(1) of the Act applies and states:

> **Tenant's notice**
>
> **45**(1) **A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that**
>
> (a) **is not earlier than one month after the date the landlord receives the notice, and**
>
> (b) **is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.**
>
> [emphasis added]

Based on the above, and without any written notice submitted in August 2021 before me for my consideration, I find the tenant breached section 45(1) of the Act by giving insufficient notice to the landlord. I also find the tenant breached section 26 of the Act, which requires that rent, in this case $1,900, be paid on September 1, 2021.

There is no dispute that the tenant did pay $300 towards the $1900 and although the landlord has only claimed for $650, I find the landlord has complied with section 7 of the Act by requesting less than they are entitled to under the Act, which would have been $1,600. Given the above, I award the landlord **$650** for loss of rent/unpaid rent for September 2021 as claimed.

Regarding damages of $891, I agree with the tenants that the quality of the kitchen tap, vegetable sprayer and overall workmanship of the home was of poor quality. In reaching this finding, I accept the testimony of the landlord that confirmed their husband had to also replace a bathroom faucet within a short period of owing the new home, which I find to be a premature failure of a faucet, which RTB Policy Guideline 40 (Useful Life of Building Elements) states is 15 years for faucets. I also find that the photo evidence supports that the tenant did not cause damage that exceeds normal wear and tear and I find the landlord failed to comply with section 7 of the Act and part 4 of 4-part test for damages or loss by purchasing an entirely new kitchen faucet versus just the vegetable sprayer head. I am also not convinced that the tenant damaged the garburator and find it is more likely than not that either the garburator was not installed correctly to begin with and/or was of poor quality.

As the landlord's claim had some merit, I grant the landlord **$100** for the cost of the filing fee, pursuant to section 72 of the Act.

I find the landlord has established a total monetary claim in the amount of **$750** comprised of $650 for the unpaid portion of September 2021 rent, plus the recovery of the cost of the $100 filing fee.

As the landlord continues to hold the tenants' security deposit of $900**,** I offset that amount with the $750 landlord claim, and **I grant** the tenants a monetary order pursuant to section 67 of the Act, for the balance owing by the landlord to the tenant for the remainder of the tenants' security deposit balance of **$150**.

As this Decision contains personal information and pursuant to section 62(3) of the Act, I make the following order:

> **I ORDER** that this Decision not be posted on any private website or on any social media platform.

Any violation of my order may result in an administrative penalty being imposed under the Act, which carries a maximum penalty of up to $5,000 per day.

Conclusion

The tenants' application fails.

The landlord's application is partially successful.

The landlord has established a monetary claim $750, which is $150 less than the tenants' $900 security deposit held by the landlord. As a result, I grant the tenants a monetary order pursuant to section 67 of the Act, for the balance owing by the landlord to the tenants for their security deposit balance of $150, which has accrued no interest under the Act.

Should the landlord fail to pay the tenants this amount, the monetary order must be served on the landlord by the tenants, along with a demand for payment letter. The tenants may enforce the monetary order in the Provincial Court (Small Claims) to be enforced as an order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 29, 2022

Residential Tenancy Branch