



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, MNRL-S, FFL**

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 unpaid utilities and loss of rent, 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

While the tenants indicated they received the landlord’s evidence; however, they indicated it was not served in a method permitted by the Act. I do not find it prejudicial to the tenants to review and consider the landlord’s evidence as they have acknowledged it was received. Further, the landlord’s evidence is a copy of the tenants’ notice to end tenancy, a copy of the utility invoice, a copy of the tenancy agreement.

In this case, the tenants have filed a large volume evidence; however, it appears that a large part of their evidence is related to their own application for dispute resolution which not for me to consider at today’s hearing. I will only consider relevant evidence that is related to the landlord applications application.

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 of rent and unpaid utilities?
Is the landlord entitled to retain the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenancy began on May 1, 2020. Rent in the amount of \$2,740.00 was payable on the first of each month. The tenants paid a security deposit of \$1,275.00. The tenancy ended on February 28, 2022.

The tenants claim a pet damage deposit of \$75.00 was paid. The landlord denied this. The tenancy agreement filed in evidence does not support a pet damage deposit was paid. However, that is not an issue that is properly before. Should this issue remain the tenants are entitled to make their own application for dispute resolution and the onus would be on the tenants to prove.

The landlord claims as follows:

a.	Unpaid utilities (water)	\$ 107.62
b.	Loss of rent March 2022	\$2,740.00
c.	Filing fee	\$ 100.00
	Total claimed	\$2,947.62

Unpaid utilizes (water)

At the outset of the hearing the tenants agreed that they owe the landlord the amount of \$107.62 for water, as they were responsible to 80% of the utilities. The tenants stated the landlord owes them for other unpaid utilities which will be heard under their own application for dispute resolution.

Loss of rent

The landlord testified that the tenants gave notice to end the tenancy on February 12, 2022, effective February 28, 2022. The landlord stated the tenants were using section 50(1) of the Act to end the tenancy; however, they never issued a notice to end tenancy under section 49 of the Act and the tenants were required under the Act to give at least 30 days' notice.

The landlord testified that they had a conversation by email with the tenants that once they had the permit to demolish their family home, they would be giving the tenants a two month notice to end tenancy as they would require the rental unit to live while their new home was built.

The landlord testified that due to the tenants' action of ending the tenancy contrary to the Act, they lost rent for March 2022; however, they were able to find a new renter and their tenancy commenced on March 15, 2022, at a monthly rate of \$2,450.00.

The tenants testified that on February 7, 2022, the landlord sent them an email asking if they knew anyone interested in renting one of their other rental units. The tenants stated that during the conversation that the landlord informed them that they were currently in the process of obtaining a permit to demolish their current residence and would be moving into the rental unit.

The tenants stated that this was very stressful for their family, and they immediately looked for other housing, as they did not want to end up homeless consider the sever housing crisis. The tenants testified based on the February 7, 2022, emails they gave the landlord notice to end the tenancy effective February 28, 2022, pursuant to section 50(1) of the Act as they had found suitable living accommodations.

The tenants confirmed they did not receive a Two Month Notice for Landlord's Use of Property. Filed in evidence is an email thread of February 7, 2022.

The tenants testified that right after they vacated the rental unit on February 28, 2022, the landlord was advertising the rental unit for a higher rent and showing the rental unit. The tenants stated that on March 4, 2022, people were moving into the premises. The tenants stated that the landlord did not loss any rent for March 2022 because they had found a new renter and the rent advertised was significantly higher. Filed in evidence are text exchange with neighbour and photographs showing someone moving into the premises.

The landlord argued that on March 4, 2022, they were moving some of their extra furniture into the home, which was used by the new renter that moved into the premises on March 15, 2022.

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.

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.

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.

Section 7 (2) of the Act states that 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.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Unpaid utilities (water)

As the tenants agreed that they owe the landlord for an unpaid water in the amount claimed. Therefore, I granted the landlord for unpaid water utilities in the amount of **\$107.62**

Loss of rent

In this case, I have read the email exchange of February 7, 2022. I find the email exchange does not support the landlord had given the tenants notice to end their tenancy pursuant to section 49 of the Act.

I find the email exchange only supports that the landlord was informing the tenants that they intended to give the tenants two months' notice to end tenancy once their demolishing permits were obtained for their family home. Clearly the email exchange the landlord stated they did not yet have a date and would give the tenants two months' notice.

While I accept this was concerning for the tenants and finding living accommodations elsewhere was reasonable when the issue of their tenancy is uncertain; however, that

was a personal choice of the tenants to take action before they were given a notice to end tenancy pursuant to section 49 of the Act.

I find the tenancy did not end pursuant to section 49 of the Act. The tenants did not receive, nor did the landlord give the tenants a Two Month Notice to End the Tenancy for Landlord's Use of Property in the proper form as required by the Act. I find the tenants were not entitled to exercise any rights given under section 49 of the Act until they were given a notice to end tenancy in the proper form. This includes section 50 and 51 of the Act.

Rather, I find the tenants breached the Act when they ended the tenancy by attempting to prematurely exercise a right under section 50 of the Act.

I find the tenants were only entitled end the tenancy under section 45 (1) of the Act, by giving the landlord notice to end the tenancy effective on a date this is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month. I find as the tenants gave notice on February 12, 2022; I find the earliest date the tenants were entitled to end the tenancy was on March 31, 2022.

In this case, the landlord was entitled to re-rent the rental unit as the tenancy did not end pursuant to section 49 of the Act. Under section 7(2) of the Act the party who claims compensation must do whatever is reasonable to mitigate the loss. This would mean re-rent the premises to recover loss of rent.

However, I am not satisfied that the landlord has proven a loss. The evidence of the tenants were that a new renter moved into the premises on March 5, 2022, at a higher rent. The tenants have provided supporting evidence to support their version of events. The evidence of the landlord was they moved some of their own furniture into the premises on this date, and then rented the rental unit commencing March 15, 2022, at a lower rent. The landlord provided no supporting evidence to support their version of events. As the onus is on the landlord to prove their version, I find without further evidence the landlord has not met the burden of proof. Therefore, I dismiss the landlord's claim for loss of rent due to insufficient evidence.

I find that the landlord has established a total monetary claim of **\$207.62** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the amount of **\$207.62** from the security deposit of **\$1,275.00** in full satisfaction of the claim. As the landlord no longer has any authority

under the Act to keep the balance of the security deposit. I find the landlord must return to the tenants forthwith the balance due of **\$1,067.38**. I grant the tenants a monetary order in this amount. Should the landlord fail to return the balance due, this order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord is granted a monetary order and may keep the/a portion of the security deposit in full satisfaction of the claim. The tenants are granted a formal order for the balance due of their security deposit.

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: October 26, 2022

Residential Tenancy Branch