



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The Landlords apply for the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 67 seeking compensation for repairing damage to the rental unit caused by the Tenants;
- an order pursuant to s. 67 seeking compensation for unpaid rent;
- an order pursuant to s. 67 seeking compensation for loss or other money owed; and
- return of their filing fee pursuant to s. 72.

The Landlords advance their monetary claims by claiming against the security deposit.

K.D. appeared as the Landlord. A.S. appeared as the Tenant and was joined by his son, A.S., who spoke in his behalf.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Issues to be Decided

- 1) Are the Landlords entitled to compensation for damage to the rental unit?
- 2) Are the Landlords entitled to compensation for unpaid rent?
- 3) Are the Landlords entitled to compensation for loss or other money owed?
- 4) Are the Landlords entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on September 1, 2014.
- The Landlords obtained vacant possession of the rental unit on January 31, 2022.
- Rent of \$1,775.00 was payable on the first day of each month.
- A security deposit of \$900.00 was paid by the Tenants.

A copy of the tenancy agreement was put into evidence. I was advised by the parties that the rental unit is an upper portion of a single detached home and that there is a basement suite.

The Landlord testified that he purchased the property in June 2021 with the intention of occupying it. According to the Landlord, the Tenants were dealing with health issues and that he wanted to accommodate them to the extent possible rather than end their tenancy by serving a Two-Month Notice to End Tenancy. I am advised by the Landlord that the parties came to an agreement that the Tenants would vacate the rental unit on March 1, 2022 and I was directed to a mutual agreement to end tenancy in the Landlords' evidence. The Landlord testified that the Tenants provided 8 post-dated cheques for the remainder of the tenancy and that he and his partner lived in the basement suite over that time.

The Landlord alleges that the Tenants failed to give written notice when vacating the rental unit and gave little to no notice that they would be vacating on January 31, 2022. The Landlord testified that the Tenants had advised him by way of phone call on or about December 31, 2021 that they had put an offer on a house but that it was subject

to financing. The Landlord further testified he was advised by the Tenants on or about January 10, 2022 that their financing had been approved but that the Tenants did not give a clear idea of when they would be vacating the rental unit. The Landlord seeks rent for February 2022 due to the lack of notice.

The Tenants' agent confirmed that no written notice was given when the Tenants vacated the rental unit but argued that the Tenants could vacate earlier than the end date set in the parties' agreement. The Tenants' agent further argued that the Landlord intended to occupy the upper unit such that there was no loss rental income as they lived in the basement and could simply move upstairs.

The Tenants' agent further testified that during the move-out walkthrough the Landlord agreed he would not deposit the post-dated cheque for February 2022. The Landlord denies this.

The Landlord also seeks the cost of cleaning the rental unit. The Landlord testified that the rental unit had not been adequately cleaned and has provided photographs showing items left behind in cabinets and dusty items within the rental unit. I was directed to an invoice dated February 10, 2022 for cleaning costs and carpet cleaning totalling \$388.45. The Landlord seeks this amount.

The Tenants' agent emphasized that the Tenants had retained cleaners for the rental unit. The Tenants evidence includes an invoice from a cleaning company dated January 26, 2022. The Tenants' agent argued that if there were issues with the cleaning, the cleaning company the Tenants had retained would have returned to clean the unit. I am told the Landlord did not communicate this with the Tenants and instead chose the more expensive option of getting his own cleaners.

The Landlord says the carpets were not cleaned. The Landlord's evidence includes video of carpets, which appeared to be dirty. The Tenants evidence includes a message dated February 8, 2022 from the Tenants' agent to the Landlord, which states the following:

As per our conversation you were satisfied with the condition of the house except the carpet, which I offered to clean the next day, by booking a professional carpet cleaning company and you said there is no need And (sic) you will hire cleaners to do that.

The Tenants' cleaning invoice does not indicate the carpets were cleaned.

The Landlord also seeks \$852.02 for unpaid utilities from November 30, 2021 to January 27, 2022. The tenancy agreement indicates that the Tenants are to pay 60% of the utility costs and the Landlords evidence includes a copy of the relevant utility statement. The Tenants' agent confirmed that the Tenants have provided the Landlord with a cheque for \$855.00 in February 2022 which had not been deposited by the Landlord. The Tenants' agent confirmed the Tenants were responsible for paying utilities and did not dispute the amount. The Landlord confirmed receiving the cheque but did not deposit it due to the present application.

The parties confirmed that no written move-in inspection had been conducted by the previous landlord. The parties further confirmed that the Tenants provided their forwarding address to the Landlord on February 9, 2022. The parties finally confirmed that none of the security deposit has been returned to the Tenants.

Analysis

The Landlord seeks various monetary orders by claiming against the security deposit.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38. Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit within the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Landlords filed their application on February 13, 2022. It is uncontested that the Tenants provided their forwarding address on February 9, 2022. Accordingly, I find that the Landlords filed their application within the 15-day window imposed by s. 38(1) of the *Act*.

I have turned my mind to the question of extinguishment as it was confirmed by the parties that no move-in or move-out condition inspection report was completed pursuant to ss. 23 and 35 of the *Act*. Policy Guideline #17, which provides guidance with respect

to how deposits are handled under the *Act*, is clear that even where a landlord's right to claim against the security deposit for damages to the rental unit is extinguished, a landlord still retains the right to claim against the deposit for amounts other than damage to the rental unit. As that the Landlords have done so here, I find that the question of extinguishment is not relevant under the circumstances.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

The Landlords seek rent from February 2022 due to the Tenants failure to give proper notice to end the tenancy. Tenant's may end a tenancy by giving notice to the landlord pursuant to s. 45 of the *Act*. A tenant's notice must comply with the formal requirements set out under s. 52 of the *Act*.

In this instance, the Tenants admit through their agent that they never gave written notice that they would be vacating. This is in clear contravention of their obligation to do so as per s. 52 of the *Act*. I have little difficulty in finding that the Tenants breached their obligation to give notice as set out under s. 45 of the *Act*.

The fact that the Landlord and the Tenants came to an agreement for the tenancy to end is not relevant to the Tenants obligation to providing the Landlords with proper notice. The mutual agreement to end tenancy fixed the end date of the tenancy. It did not mean the Tenants could not end the tenancy sooner as this was a monthly periodic tenancy as per the tenancy agreement. However, if the Tenants chose to end the tenancy sooner, which they chose to do so under the circumstances, they were still required to provide a proper notice as per s. 45 of the *Act*. They did not do so.

The Tenants argue that the Landlords suffered no financial loss as they were to occupy the rental unit when the tenancy came to an end. I do not agree with the Tenants characterization that no financial loss was sustained. The Landlords did suffer a financial loss: they lost one month's rent that the Tenants were obliged to pay under the tenancy agreement. The Tenants are not permitted to unilaterally end the tenancy without following the procedures set out under s. 45 of the *Act*.

I have considered whether there was an implied waiver by the Landlords based on the allegation by the Tenants that the Landlords said they would not deposit the post-dated cheque from February 2022. I have no evidence to support that the Landlord agreed he would not deposit the February 2022 rent cheque, thereby giving rise to an implied waiver. Indeed, the Landlord specifically denied this at the hearing. I find that there is insufficient evidence to support the argument that the Landlords waived their claim for February 2022 rent by implication.

I find that the Landlords have sustained a loss equivalent to one month's rent, being \$1,775.00, for the Tenants breach of s. 45. The Landlords could not have reasonably mitigated their damages under the circumstances given the non-existent notice. The Landlords have made out their claim for this amount.

There is no dispute that the Tenants were obliged to pay utilities under the tenancy agreement. The tenancy agreement clearly specifies the Tenants were responsible for 60% of the utility costs. The Landlords' evidence includes a BC Hydro invoice for \$1,420.03, which the Landlord claims the Tenants are responsible for \$852.02. This corresponds with the Tenants proportion as per the tenancy agreement. Indeed, the Tenants have confirmed this by providing the Landlord a cheque for \$855.00.

It is unclear to me why the Landlord would not have deposited the cheque. However, the Landlords inexplicable reticence to deposit the cheque does not change the Tenants obligations under the tenancy agreement to pay utilities. I have little difficulty finding that the Tenants are responsible for paying \$852.02 for the utilities and will grant this portion of the Landlords' claim, though the Tenants have likely made good on this if the cheque is still honoured.

The Landlords also seek the cost of cleaning the rental unit. Section 37(2) of the *Act* imposes an obligation on tenants to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the rental unit or the residential property.

I have reviewed the Landlords photographs, which do show items left in cabinets and some dusty areas. However, it is not clear to me based on the evidence that the Tenants breached their obligation to return the rental unit in a reasonably clean state as s. 37 of the *Act*. Indeed, the Tenants indicate that the rental unit was professionally cleaned, which was supported by an invoice to that effect. The Landlords evidence shows there may have been some issues, namely some items left in cabinets and some dusting, though this is relatively minor and does not rise to the level, in my view, of the Tenants breaching s. 37.

Looking at the carpets, however, the Landlords' video clearly shows the carpets are not clean, a point that was acknowledged by the Tenants agent in the message of February 8, 2022. The Tenants indicate they could have retained a professional carpet cleaner to show up after they moved out, which indicates that the carpets had not been cleaned. I find that the Tenants, by failing to clean the carpets, breached their obligation under s. 37. The Landlords did clean the carpets, which the invoice they put into evidence shows cost \$157.50 (\$150.00 + GST). I find that the Landlords are entitled to this amount with respect to the carpet cleaning.

Pursuant to s. 67, I find that the Landlord has established a monetary claim totalling \$2,784.52 (\$1,775.00 + \$852.02 + \$157.50). I direct that the Landlords retain the security deposit of \$900.00 in partial satisfaction of the total amount owed by the Tenants.

Conclusion

The Landlords have established a monetary order for unpaid rent totalling \$1,775.00, a monetary order for the utilities totalling \$852.02, and the cost of carpet cleaning totalling \$157.50.

The Landlords' claim for the cost of cleaning the rental unit, excluding the carpet cleaning as set out above, is dismissed without leave to reapply.

The Landlords were largely successful in their application. I find they are entitled to their filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenants pay the Landlords' \$100.00 filing fee.

I direct that the Landlords retain the security deposit of \$900.00 in partial satisfaction of the total amount owed by the Tenants.

I make a total monetary order taking the following into account:

Item	Amount
Unpaid Rent	\$1,775.00
Unpaid Utilities	\$852.02
Carpet Cleaning	\$157.50
Landlords' filing fee	\$100.00
Less security deposit to be retained by the Landlords	-\$900.00
Total	\$1,984.52

Pursuant to ss. 67 and 72, I order that the Tenants pay **\$1,984.52** to the Landlords.

It is the Landlords obligation to serve the monetary order on the Tenants. If the Tenants do not comply with the monetary order, it may be filed by the Landlords with 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: October 04, 2022

Residential Tenancy Branch