



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for compensation for unpaid rent, money owed, or monetary loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenants confirmed receipt of the landlord's application ('Application'). In accordance with section 89 of the *Act*, I find that the tenants duly served with the Application. All parties confirmed receipt of each other's evidentiary materials, and the hearing proceeded.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as requested for losses or money owed?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or

arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on October 1, 2021, with monthly rent set at \$3,300.00, payable on the first of the month. The landlord still holds the security deposit of \$1,650.00. The tenancy ended on January 31, 2022 after the tenants gave notice to end the tenancy on January 11, 2022 that they were moving out. The landlord provided a copy of the email from the tenants on January 11, 2022 that they were moving out at the end of the month. The landlord testified that they were able to find a new tenant for February 9, 2022, who paid \$2,000.00 for the month of February 2022. The landlord is seeking a monetary order in the amount of \$1,300.00 for the lost of rent for February 2022. The landlord is also seeking further monetary claims as set out below:

The landlord filed this application in relation to the following claims:

Item	Amount
Loss of rent	\$1,300.00
Cleaning Invoice	567.00
Unnecessary Furnace Technician Call	162.75
Carpet Cleaning	84.00
Recovery of Filing Fee	100.00
Total Monetary Order Requested	\$2,213.75

The landlord testified that the tenant failed to leave the home in reasonably clean condition, and provided receipts for cleaning and carpet cleaning.

The landlord is also seeking reimbursement of what they considered to be an unnecessary emergency call related to the thermostat. The landlord provided copy of the invoice which included a note from the technician that the thermostat was set to cooling instead of heating. The landlord testified that the tenants were complaining that they were freezing, and had no choice but to call a technician to attend immediately.

The tenants testified that they were unaware that the thermostat was set to “cooling”, and that they did not adjust the thermostat to that setting. The tenants testified that they felt very cold, and reported this to the landlord. The tenants testified that instead of investigating the issue themselves, the landlord had made the choice to call a technician. The tenants also testified that the landlord had never provided clear

instructions on how to use the thermostat, and argued that they had issues with the heating in the home since the beginning of the tenancy.

The tenants do not deny that they gave notice to end the tenancy on January 11, 2022, and moved out on January 31, 2022 as they felt that the landlord had breached the *Act* and tenancy agreement, and no longer felt comfortable living there. The tenants testified that they had to end the tenancy as the landlord would enter the home without their permission, and that the landlord was extremely rude and harassed the tenants over issues the landlord had with the tenants, including the number of occupants in the home, and lint in the dryer.

The tenants testified that their home was spotless, and deny that professional cleaning was required.

Analysis

Section 44 and 45 of the *Residential Tenancy Act* states the following about how a tenancy may end:

- 44** (1)A tenancy ends only if one or more of the following applies:
- (a)the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i)section 45 [*tenant's notice*];
 - (i.1)section 45.1 [*tenant's notice: family violence or long-term care*];
 - (ii)section 46 [*landlord's notice: non-payment of rent*];
 - (iii)section 47 [*landlord's notice: cause*];
 - (iv)section 48 [*landlord's notice: end of employment*];
 - (v)section 49 [*landlord's notice: landlord's use of property*];
 - (vi)section 49.1 [*landlord's notice: tenant ceases to qualify*];
 - (vii)section 50 [*tenant may end tenancy early*];
 - (b)the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
 - (c)the landlord and tenant agree in writing to end the tenancy;

- (d)the tenant vacates or abandons the rental unit;
- (e)the tenancy agreement is frustrated;
- (f)the director orders that the tenancy is ended;
- (g)the tenancy agreement is a sublease agreement.

(2)[Repealed 2003-81-37.]

(3)If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

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.

I find that the tenants did not end this tenancy in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this tenancy. The evidence is clear that the tenants did not comply with the *Act* in ending this periodic tenancy as they never gave notice in a manner required by section 45(1) of the *Act*. I, therefore, find that the tenants vacated the rental unit contrary to section 45 of the *Act*. I am satisfied that the landlord mitigated their losses by re-renting the home as soon as possible. Despite their efforts, the landlord suffered a monetary loss of rent in the amount of \$1,300.00 for February 2022. I allow the landlord's monetary claim for this loss of rent.

I will now consider the remaining claims.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(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.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. In light of the disputed testimony, I am not satisfied that the landlord had provided sufficient evidence to support that the tenants left the home in unreasonably

clean condition, and that professional cleaning and carpet cleaning was required. Accordingly, I dismiss these claims without leave to reapply.

The landlord is also seeking reimbursement for the cost of the technician call out in relation to the thermostat. The tenants dispute the claim as they deny adjusting the thermostat, and were genuinely cold. The tenants also argued that the landlord made the decision to call the technician before investigating the matter themselves.

Section 33 of the *Act* states the following in regards to emergency repairs:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Under Section 33 (1)(c) of the *Act*, issues with the primary heating system is considered an emergency repair. I find that the tenants had contacted the landlord about the issue, as required by the *Act*. In this case, the landlord had called a technician to attend the home in order to investigate and repair the issue.

Residential Tenancy Policy Guideline #5 addresses the duty of the claimant to mitigate loss:

“Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation),

the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss¹. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation². Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed."

In light of the evidence and testimony before me, it is unclear as to why the thermostat was set to "cooling". As noted by the tenants, the landlord did not provide sufficient evidence to support that the tenants were provided with clear instructions on how to adjust the thermostat. Furthermore, I find that the landlord could have mitigated this loss by troubleshooting or investigating the matter themselves before employing the services of a technician. As noted by the invoice, there were no emergency repairs required. I find that the landlord made the decision to call the technician, and that this decision and loss is not due to the tenants' failure to comply with the *Act*. In fact, I find that the tenants had informed the landlord of the lack of heating, which is a required step under section 33 of the *Act*. I do not find that the landlord had established that this loss was the result of the tenants' non compliance with the *Act* or tenancy agreement, and therefore dismiss this claim without leave to reapply.

As this application had merit, I allow the landlord to recover half of the filing fee for their application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' security deposit in satisfaction of the monetary claim. The remainder shall be returned to the tenants.

Conclusion

I allow the landlord a monetary order totalling \$1,400.00 as set out in the table below. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' security deposit in satisfaction of the monetary claim. The remainder shall be returned to the tenants.

Item	Amount
Loss of Rent for February 2022	\$1,300.00
Recovery of Filing Fee	100.00
Less Security Deposit Held	-1,650.00
Total Monetary Order to Tenants	\$750.00

I issue a Monetary Order in the amount of \$750.00 in the tenants' favour for the return of the remaining portion of their security deposit. Should the landlord 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.

The remainder of the application is dismissed without leave to reapply.

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: November 23, 2022

Residential Tenancy Branch