



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDCL, FFL

### **Introduction**

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

- a monetary order for money owed 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.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. Both parties confirmed that they understood.

The tenants confirmed receipt of the landlord's application ('Application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant duly served with the Application and evidence. The landlord testified that they were unable to open the attachment containing the tenant's evidentiary materials. After summarizing the documents submitted by the tenant during the hearing, the landlord confirmed that they were okay with the admittance of these documents and proceeding with the scheduled hearing.

### **Issue(s) to be Decided**

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

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

### **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 fixed term tenancy began on May 15, 2021, and was to end on May 15, 2022. The tenancy ended on March 15, 2022 after the tenants gave written notice on February 13, 2022 that they were moving out. A copy of this email from the tenant was submitted in evidence. Monthly rent was set at \$1,900.00, payable on the first of the month. A security deposit of \$950.00 was collected, and applied to towards the rent of March 1 to March 15, 2022.

The landlord is seeking a monetary order for loss of rent as well as reimbursement of the cost for repairs. The landlord testified that they were able to mitigate their losses and find a new tenant for April 15, 2022. The landlord is seeking a monetary order in the amount of \$1,900.00 for the lost of rental income due to the early end of this fixed term tenancy. The landlord confirmed that they did allow the tenant to end the fixed term tenancy with one month's notice if the heating issue was not resolved, but the landlord argued that the issue was resolved, and the tenant still wanted to end the tenancy.

The landlord provided a summary of the timeline in their evidentiary materials. The landlord submits that starting on February 3, 2022 the tenant complained about the heat not working in their rental unit. The landlord stated that the home has one furnace that heats the floors in the entire house, and is controlled by thermostats in all three separate units. The landlord submits that when they checked that day, the heating appeared to be working properly, and only the tenant was complaining about the issue. The landlord submits that the thermostat was replaced on February 7, 2022 for the tenant's rental unit, and the tenant sent a message on February 8, 2022 to switch off the heat as the floor was warm. On February 10, 2022 the tenant reported that the heating was not working again. The landlord states that they had arranged for plumbers to attend on February 12, 2022 and 13, 2022, and offered alternative accommodation if the heating issue was not resolved. The landlord submits that on February 12, 2022 they received an email from the tenant that if the issue was resolved within a day or so, that they would stay until June 30, 2022. A copy of the email was submitted in evidence.

On February 12, 2022, a plumber attended and confirmed that the pipes were hot and the thermostat was in good condition. The plumber recommended servicing to ensure

the furnace ran smoother, which the landlord requested to be done immediately. The landlord submits that despite this, the tenant still complained about how the heating was not working properly. The landlord submits that when they attended that evening, the temperature was 21 degrees Celsius, and the tenants were dressed in tshirts and shorts. The landlord states that they suspected that the tenants were making false claims about the heating in an effort to end the tenancy early.

A plumber attended on February 13, 2022, and attempted to resolve the issue further by changing the zone valve and replacing the thermostat again. The landlord notes that despite the landlord's continued efforts to fix the issue and work with the tenant, the tenant would complain about the heat. The landlord received a call on February 28, 2022 from the tenant, informing the landlord that they would not pay rent on March 1, 2022, and that they would be moving out on March 15, 2022. The tenants moved out on March 15, 2022. In addition to the one month's lost rental income, the landlord is seeking reimbursement of the two plumbing invoices in the amount of \$945.00. The landlord submitted a copy of the invoice, as well as the cheque for payment in that amount.

The landlord believes that the tenant made false claims about the heating in an effort to end the tenancy early, costing the landlord a loss of rent as well as the money paid to try to resolve the issue. The landlord notes the plumber's notes on the invoice which stated: "no major heat issue in the basement unit. When I did direct connection of thermostat within 1 hour, tenant came screaming switch of the heat. With my so many years of experience I believe there was manipulation and playing around with the thermostat".

The tenant testified that they did have a heating issue, and were suffering greatly. The tenant filed an application for emergency repairs on February 12, 2022 related to the heating issue. The tenant submits that they were sick and could not sleep. A hearing was set for May 30, 2022, but the tenants had already moved out on March 15, 2022. The tenant testified they moved out as they were suffering, and the landlord had agreed that the tenants could move out early with one month's notice.

### **Analysis**

Sections 44 and 45 of the *Residential Tenancy Act* states the following about ending a fixed-term tenancy:

**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.*

**45** (2) *A tenant may end a fixed term 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,*

*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

*(c) 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.*

In review of the evidence and testimony before me, although I find that although the evidence shows that both parties had discussed the possibility of ending this tenancy early with one month's notice, I am not satisfied that both parties had reached a mutual agreement allowing the tenant to end this fixed term tenancy earlier than May 15, 2022.

The tenant filed their application on February 12, 2022, a day before they emailed the landlord notice that they would be moving out in March. The tenant emailed the landlord the next day to end the tenancy, and moved out on March 15, 2022 before the hearing was held. The tenant was not in possession of an order by an Arbitrator, nor did the tenant have written confirmation from the landlord allowing the tenant to move out on March 15, 2022 without penalty.

I note that even if the landlord did permit the tenant to end the tenancy before the fixed term with one month's notice, the earliest date that would qualify would still be March 31, 2022 as the tenant cannot end a tenancy earlier than the day before the day in the month when the rent is payable, which is the first of the month.

The evidence is clear that the tenant did not comply with the *Act* in ending this tenancy, and I therefore, find that the tenant vacated the rental unit contrary to Sections 44 and 45 of the *Act*.

I find the evidence shows that as a result of the tenant's actions, the landlord suffered a rental loss. The evidence of the landlord is that they were able to re-rent the suite for as of April 15, 2022, and are only seeking the lost of one month's rent. I am satisfied that the landlord had sufficiently mitigated their losses for this tenancy by filling the tenancy

as soon as possible, I therefore allow the landlord's claim for a monetary order for loss of rental income in the amount of \$1,900.00 due to the tenant's failure to comply with sections 44 and 45 of the *Act*.

The landlord also filed an application for reimbursement of the plumbing bill in the amount of \$945.00.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the landlord 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 claims 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.

In review of the evidence and testimony before me, although the landlord and plumber suspects that the tenants had falsely reported the heating issue, and although the plumber suspects that “there was manipulation and playing around with the thermostat”. I do not find these suspicions to be supported in evidence. In this case, I find the evidence falls short. I also note that the invoice includes the cost of servicing the furnace system, which is part of a landlord’s obligation to maintain the property, and which benefitted the entire home.

Section 32 of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

**Landlord and tenant obligations to repair and maintain**

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

As noted above, the burden of proof is to support that the loss stemmed from a contravention of the *Act* or tenancy agreement. I therefore dismiss the landlord’s claim for reimbursement of the plumbing bill without leave to reapply.

As the landlord’s application had merit, I allow the landlord to recover the fee for filing this Application.



**Conclusion**

I issue a Monetary Order in the amount of \$2,000.00 in the landlord's favour under the following terms:

Item	Amount
Loss of rental income	\$1,900.00
Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$2,000.00</b>

Should the tenants 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 landlord's application for reimbursement of the plumbing bill 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: January 11, 2023

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Residential Tenancy Branch