



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

File #310092857: MNDCT, MNSD
File #310093921: MNRL-S, MNDL-S, FFL

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- a monetary order pursuant to s. 67 for compensation or other money owed; and
- an order pursuant to s. 38 for the return of the security deposit and/or the pet damage deposit.

The Landlord files its own application seeking the following relief under the Act:

- a monetary order pursuant to ss. 38 and 67 seeking compensation for unpaid rent by claiming against the deposit;
- a monetary order pursuant to ss. 38 and 67 to pay for repairs caused by the tenant during the tenancy by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

W.A. appeared as the Tenant. R.P. appeared as the Landlord’s agent.

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. 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) Is the Tenant entitled to monetary compensation?
- 2) Is the Tenant entitled to return of his security deposit?
- 3) Is the Landlord entitled to compensation for unpaid rent?
- 4) Is the Landlord entitled to compensation for damages to the rental unit?
- 5) Is the Landlord entitled to its 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 tenancy was to begin on September 1, 2022, though the Tenant moved into the rental unit on August 1, 2022.
- The Tenant moved out of the rental unit on October 1, 2022.
- Rent of \$2,700.00 was due on the first of each month.
- The Tenant paid a security deposit of \$1,350.00 to the Landlord.

I am provided with a copy of the tenancy agreement by the parties. The tenancy agreement indicates it was for a fixed one-year term and reverting to a monthly periodic tenancy after August 31, 2023.

The Tenant indicates that he discovered bed bugs on the second floor of the rental unit a week after moving in. The Tenant testifies that he reported the issue to the Landlord at that time but was told by the Landlord that it would not pay for treatment as it was not responsible. The Landlord argued that the Tenant brought the bed bugs with him. The Tenant denies the allegation and insists that he did not have bed bugs prior to moving into the rental unit. The Tenant testifies that he spoke with the landlord he had prior to moving into the rental unit, who reported that no bed bugs were discovered in his former rental unit after he moved out. The Tenant further testifies that the bed bugs were also not present in the vehicle he used to move his belongings into the rental unit.

The Landlord's agent emphasized at the hearing that the Tenant brought the bed bugs with him. I am directed to correspondence in the Landlord's evidence from the former tenant at the rental unit, one H.H., which the agent submits is proof the previous tenant did not have bed bugs. The Tenant argues that the Landlord is playing word games with the previous tenant's emails and indicates that English is not the previous tenant's first language. The Landlord's agent denies this and emphasizes the email with the previous tenant is clear.

I reproduce the email exchange, which is dated August 12, 2022, between the previous tenant and the Landlord's agent:

Landlord's Agent: Hello [H.]

Please send the \$100, and we will see what other actions needed to be taken.

Did you have any bed bugs in the unit?

Regards,

[R.P.]

H.H.: Hello [Landlord's Agent]

No. We never did.

[H.H.]

Review of the exchange preceding the August 12, 2022 email shows that there was some dispute regarding the end of the tenancy with the previous tenant. Further review of the email correspondence provided by the Landlord shows that Landlord was unaware that the Tenant moved into the rental unit on August 1, 2022, with an email from the Landlord's agent to the Tenant on August 9, 2022 suggesting the Landlord was treating the early move-in as a sublease on the previous tenancy.

The Tenant testified to attempts to treat the bed bugs himself through some DIY treatments, all to no avail. The Tenant further testified to living on the main floor with his family members, which were less than comfortable and caused a degree of

sleeplessness. The Tenant indicates the bed bugs and lack of sleep impacted his mental health and he argues that he lost his job due to the sleeplessness. I am provided with no evidence to support the Tenant lost his job at this time.

The Tenant indicates that he moved out of the rental unit on October 1, 2022 due to the bed bugs. I am told by the parties that the Tenant notified the Landlord that he vacated the rental unit on October 3, 2022 after having already moved out. The parties further indicate that the move-out inspection was conducted on October 4, 2022.

The Tenant seeks the return of his rent for September 2022 and \$1,820.00 for furniture he says he had to throw out and replace after they were infested with bed bugs. The Tenant provides written submissions for the replacement cost of the furniture totalling \$1,604, though it is difficult to ascertain this accurately based on the quality of the reproduction provided. It is unclear based on the Tenant's submissions at the hearing or the Tenant's written submissions what furniture had to be replaced. The Landlord's evidence includes an email dated October 3, 2022 from the Tenant in which he claims \$2,080.00 for the furniture. At the hearing, the Tenant acknowledges that he did not have all the receipts for the furniture replaced in his evidence. No monetary order worksheet was provided by the Tenant.

The Landlord's agent advises that the Landlord seeks rent for October 2022 as Tenant ended the tenancy early and gave no notice. The Landlord's agent says that the Landlord found a new tenant to occupy the rental unit on November 1, 2022.

The Landlord's agent also claims damages to the rental unit totalling \$600.00, with \$300.00 due to bed bug treatment and an additional \$300.00 for repairs. The Landlord provides a monetary order worksheet and receipts for the amounts claimed, with the repair invoice indicating work undertaken to the closet lamp, rehangng a washer/dryer door, unplugging a washroom sink, cleaning a bathroom fan, and reinstalling a pocket door.

I am provided with a copy of the condition inspection report by the Landlord. The Tenant indicates that he did not provide a forwarding address to the Landlord after moving out, indicating his address was provided when he served his application on the Landlord.

The parties confirm the Landlord retains the security deposit in full.

Analysis

Both parties advance monetary claims with respect to this matter.

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.

Looking first to the Tenant's, I accept that there were likely bed bugs in the rental unit. The Tenant indicates that there were bed bugs and the Landlord treated for them after the Tenant vacated.

Section 32 of the *Act* sets out the obligations of landlords and tenants with respect to repair and maintenance, and states the following:

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.

Ultimately, responsibility for the bed bugs in this case turns on whether they were present in the rental unit prior to the Tenant taking occupancy. If they were there before the Tenant moved in, the Landlord is responsible. If they were not, the Tenant likely brought them with him and he would be responsible.

I am directed to an email from the previous tenant H.H. as evidence that there were no bed bugs. The Tenant argued that the Landlord is playing with words in the email from the previous tenant. I put no weight in the Tenant's argument. The correspondence reproduced above is unambiguous. The previous tenant clearly denied having bed bugs.

The issue I have with the correspondence provided by the Landlord from the previous tenant is that there is every reason to doubt the veracity of the denial. The Landlord was clearly in some form of dispute with the previous tenant. Review of the materials shows that the Landlord was troubled by the previous tenant leaving early and the Tenant moving in early. It is clear that the move-out process did not occur as it ought to have. This is discussed somewhat in the email thread provided. Further, in the email in which the agent asks about the bed bugs, there is oblique reference to the previous tenant that the Landlord "will see what other actions needed to be taken". I suspect the deposit had yet to be returned to the previous tenant when he was asked about the bed bugs. Given this context, it is likely that the previous tenant denied the bed bugs given the risk of being exposed to a claim on the issue.

All this is to say that I accept the Tenant likely did not bring bed bugs with him when he moved into the rental unit. The Tenant's concern with respect to the bed bugs caused him to end the tenancy before the end of the term. It seems unlikely that given the questionable denial from the previous tenant and the Tenant's overall attitude regarding the bed bugs that he brought them with him. I find that treating the bed bugs was the Landlord's responsibility and its to do so constituted a breach of s. 32(1) of the *Act*.

The Tenant claims the cost of replacing furniture. The issue I have with this portion of the claim is that it is unclear what furniture needed to be replaced, its value, or whether the furniture could have been treated rather than thrown out. The Tenant's receipt

indicates a replacement cost of \$1,604, though this is difficult to ascertain the specifics of this due to the poor image quality of the evidence. In an email to the Landlord sent on October 3, 2022, he asks for \$2,080.00 in compensation for the furniture. At the hearing, this changed to \$1,820.00. I find that the Tenant has failed to properly quantify his claim. This portion of his monetary claim is dismissed without leave to reapply.

The Tenant also seeks compensation equivalent to September's rent due to the stress and impact from the bed bugs. I find that the Tenant is conflating his claim for compensation with a rent reduction claim. His application does not advance a rent reduction claim and ties the compensation to rent for September in a way that I find is inappropriate. As per Rule 2.2 of the Rules of Procedure, his claim is limited to what is stated in the application, which is not a rent reduction claim.

Despite this, I find that the Tenant is entitled to compensation due to the Landlord's breach of s. 32(1) and take guidance from Policy Guideline #16, which states the following:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.
- "Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

Though the Landlord breached s. 32(1) of the *Act*, I do not find aggravated damages are appropriate. The Tenant did not make the request in his pleadings or at the hearing. I find that nominal damages are appropriate and award the Tenant \$500.00 due to the Landlord's breach of s. 32(1) of the *Act*.

The Landlord also seeks compensation due to the Tenant leaving the rental unit before the end of the term. Tenants may end a tenancy by giving notice to the landlord pursuant to s. 45 of the *Act*. In the case of fixed term tenancies, the effective date of the tenant's notice cannot be earlier than one month after the date the landlord receives the notice, cannot be earlier than the date specified in the tenancy agreement as the end of the tenancy, and is on a day before rent is due under the tenancy agreement.

In this instance, not only did the Tenant not give proper notice as the term ended on August 31, 2023, he gave notice on October 3, 2022 after already moving out. This is not a situation where the tenancy was frustrated, which is to say that contract was incapable of being performed. To be clear, bed bugs do not give a tenant the right to avoid their obligations under the *Act* nor does it permit them to avoid their obligation to pay rent. Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. The proper course would be to file an application seeking repairs or come to an agreement with the Landlord to end the tenancy early.

I find that the Tenant breached the fixed term portion of the tenancy agreement and the notice requirements set by s. 45 of the *Act*. I find that the Landlord is entitled to compensation for rent for October 2022. I further find that the Landlord mitigated its damages by finding a new tenant for the rental unit, who moved in on November 1, 2022. I grant the Landlord \$2,700.00 for this portion of its claim.

The Landlord also seeks \$600.00 for damages to the rental unit. Given my findings above, I do not grant the Landlord's claim for \$300.00 to treat bed bugs as this was not the Tenants responsibility. Looking to the other claims, I note that none of the alleged issues were highlighted in the move-out inspection report. As per s. 21 of the Regulations, a condition inspection report completed in accordance with the *Act* is evidence to the state of repair and condition of the rental unit unless there is a preponderance of evidence to the contrary. I find that no such evidence exists to displace the weight to be accorded to the move-out inspection. I find that the Landlord has failed to establish that any of the alleged deficiencies exist or that the Tenant was responsible.

As the Landlord and Tenant claim for the deposit, s. 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.

In this instance, the Tenant has not provided his forwarding address, only doing so as part of his application. I do not accept that this is the proper means of providing a forwarding address as it is given in the context of dispute proceedings. Further, I note that the Landlord filed its application within 15-days of the Tenant being provided the Notice of Dispute Resolution to serve on the Landlord, such that even if I am wrong in the above, the Landlord met the filing deadline in any event. I have also turned my mind to the question of extinguishment. I find that it is not relevant as the Landlord filed its claim for compensation other than just damage to the rental unit.

Taking the above into account, I order the Landlord retain the security deposit in partial satisfaction of the amount owed by the Tenant and deduct the amount owed to the Tenant, such that the balance owed by the Tenant is \$850.00.

Conclusion

The Tenant is entitled to \$500.00 in compensation under s. 67 of the *Act*. All other aspects of his monetary claim are dismissed without leave to reapply.

The Landlord is entitled to \$2,700.00 in compensation under s. 67 of the *Act*. All other aspects of its monetary claim are dismissed without leave to reapply.

Pursuant to s. 72(2) of the *Act*, I order that the Landlord retain the security deposit of \$1,350.00 in partial satisfaction of the amount owed by the Tenant.

I find that the Landlord was largely successful in its application such that it is entitled to its filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay the Landlord's \$100.00 filing fee.

Taking the above into account, I order that the Tenant pay **\$950.00** to the Landlord (\$2,700.00 + \$100.00 - \$1,350.00 - \$500.00).

It is the Landlord's obligation to serve this order on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlord 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: February 15, 2023

Residential Tenancy Branch