



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDCL, MNSD, FFL

Introduction

On April 8, 2022, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss; a monetary order for unpaid rent; a monetary order for damage or repairs; and to keep the security deposit.

The matter was set for a conference call hearing. The Landlord and the Tenants attended the teleconference hearing. The Landlord was assisted by his son acting as the Landlord’s agent and also as an interpreter. At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

Preliminary and Procedural Matters

A fundamental principle of fairness requires that the parties to a proceeding have an opportunity to consider and respond to any documentary evidence that was submitted to the Residential Tenancy Branch (“RTB”) for consideration. Parties that submit documentary evidence to the RTB are required to serve the other party with the exact same documentary evidence. The Residential Tenancy Branch has established Rules of Procedure (“the Rules”) with the objective to ensure a fair, efficient, and consistent process for resolving disputes for landlords and tenants. The Rules explain the requirements for exchanging evidence. The Notice of Dispute Resolution proceeding includes information that the Rules apply to the proceeding and provides the website address to view the Rules. To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

Both parties failed to provide the other with a copy of the same evidence that was provided to the RTB.

The Landlord provided the RTB with 168 pages of documentary evidence which included 44 photographs taken of the rental unit at the end of the tenancy and also contained an 89-page Condition Inspection Report (CIR) with photographs of the unit at the start of the tenancy. The CIR is not signed by the Landlord or Tenant. The Tenants testified that they never received all of the Landlord's evidence as they did not receive any photographs. The Landlord testified that they did not send the 89-page CIR containing the photographs to the Tenants because they would have received it back in 2019. The Tenants replied that they participated in a move in inspection and the Landlord took photographs at that time, but they never received a copy of the photographs or the CIR back in 2019.

The Tenants provided the RTB with 72 pages of documentary evidence which included 28 pages of photographs of the rental unit taken at the end of the tenancy. The Landlord testified that they only received 6 pages from the Tenants. The Tenants replied that they did not send a copy of their photographic evidence to the Landlord.

The Rules provide the following information:

3.10.1 Description and labelling of digital evidence

To ensure a fair, efficient and effective process, where a party submits digital evidence, identical digital evidence and an accompanying description must be submitted through the Online Application for Dispute Resolution or Dispute Access Site, directly to the Residential Tenancy Branch . . . and be served on each respondent.

3.17 Consideration of new and relevant evidence

Evidence not provided to the other party . . . in accordance with the Act or [Rule 10] may or may not be considered depending on whether the party can show to the arbitrator that it was new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

Since both parties did not follow the Rules with respect to exchanging evidence, and since they did not have an opportunity to consider and respond to the evidence before me, I find that it would be unfair for me to consider any of the documentary evidence from the Landlord and Tenants as the majority of evidence was not exchanged and it was not possible to verify which documents had been properly served.

Nevertheless, based on the affirmed testimony provided by the parties in the hearing, I am able to make a decision on the Landlord's claims without needing to rely on the documentary evidence.

I have reviewed the oral evidence before me; However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to a monetary order for damage or repair costs?
- Is the Landlord entitled to other compensation for damage or loss?
- Can the Landlord keep the security deposit towards their claims?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenants testified that the tenancy began on October 2, 2019, as a one-year fixed term tenancy that continued thereafter on a month-to-month basis. Rent in the amount of \$2,600.00 was to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$1,300.00. The tenancy ended on February 28, 2022.

The Landlord testified that the Tenants broke the fixed term tenancy agreement by moving out of the rental unit on December 8, 2018, prior to the end of the fixed term agreement.

Loss of Rent \$1,300.00

The Landlord testified that the Tenants failed to pay the full amount of monthly rent owing under the tenancy agreement for 13 months. The Landlord testified that the Tenants called them asking to reduce the monthly rent due to a change in their income. The Landlord did not agree to the reduction in rent but they later received a \$500.00 per month rent supplement from the Government due to the financial impact of Covid 19. The Tenants began paying the Landlord \$2,000.00 each month and the Government

paid the Landlord \$500.00. The Landlord accepted the payments totalling \$2,500.00 under the impression that the Tenants would pay the shortfall of \$100.00 per month at a later time. The Landlord testified that there was no agreement that the rent was reduced. The Landlord testified that the Tenants even offered to give up a parking spot for a rent reduction and the Landlord declined the offer.

The Tenants testified that in October 2020 they were having financial difficulty and informed that the Landlord that they need to move out. The Tenants stated that the Landlord verbally agreed a \$100.00 reduction of monthly rent. The Tenants pointed out that the Landlord is pursuing this claim 2 years after the fact. The Tenants acknowledged that they were paying the Landlord \$2,000.00 each month and the Government was paying the Landlord \$500.00 each month. The Tenants testified that any documentation they have regarding this in a different language and they have not provided proof. The Tenants stated that they commenced paying the full rent of \$2,600.00 in December 2021.

Damage and Cleaning

The Landlord is seeking compensation for the cost to clean and repair the rental unit at the end of the tenancy. The Tenant testified that the Landlord did not perform a move out inspection. The Landlord testified that the Tenant did not have time to participate in a move out inspection and told the Landlord to do it and let him know. The Landlord testified that they called the Tenant after the inspection and they spoke about issues found. The Landlord's claim includes the following items:

- Lights
- Cleaning
- Cabinets
- Walls
- Carpets
- Toilet

The Landlord testified that he sold the rental property, and the purchaser took possession of the property at the end of April 2022. The Landlord testified that the purchaser contacted him stating that the property was not clean. The purchaser's agent arranged for the property to be cleaned and sent a cleaning invoice dated May 8, 2022, to the Landlord who is seeking to recover the cleaning cost from the Tenants.

The Landlord testified that the kitchen cabinets were left damaged. The Landlord is seeking compensation; however, he never completed the repair. He testified that the Tenant is responsible for 10% of the estimated cost to repair the cabinet. The Landlord testified that the condition of the cabinets was worked into the sale of the unit.

The Landlord testified that his claims for compensation for damage to the walls and carpet and bathroom toilet are similar to the cabinets as the Landlord did not make the repairs, but the condition of these items was worked into the sale of the unit.

The Tenants testified that the cabinets are 14 years old and that they cleaned the carpets and left the rental unit in perfect condition and that there was no mention of any damage when the keys were handed over to the Landlord.

Compensation for Damage or Loss under the Act \$30,000.00

The Landlord testified that this monetary claim is for punitive damages related to the Tenants not cooperating with the sale of the rental unit by allowing open houses and showings. The Landlord stated that they sold the house without the buyer viewing the unit.

The Tenants testified that the owner listed the unit for sale in August 2021 and had open houses weekend. The tenant suggested that the asking price was too high as an identical unit sold for \$100,000.00 less than the Landlord was asking. The Tenant testified that they were cooperating until family members got sick with Omnicron Covid virus. He stated that he could not get out of bed. The Tenants notified the Landlord that they were sick and could not accommodate open houses or showings and they heard nothing back from the Landlord. The Tenants were later informed by the apartment manager that the unit had been sold.

The Landlord replied that the Tenants only permitted one open house and one showing.

Security Deposit

The Landlord's application submitted on April 8, 2022, includes a claim to retain the security deposit of \$1,300.00 in full or partial satisfaction of their claims.

The Tenants testified that they provided their forwarding address in writing to the Landlord on March 24, 2022, using regular mail.

The Landlord testified that they never received the forwarding address, and they relied on an address for the Tenants that was provided by their realtor.

Analysis

Residential Tenancy Policy Guideline # 16 Compensation for Damage or Loss is intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. The Guideline provides information on the elements of compensation as follows:

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

Unpaid Rent

I find that the tenancy agreement requires the Tenants to pay monthly rent of \$2,600.00. The Tenants acknowledged that the Landlord only received \$2,500.00 for a period of 13 months. While the Tenants suggest that the Landlord gave them a \$100.00 discount for the 13 month period, there is insufficient evidence from the Tenants to support their testimony. The Tenants acknowledged that they started paying the rent of \$2,600.00 again in December 2021.

I find that the Tenants are responsible to pay the Landlord the \$100.00 shortfall in rent for the 13-month period. I award the Landlord the amount of \$1,300.00.

Damage and Cleaning Costs

Section 21 of the Residential Tenancy Regulation provides that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on

the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Even if the Landlord's CIR evidence had been accepted it is not reliable evidence as it does not comply with the requirements under section 20 of the Regulations as it was not signed by the Landlord and Tenant and there was insufficient evidence from the Landlord that it was ever provided to the Tenants. Under section 36(2) of the Act the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

With respect to the Landlord's claims to be compensated for cleaning and damage, I find that the Landlord has not provided reliable evidence showing the condition of the rental unit at the start and end of the tenancy. Furthermore, the Landlord never completed the repairs. The Landlord sold the property without making repairs and now wants to be compensated because of a reduced sale price or because the purchaser wanted cleaning and repairs completed after taking possession.

I find that it is not reasonable to seek compensation from the Tenants based on the purchaser wanting the Landlord to pay for cleaning or repairs or based on the Landlord's submission that that the Tenants are responsible for a reduction of the sale price because they prevented open houses or showings. If the Tenants were refusing entry to the Landlord, after a proper written notice of entry was served, the Landlord could have applied for dispute resolution requesting an Arbitrators order for entry. Instead the Landlord chose to sell the home as is.

The Landlord's claims for compensation for these above listed items are dismissed without leave to reapply.

Compensation for Damage or Loss under the Act \$30,000.00

The Landlord testified that this monetary claim is for punitive damages related to the Tenants not cooperating with the sale of the rental unit by allowing open houses and showings.

I take guidance from Residential Tenancy Policy Guideline # 16 Compensation for Damage or Loss where it provides an amount arrived at must be for compensation only and must not include any punitive element.

The Landlord's claim for \$30,000.00 as punitive damages is dismissed without leave to reapply.

Security Deposit

The Landlord failed to comply with the requirements of sections 23 and 35 of the Act regarding an inspection and preparation and disclosure of a condition inspection report. The Landlord's right to claim against the security deposit for damage is extinguished.

Section 72 of the Act permits the Director to permit a landlord to deduct a security deposit due to a Tenant from an amount owed to a Landlord.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$1400.00 comprised of \$1,300.00 in unpaid rent and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit of \$1,300.00 towards the award of \$1,400.00, I find that the Landlord is entitled to a monetary order in the amount of \$100.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Landlord established a monetary claim for unpaid rent and the filing fee in the amount of \$1400.00.

The Landlord's other claims for cleaning and repair costs and punitive damages are dismissed without leave to reapply. I order that the Landlord can keep the security deposit of \$1,300.00 in partial satisfaction of the Landlord's claim.

I grant the Landlord a monetary order in the amount of \$100.00.

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 1, 2023