



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL, MNDL, MNDCL, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on June 30, 2022 seeking compensation for damages to the rental unit and other money owed. Additionally, they seek reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 21, 2023.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary Matter – Notice of Dispute Resolution Proceeding and evidence service

At the outset of the hearing, the Landlord described their service of the Notice of Dispute Resolution Proceeding and their evidence to the Tenants (hereinafter, the “Tenant”) using email. This was specifically authorized by the Arbitrator in a previous hearing with these parties. As stated in the Arbitrator’s decision dated December 12, 2022:

Pursuant to section 62(3) and further to the landlord’s request during the hearing, I grant the landlord permission to serve the tenant LS via email at the email address listed on the cover page of this decision.

This carried over to the present hearing; the Landlord sent an email containing the Notice of Dispute Resolution Proceeding and their evidence in an email to the Tenant on January 12, 2023, as shown in the screen capture of that outgoing message. The Landlord stated they also sent a hard printed copy of their materials via registered mail (with tracking number recorded in the Landlord’s evidence) to the Tenant for good measure. The Tenant confirmed they received the information for this hearing and the Landlord’s evidence in this manner.

In conclusion, I find the Landlord completed service as required for this present hearing and their documents receive my full consideration herein.

The Tenant did not provide documents as evidence in this hearing. I stated to the parties at the outset of the hearing that testimony provided in the hearing under affirmed oath is a form of evidence. Both parties' testimony receives my full consideration herein.

Issues to be Decided

Is the Landlord entitled to compensation for unpaid rent/utilities, damage to the rental unit, and/or other money owed, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement in their evidence. This shows the tenancy starting on November 15, 2021, with the rent amount of \$3,000 per month payable on the 15th each month. The agreement shows the Tenant paid a security deposit of \$1,500 and a pet damage deposit of \$1,000.

In the hearing the Landlord stated the Tenant did not pay any deposit. They referred to a "rental summary page" they provided in their evidence. This is a spreadsheet record of all rent collected over the course of this tenancy. On that sheet, there is no record of deposits paid by the Tenant.

The Tenant stated the \$1,500 security deposit amount was taken by the Landlord and applied to rent. Specifically, this \$1,500 amount was paid at the beginning for the initial one-half calendar month they were in the rental unit. The Tenant also stated they did not pay any pet damage deposit.

The Landlord pointed to an addendum to the tenancy agreement, specifying that the Tenant had access to the front half of the property. This leaves full access to the Landlord for use of the back half of the property that has a separate driveway to park vehicles.

The addendum also states that the Tenant is responsible for paying “all house utilities”, and “all yard maintenance and up keeping.”

There is no record of the parties’ attending together at the start of the tenancy to inspect the condition of the rental unit. The Tenant in the hearing pointed to existing issues in the rental unit that were present from the beginning.

The Landlord briefly summarized the situation regarding unpaid rent. This was the key issue that ended this tenancy, with the Landlord giving the Tenant a notice to end tenancy. The Tenant moved out from the rental unit on April 26, 2022. The Tenant in the hearing acknowledged that the Landlord ended the tenancy for this reason and confirmed the last date was April 26. When confirming this date in the hearing, the Tenant pointed to problems within the rental unit requiring repairs “right from day one.”

At the end of the tenancy, the parties did not meet to inspect the condition of the rental unit. The parties stated that this was because of the final move-out process being handled by bailiffs when the Landlord enforced their order of possession for the rental unit.

On January 10, 2023 the Landlord completed a Monetary Order Worksheet, listing the following:

#	Items	\$ claim
1	repair/cleaning	4,725.00
2	cabinet repair	840.00
3	bailiff services	3,090.45
4	electric utility – Dec 2021 to Feb 2022	508.60
5	electric utility – Feb 2022 to April 2022	446.04
6	gas utility – Dec 2021 – Jan 2022	299.30
7	gas utility – Jan – Feb 2022	160.44
8	gas utility – Feb – Mar 2022	89.15
9	gas utility – Mar – Apr 2022	76.46
10	rent – Feb 15 – April 15	10,500.00
	Total	20,735.44

I reviewed individual pieces of the Landlord’s claim with the parties in the hearing. The Landlord presented their invoices, their photos, and gave a description of their reasons for claiming these amounts from the Tenant. The Tenant responded to the points raised by the Landlord. I have divided these claims into the headings:

a. Repairs and cleaning, \$4,725

Primarily, the Landlord presented that there was a lot of garbage left by the Tenant at the end of the tenancy upon move-out. The bailiffs hired to enforce an end of the tenancy had to remove everything off from the property into storage, or a place that the Tenant specified for that purpose. The Landlord also described damage in the rental unit, with the unit being “all destroyed by tenants”. The Landlord also described garbage being thrown into floor ducts, requiring extensive cleaning.

The Landlord provided photos to illustrate the extent of damage and the need for cleaning.

The Tenant described water damage present at the start of the tenancy when they moved in. They drew attention to the high watermark on the photo of the wall to show how far the water reached.

The Tenant also described the items strewn about the yard, in various states, as belonging to the Landlord. They did not have the opportunity at the end of the tenancy to sort out garbage from other items they wanted to store elsewhere.

As recalled by the Tenant, the ducts were the result of the furnace being submerged in water as a result of the earlier flooding, leaving them without power in the rental unit for approximately one month.

b. cabinet damage, \$840

The Tenant described the cabinets as being damaged from the beginning, due to “installation troubles”. The cabinet knobs, in particular, were problematic. The Landlord stated that everything was in fine working order at the start of the tenancy.

c. bailiff services, \$3,090.45

The Landlord presented an invoice in the amount of \$960.26 dated April 26, 2022. This was specific to the bailiff service. The statement that sets out the work from April 26, 2022. The enforcement of the order of possession on that date also required movers and storage and disposal, for which the bailiff services charged the Landlord \$1,263.94 and \$656.25, and \$210.

In the hearing, specific to this process, the Tenant described this as the third dispute resolution proceeding undertaken by the Landlord, with “numbers always changing”.

d. utilities totalling \$1,579.99

The Landlord provided each of the invoices from electricity and gas service providers listed above. They stated plainly in the hearing that the Tenant did not pay utilities, despite the tenancy agreement specifying that this was their responsibility. The Landlord presented the invoices to the Tenant, who then did not pay.

The Tenant recalled that the Landlord instructed them to change the utilities to their own accounts; the Landlord then told them to stop. This was because of a trailer plugged in at the rental unit property in the backyard; this configuration would cause the breaker to trip because of an excess power draw. The Tenant stated that the Landlord said they would pay the utilities because of this trailer. The Tenant also stated that the Landlord never presented invoices to them for payment during the tenancy. The Landlord’s claim about the trailer, yard space usage, and payment of utilities is “all stated after the fact, [with] never a conversation up front.”

e. rent owing, \$10,500

The Landlord prepared a spreadsheet for their evidence, showing the following:

15-Nov-21	Rent Owed	\$ 3,000.00
19-Oct-21	Rent Collected	\$ (250.00)
23-Oct-21	Rent Collected	\$ (1,250.00)
05-Nov-21	Rent Collected	\$ (1,250.00)
15-Dec-21	Rent Owed	\$ 3,000.00
01-Jan-22	Rent Collected	\$ (1,250.00)
14-Jan-22	Rent Collected	\$ (1,250.00)
31-Jan-22	Rent Collected	\$ (1,000.00)
15-Jan-22	Rent Owed	\$ 3,000.00
03-Mar-22	Rent Collected	\$ (1,250.00)
15-Feb-22	Rent Owed	\$ 3,000.00
15-Mar-22	Rent Owed	\$ 3,000.00
15-Apr-22	Rent Owed	\$ 3,000.00

Balance Rent Owed		\$10,500.00

The Tenant claimed they did not receive a copy of the ledger as set out in a spreadsheet. The Landlord stated that they provided the information to them in an email.

The Tenant acknowledged that they were paying rent amounts “in pieces”, with some transferred electronically, and some in cash, as requested by the Landlord. They could not recall being a whole month behind in rent payments.

The Landlord reiterated the Tenant had not paid rent for the final three months of the tenancy. This was as shown on the spreadsheet they provided for this hearing.

Analysis

To be successful in a claim for compensation for damage or loss the Applicant has the burden to provide enough evidence to establish the following four points:

- That a damage or loss exists;
- That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- The value of the damage or loss; **and**
- Steps taken, if any, to mitigate the damage or loss.

I find there was no security deposit provided by the Tenant here. I find it more likely than not that this was an amount – the equivalent of one-half month’s rent – that was procured for the one-half of November 2021 when the Tenant moved in.

- a. Repairs and cleaning, \$4,725*
- b. cabinet damage, \$840*

The *Act* s. 37(2) requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give their landlord all the keys and other means of access that are in the possession or control of a tenant and that allow access to and within the residential property.

The *Act* also establishes certain requirements for the start of a tenancy. There is a requirement for a landlord and a tenant together to inspect the condition of the rental unit, as per s. 23. A landlord must complete a condition inspection report to document that meeting. This affects the Landlord's entitlement to a deposit; however, the Landlord did not claim against the deposit here. As a matter of evidence presented by the Landlord here, I find there is no documentation or other proof of the state of the rental unit at the start of the tenancy in the evidence. This informs my analysis of their claim for damage in the rental unit.

I accept the Tenant's description of the rental unit as having inherent issues, and being in a less-than-pristine state at the start of the tenancy.

From the Landlord's photos, I am not satisfied of the need for cleaning at the level and extent the Landlord received an invoice for. I am not satisfied the items left on the property originated from the Tenant, where the property was used by other parties for storage or vehicle parking. There is evidence that items were hauled away; however, I am not satisfied of the volume of items, nor when this work occurred.

There is similarly no evidence of garbage being thrown into ducts requiring a special level of cleaning, and no evidence of the need for plumbing work or the need for paint or other wall damage.

Due to the lack of evidence, I am not satisfied of the need to undertake specialized cleaning as outlined in the invoice the Landlord presented. The photos provided do not match up with the amount the Landlord ostensibly spent for this job. I cannot find with surety that the Tenant caused the damage in question, with no reference to the state of the rental unit at the start of the tenancy for comparison.

Regarding cabinets, there is no proof of damage in the form of photos. I find the expense of replacement or repair is not justified as arising from this tenancy, and not proven in the record before me. Neither the extent of damage, the original state of the cabinets as at the start of the tenancy, nor the full lifespan of the cabinets is known; therefore, I cannot with assurance attribute any damage (that is not proven) to the Tenant here. I dismiss this piece of the Landlord's claim without leave to reapply.

For alleged damages and cleaning within the rental unit, I grant no award to the Landlord, and dismiss these pieces of their claim without leave to reapply.

c. bailiff services, \$3,090.45

The Landlord produced evidence of each of the costs associated with vacating the Tenant from the rental unit on April 26, 2022. I find they have established the value of this monetary loss. Moreover, I find this loss results from the Tenant's violation of the Act where they did not vacate the unit upon receiving the Order of Possession served by the Landlord.

A Writ of Possession is the only legal avenue by which a landlord may enforced an Order of Possession. By this method, there is no means for a landlord to mitigate the loss. By doing so in a relatively timely method, I find the Landlord here minimized their other losses.

In sum, I find the Landlord has established their claim in the amount of \$3,090.45. I grant this amount in full. The Landlord would not have incurred these expenses but for the actions of the Tenant at the end of the tenancy.

d. utilities totalling \$1,579.99

The addendum to the tenancy agreement specifies that "Tenant is responsible to pay for all house utilities." The Tenant did not change the gas and electricity utilities to their own names on the account. This meant the invoices for amounts owing were still sent to the Landlord.

There is no record of the Landlord presenting the amounts owing to the Tenant on a regular basis from the start of the tenancy. This equate to no effort by the Landlord at mitigating the amount in question that the Landlord claims as owing, in full, at the end of the tenancy. Minus any proof from the Landlord that they both forwarded the current billing information to the Tenant, and more importantly asked for payment, I find the Landlord has not mitigated the amount in question here by now doing this at the end of the tenancy for a collection of billed amounts. I find the Landlord did not follow the addendum in spirit, with no accounting for ongoing utilities presented to the Tenant for payment. For this reason, I grant no compensation to the Landlord for these utility payments.

e. rent owing, \$10,500

I find the Landlord's record on rent paid to be more likely than not accurate. I find the Landlord credible on this record, which follows progressively the pattern of late and staggered rent payments throughout the tenancy. The Tenant presented no evidence, or accurate testimony, to outweigh the evidence of the Landlord on this point.

I grant the Landlord the full amount of compensation claimed for this category, at \$10,500.

In total, I find the Landlord has established a claim of \$13,590.45. This is based on a review of the available evidence and the parties' testimony in the hearing.

Because the Landlord was successful in their claim, I grant \$100 reimbursement for the Application filing fee

Conclusion

Pursuant to s. 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$13,690.45 for compensation set out above and the recovery of the filing fee for this hearing application. I provide this Monetary Order in the above terms and the Landlord must serve the Monetary Order to the Tenant as soon as possible. Should the Tenant fail to comply with the Monetary Order, the Landlord may file it in the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: March 24, 2023

Residential Tenancy Branch