



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPU-DR, MNRL, MNU-DR, MNDL, FFL

Introduction

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

- an order of possession for non-payment of rent & utilities pursuant to section 55;
- a monetary order for unpaid rent & utilities and for damage to the rental unit in the amount of \$16,805.37 pursuant to section 67;
- authorization to recover the filing fee for this application from the Tenants pursuant to section 72.

This matter was reconvened from a prior hearing on December 9, 2022. I issued an interim decision setting out the reasons for the adjournment on that same day (the Interim Decision). This decision should be read in conjunction with the Interim Decision.

All parties attended the hearing. Tenant MD's father, KD, also attended the hearing.

The parties confirmed that each had served the other with their documentary evidence as ordered in the Interim Decision. The Tenants did not provide their documentary evidence to the Residential Tenancy Branch (RTB). As the Landlord had received their evidence prior to the hearing, I allowed the Tenants to rely on it at this hearing and required that they provide the RTB with their documentary evidence no later than April 21, 2023. The Tenants did this. I reviewed their evidence prior to writing this decision.

Issues to be Decided

1. When did the tenancy end?
2. How much do the Tenants owe in rental arrears?
3. Did the Tenants damage and fail to clean the rental unit?
4. Is the Landlord entitled to compensation not being able to re-rent the rental unit in August due to the rental unit's condition?
5. Is the Landlord entitled to recover the filing fee and to keep the deposits?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting December 1, 2021 and ending November 30, 2022. Monthly rent was \$4,490 plus utilities and was payable on the first of each month. The tenant paid the Landlord a security deposit of \$2,245 and a pet damage deposit of \$2,245, which the Landlord continues to hold in trust for the tenant.

The Tenants vacated the rental unit on June 30, 2022. Tenant CJ testified that the Landlord would come over to the rental unit unannounced and that he and tenant MD had a confrontation following which the police were called. She testified that the RCMP told her that if she felt uncomfortable, she should leave the rental unit.

The Tenants testified that the Landlord changed the lock to the rental unit in mid-July 2022, which caused tenant MD to be unable to retrieve some of his belongings from the rental unit.

The Landlord testified that:

- He changed the locks in August 2022.
- The Tenants did not give him notice of their departure, and that they had not paid any rent for May, June, or July.
- He was unable to re-rent the rental unit for August due to the condition the rental unit was left in but was able to secure a new tenant for September 1.
- He did not conduct a move-in condition inspection at the start of the tenancy as he had fully renovated the rental unit prior to it starting.
- He did not conduct a move-out condition inspection with the Tenants at the end of the tenancy.
- The Tenants:
 - Incurred \$447.45 of utilities costs in May 2022, of which they paid \$347.45 on June 2.
 - Incurred \$108.62 in utilities costs in June 2022, and did not pay any portion.
 - Broke the cabinet doors the kitchen and bathroom.
 - Cut open drywall in the living room.
 - Allowed their dog to defecate in the rental unit.
 - Did not clean the rental unit prior to leaving.
- He paid a contractor \$1,570 to fix the drywall and the broken cabinet.

- He paid a cleaner \$990 to clean the rental unit.

The Landlord did not provide any invoices supporting these expenses. He provided photographs of the interior of the rental unit which show that it had not been cleaned at the end of the tenancy.

CJ testified that:

- The Tenants paid May 2022 rent in cash to the Landlord in May.
- The Tenants paid \$3,900 of June rent in cash to the Landlord in June.
- The Tenants paid the \$208.62 owed for utilities by etransfer.
- The Tenants did not pay any rent for July, as they vacated the rental unit on June 30.
- An electrician cut hole in the drywall to repair faulty wiring which had caught fire.
- The Landlord approved this electrician attending the rental unit.
- The cabinets doors fell off with normal use, as the rental unit was built in the 1980s and the doors were original.
- Rental unit was not cleaned prior to their moving into, and the carpets were stained.
- The Landlord mutually agreed with them that they could end the tenancy before the end of the fixed term but did not do so in writing.

The Tenants provide several photographs and a short video which show what appears to be leftover renovation materials in the rental unit and garage at the start of the tenancy. They did not provide any evidence supporting their testimony of utilities or rent payments, such as ATM invoices showing withdrawal of cash, receipts from the Landlord for cash payments, or correspondence regarding the payments.

The Landlord testified that he received a check for rent from the Tenants in June, which bounced, and that the Tenants never paid any cash to him in May or June. However, he said they did provide him an etransfer of \$3,000 on May 16, which was for arrears from April. He served the Tenants with a 10 Day Notice to End Tenancy for Non-Payment of Rent on July 2, 2022, which specified rent arrears of \$9,546.75 and unpaid utilities of \$208.62.

The Landlord provided a text message exchange between himself and MD dated June 1. He wrote:

The amount for the previous month rent and utility was
Total: \$6159.87

Which I received \$3000

MD replied:

just so I clarify this, the extra \$1,669.87 is she didn't pay the utilities from April?

The Landlord replied:

For this month it is
\$4590 plus \$198.44 (rent and 2/3 of the utility)

MD replied:

So I'll owe you \$5,000 Friday, and \$4,159.97 is the rest

Analysis

1. When did the tenancy end?

It is not disputed that the Tenants vacated the rental unit in June 2022. There is no evidence to corroborate the Tenants' assertion that the parties mutually agreed to end the tenancy prior to the end of the fixed term. Such an assertion is contrary to the subsequent actions of the parties, including the Landlord issuing the 10 Day Notice to End Tenancy on July 2, and the Tenants leaving items in the rental unit after they vacated, for later retrieval. As such, I do not find that this occurred.

The parties do not dispute the Tenants did not give one month's written notice of their intention to vacate the rental unit. Section 45 of the Act requires a tenant to either give at least one month's written notice of their intention to end the tenancy, or, in the event a landlord has breached a material term of the tenancy agreement, give written notice of this breach to the landlord and set out a deadline by which date it must be fixed and state that if it is not fixed, then the tenants will end the tenancy. The Tenants did neither of these.

The Tenants moved out in breach of the Act. The soonest they could have moved out in accordance with the Act, on the basis that their leaving the rental unit in June amounted to notifying the Landlord of their intention to move out, would have been July 31, 2022.

Accordingly, I deem that the tenancy ended on that date.

As the tenants have already vacated the rental unit, I dismiss the Landlord's application for an order of possession, as it is now moot.

2. How much do the Tenants owe in rental arrears?

The parties' testimony differs as to how much rent was paid for May and June 2022. The parties did not provide much in the way of documentary evidence supporting their respective positions. However, I find the text message exchange between the Landlord and MD useful in determining the Tenants' account balance, as MD does not dispute the Landlord's assertions of the amounts owed.

From this exchange, I conclude that the Tenants paid the Landlord \$3,000 in May (as the Landlord asserted) and that this payment was *partially* attributed to April rent, given that he stated as much to MD, and MD did not dispute this statement.

I understand that, as of May 1, 2022, the Tenants owed the Landlord \$6,159.87, representing unpaid rent and utilities for April and rent for May 2022. There is nothing in the text message exchange to support the Tenants' testimony that they paid the full amount of May's rent in cash in May.

From this I conclude that the Tenants were either attempting to deceive me when they testified they made such a payment or that they could not recall how much of a payment they made. In either event, this causes me to find that their testimony regarding rent payments is not reliable.

As such, where the Tenants' and the Landlord's testimony differs on the subject of rent paid, I prefer the Landlord's. Accordingly, I find that the Tenants did not pay any rent for June 2022, and that they currently owe \$208.62 in unpaid utilities.

As I have found that the tenancy ended on July 31, 2022, the Tenants are responsible for paying July's rent as well. In total, I find that the Tenants owe \$12,348.49 in unpaid rent and utilities calculated as follows:

Date	Owed	Paid	Balance	Description
1-May-23	\$6,159.87		\$6,159.87	May Rent plus April rent and utility arrears
16-May-23		\$3,000.00	\$3,159.87	Payment
30-May-23	\$447.45		\$3,607.32	Utilities owed

1-Jun-23	\$4,490.00		\$8,097.32	June rent
2-Jun-23		\$347.45	\$7,749.87	Utilities payment
30-Jun-23	\$108.62		\$7,858.49	Utilities owed
1-Jul-23	\$4,490.00		\$12,348.49	July rent
		Total	\$12,348.49	

3. Did the Tenants damage and fail to clean the rental unit?

The Landlord has not provided a move-in condition inspection report, nor any documentary proof of the condition of the of the rental unit at the start of the tenancy. As such, I cannot say what the condition of the rental unit was at the start of the tenancy. Without something to compare the state of the rental unit at the end of the tenancy to, I cannot find that the Tenants damaged the rental unit during the course of the tenancy. I dismiss the Landlord's application for the cost to fix the drywall and broken cabinets.

Based on the photographs submitted into evidence, I accept that the Tenants did not clean the rental unit prior to vacating it. Section 37 of the Act requires them to do this. As such, the Tenants breached the Act. However, the Landlord failed to provide any documentary proof (such as a receipt, invoice, or quote) that he actually paid the \$990 he seeks for cleaning and garbage removal. Accordingly, I find that he has failed to establish, on a balance of probabilities, that he has actually incurred this cost.

In the circumstances, as I am satisfied that the Tenants breached the Act and as the Landlord has failed to prove his loss, I find that the Landlord is entitled to nominal damages of \$250 as compensation for the tenant's breach of section 37 of the Act.

4. Is the Landlord entitled to compensation not being able to re-rent the rental unit in August due to the rental unit's condition?

I have found that the Landlord has failed to prove on a balance of probabilities that the Tenants damaged the rental unit during the tenancy. It follows that the Landlord is not entitled to compensation for the inability to re-rent the rental unit due to it being damaged by the tenant. Based on the photographs submitted, I do not find that the rental unit was so unclean as to prevent the rental unit from being re-rented in August 2022. I see no reason why the rental unit could not have been adequately cleaned during July after the tenants vacated it.

As such, I dismiss this portion of the application.

5. Is the Landlord entitled recover to the filing fee and to keep the deposits?

Per section 72(1) of the Act, as the Landlord has been successful in the application, he may recover the filing fee from the Tenants.

Per section 72(2) of the Act, the Landlord may retain the security deposit and pet damage deposit in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 62, 65, 67, and 72 of the Act, I order that the Tenants pay the Landlord \$8,208.49, representing the following:

Description	Total
Arrears	\$12,348.49
Nominal damages	\$250.00
Filing fee	\$100.00
Deposits credit	-\$4,490.00
	\$8,208.49

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: May 23, 2023

Residential Tenancy Branch