



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL, MNDL, MNDCL, FFL

Introduction

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

- a monetary order for unpaid rent and utilities, and compensation for monetary loss or 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 were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

The tenants confirmed receipt of the landlord's application for dispute resolution ('Application'). In accordance with section 89 of the *Act*, I find that the tenants duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed with the hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for money owed or monetary losses associated with this tenancy?

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

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 month to month tenancy began on December 1, 2018, and was to end on the effective date of a 2 Month Notice, February 14, 2022. Monthly rent was set at \$2,500.00, payable on the first of the month. The security and pet damage deposits were dealt with in a previous arbitration hearing held on August 30, 2022.

The landlord filed this application requesting the following monetary orders:

Unpaid Rent (April 2020-May 2020)	\$3,000.00(amended to \$1,280.00 in hearing)
Rent Owed (January 11-15, 2022)	403.23
Unpaid Utilities-Electricity (January 3-February 14, 2022)	33.14
Unpaid Utilities-Gas Bill (November 4-February 4, 2022)	91.70
Paint Supplies	11.40
Paint	130.73
Cleaning & Painting	500.00
Filing Fee	100.00

Both parties confirmed that this tenancy ended pursuant to a 2 Month Notice to End Tenancy for an effective date of February 14, 2022. The tenants do not dispute that they did not give the landlord written notice to end the tenancy on an earlier date than the effective date, and as the tenants returned the keys to the landlord on January 8, 2022, the landlord was provided with a monetary order for the rent owed from January 1, 2022 to January 10, 2022 after the previous arbitration hearing. The landlord confirms that the tenants should be entitled to one month's rent for the period ending on February 14, 2022, but feels that the tenants are responsible for the portion of rent that was not paid after January 10, 2022 as the tenants did not give proper written notice.

The tenants feel they gave proper 10 day's notice by informing the landlord over the phone on December 2, 2021 that they had found a new place to live, and would be moving earlier.

The landlord is also seeking a monetary order for rent owed from April and May 2020. The landlord testified that the tenants were suffering from financial hardship, and the landlord had provided the tenants with temporary relief from a portion of their rent with the understanding that they would repay the outstanding rent later. The landlord adjusted the amount outstanding from \$3,000.00 to \$1,280.00 during the hearing to reflect the amount they feel that the tenants owed for this period.

The tenants deny that they owe any rent for this period. The tenants testified that the landlord had offered the rent reduction because of financial hardship, and that there was no expectation or agreement that the tenants would have to pay back any of the relief provided.

The landlord is also seeking a monetary order for unpaid utilities. The landlord submits that utilities were not included in the monthly rent, and that the tenants had cancelled the utilities early even though the tenancy was not to end until February 14, 2022.

The tenants provided proof that they had cancelled the gas bill as of January 3, 2022, and the bill for the period up to that period in the amount of \$128.66. The tenants also submitted the billing and payment history showing that they had paid the \$128.66 on February 1, 2022. The tenants argued that they had paid the outstanding gas bill as required for the period up to the end of their tenancy.

The tenants also provided a copy of the electricity bill dated January 6, 2022 that stated that the tenants had closed the account as of January 2, 2022, and the final bill amount was \$137.58. The tenants provided a copy of their banking statement that shows a payment for that amount for the account on January 31, 2022. The banking statement also shows the \$128.66 paid for the gas bill.

The landlord is also seeking monetary orders for the tenants' failure to leave the rental unit in reasonably clean and undamaged condition. The landlord feels that the tenants had caused damage to the walls by using the wrong paint. The landlord submitted photos of dirty blinds, a dirty lint trap, a stained countertop, and a receipt for services payable to the landlord in the amount of \$500.00 for cleaning and painting, as well as receipts for the paint and paint supplies.

The landlord testified in the hearing that the developer had agreed to repair deficiencies in the home by repainting the entire property, but the tenants were concerned about the stress on their cat and offered to paint the room occupied by the cat themselves. The landlord testified that there were hundreds of tack holes, and the tenants had used a paint with the wrong finish, which was more noticeable in person than the photos.

The tenants testified that they had used the bucket of paint that they had found in the home, and deny using hundreds of tacks. The tenants deny that the home was new when they moved in, and argued that the home was occupied for at least 7 to 8 months prior to the tenants taking possession.

The tenants also dispute the landlord's claim for cleaning, and submitted receipts for professional move-out cleaning and a detailed list of the work performed on January 4, 2022 as well as carpet cleaning dated January 5, 2022.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 50(1) of the *Act* allows a tenant who receives a notice to end tenancy for landlord's use of the property (pursuant to section 49 of the *Act*) under these circumstances to end the tenancy early by "giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice." If a tenant elects to exercise this option, the tenant is only responsible for paying to the landlord "the proportion of the rent due to the effective date of the tenant's notice" as per section 50(1)(b) of the *Act*.

In this case, I am satisfied that the tenants were served with a 2 Month Notice for the tenancy to end on February 14, 2022, but did not give the landlord at least 10 days' notice in writing as required by section 50(1) of the *Act*. Accordingly, the tenants are responsible for rent up to the end of this tenancy, which was to be February 14, 2022. As the landlord was already provided a monetary order for the unpaid rent for the period of January 1 through to January 10, 2022, and as the tenants are entitled to the equivalent of one month's rent (January 15, 2022-February 14, 2022), I find that the landlord is entitled for the unpaid rent for the period of January 11, 2022 to January 14, 2022. I note that although the landlord claimed unpaid rent for January 10, 2022, that was already included in the monetary order granted in the previous arbitration. The landlord is therefore entitled to a monetary order in the amount of $(\$2,500.00/31 \times 4 \text{ days}) = \322.58 .

I will now consider whether the tenants owed any rent for the period of April and May 2020. I note that during this period, the Residential Tenancy Policy Guideline #52 COVID-19: Repayment Plans and Related Measures was in effect. The Policy Guideline referenced the "affected rent" period as the period between March 18, 2020 to August 17, 2020. As per the Policy Guideline and associated tenancy regulation, "a landlord

must give a tenant a repayment plan if the tenant has unpaid affected rent, unless a **prior agreement** has been entered into and has not been cancelled.

Residential Tenancy Policy Guideline #52 also sets out how a Repayment plan must be served on the tenant:

Giving the Repayment Plan

A repayment plan must be given to a landlord or tenant in one of the following ways:

- *by leaving a copy with the person;*
- *if the person is a landlord, by leaving a copy with an agent of the landlord;*
- *by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- *if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- *as ordered by an arbitrator on application.*

In review of the evidence before me, although the referenced rent fell within the affected period, I find that the landlord failed to provide sufficient evidence that there were any prior agreements with the tenants to repay any of the relief provided during this period, nor did the landlord provide sufficient proof to show that the tenants were provided with a repayment plan in a manner set out in the Policy Guideline above. Although I sympathize with the significant hardship that the landlord faced during this period, I am not satisfied that there was any agreement for the tenants to repay back any rent. Accordingly, I dismiss the landlord's claim for unpaid rent without leave to reapply.

Although I accept that utilities are not included in the monthly, rent, and although the tenancy was to end on February 14, 2022, I find that the tenants had provided sufficient proof to show that they had formally terminated their gas and electricity service as of January 3 and January 2, 2022 respectively. Furthermore, I find that the tenants had provided sufficient proof to show that they had paid the final utility bills in full. Accordingly, I dismiss the landlord's claim for unpaid utilities for this tenancy without leave to reapply.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear. As stated above, the onus is on the applicant to support their claims.

As noted in Residential Tenancy Policy Guideline #40 “when applied to damage(s) caused by a tenant, the tenant’s guests or the tenant’s pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant’s responsibility for the cost or replacement.”

As per this policy, the useful life of interior paint is 4 years. As noted above, the burden of proof is on the applicant to support their claim. In this case, the tenants had moved in on December 1, 2018. As the unit was previously occupied for 7 months, I find that the paint would have only had 2.5 months left of useful life. Furthermore, I note that RTB Policy Guideline #1 states that the “landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible”. Although the tenant is responsible for all deliberate and negligent damage to the walls, I am not satisfied that the landlord had provided sufficient evidence to support that the tenants had caused an excessive number of holes that were not filled by the tenants. Furthermore, as the paint was near the end of its useful life, I find that the mismatched paint could be due to fading of the original wall colour, which is considered wear and tear. I do not find that the landlord had demonstrated that the tenants had deliberately or negligently damaged the walls, and accordingly, I dismiss the landlord’s claim for painting without leave to reapply.

In consideration of the claim for cleaning, although I recognize that the tenants did pay for professional cleaning, I find that the landlord did provide sufficient evidence to show that there were several items that were missed, such as the dirt blinds, the rust stain on the countertop, and the dirty lint trap. I note that the landlord had performed the cleaning themselves, and provided a calculation based on the time spent cleaning the missed items. I do not find the landlord’s calculation of 6.5 hours to be reasonable for the cleaning of these missed items. As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the landlord compensation in

the amount of \$50.00 in nominal damages for the failure of the tenants to leave the home in reasonably clean condition.

As the landlord's application had merit, I allow the landlord to recover the \$100.00 filing fee.

Conclusion

I issue a Monetary Order to the landlord for the following monetary claims:

Rent Owed (January 11-15, 2022)	322.58
Cleaning	50.00
Filing Fee	100.00
Total Monetary Order	\$472.58

The landlord is provided with this Order in the above terms and the tenants must be served with a copy of this Order as soon as possible. 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 remainder of the landlord's monetary claims are 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: June 30, 2023

Residential Tenancy Branch