



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, FFL

Introduction

On May 5, 2022, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On May 12, 2022, this Application was originally set down to be heard on January 6, 2023, at 1:30 PM. This Application was subsequently adjourned, for reasons set forth in the Interim Decision dated January 6, 2023. This Application was then set down for a final, reconvened hearing on May 9, 2023, at 9:30 AM.

Both the Landlord and the Tenant attended the final, reconvened hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of documents was discussed at the original hearing, and there were no issues with the exchange of documents. As such, all parties’ evidence will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on July 1, 2021, for a fixed length of time until June 30, 2022; however, the Tenant gave up vacant possession of the rental unit and he was only able to re-rent it on February 1, 2022. Rent was established at an amount of \$1,250.00 per month and was due on the first day of each month. A security deposit of \$625.00 was supposed to be paid according to the tenancy agreement, but he stated that the Tenant never paid this. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The Tenant advised that there was no fixed term tenancy and that she gave her notice to end the tenancy on November 1, 2021, that was effective for November 30, 2021. She confirmed that rent was established at an amount of \$1,250.00 per month and was due on the first day of each month. As well, she stated that she did not pay a security deposit as it was given by the previous tenant. She also submitted a copy of the signed tenancy agreement as documentary evidence for consideration.

The Landlord confirmed that neither a move-in inspection report nor a move-out inspection report was completed.

He then advised that he was seeking compensation in the amount of **\$1,250.00** for December 2021 rent because the Tenant breached the fixed term tenancy agreement by giving her notice to end the tenancy on November 1, 2021, that was effective for November 30, 2021. He testified that he was not sure when the rental unit was vacant,

but he placed ads with his “realtor friends” on or around December 15, 2021, and he also gave the Tenant the option to find another tenant.

The Tenant advised that the Landlord was aware that the rental unit was empty, and that he texted her to inform her that she must find a new tenant. As such, she placed ads on social media, and she was contacted right away.

The Landlord advised that he was seeking compensation in the amount of **\$1,250.00** for January 2022 rent. He stated that the Tenant found a new tenant, who texted him in January 2022 about the availability of the rental unit. However, this tenant could not move in until February 1, 2022.

The Tenant advised that this new tenant moved in on January 30, 2022, and paid a security deposit.

The Landlord confirmed that this new tenant paid him a security deposit on February 1, 2022.

The Landlord advised that he was seeking compensation in the amount of **\$195.60** for the cost of the water utilities from July to December 1, 2021. He stated that the tenancy agreement required that the Tenant be responsible for all utilities, that the Tenant paid a portion of these utilities, and that this was the balance remaining. He stated that the city would add this amount onto his taxes.

The Tenant acknowledged that she was responsible for all utilities. She testified that she informed the Landlord of a water leak by text message at the start of the tenancy, but the Landlord never addressed this properly. She stated that the city confirmed that there was a leak. She referenced documentary evidence to demonstrate that this leak was responsible for an extremely high water bill. She testified that she paid all of the water utility bill directly to city hall up until this utility was disconnected on January 15, 2022. However, she does not have any receipts to prove this payment, other than the print-out of the Utility Master Inquiry of the disconnection date with a \$0 balance outstanding.

The Landlord responded that the outside hose bib was faulty, and he fixed this leak within a week. He stated that there was a discrepancy on the water bill. As well, he testified that if this was not paid by December 31, 2021, it would be added to his taxes. However, while \$390.00 was still owing, he stated that the Tenant paid \$194.40, leaving a balance of \$195.60.

At the final, reconvened hearing, the Landlord advised that he was seeking compensation in the amount of **\$43.56** for the cost of the water utilities from December 1 to December 31, 2021. He stated that the new tenant took over the utilities on February 1, 2022, and he referenced the utility bill submitted as documentary evidence to support this claim for compensation.

The Tenant referenced the same documentation indicating a zero balance. She stated that she paid the amount of utilities to settle her bill in December 2021, but she does not know specifically when this was done.

The Landlord advised that he was seeking compensation in the amount of **\$136.57** for the cost of the water utilities from January 1 to January 31, 2022. He stated that this amount was calculated based on bills for \$63.68, \$64.95, and \$37.11; however, these did not total the actual amount that he was seeking, and he acknowledged that his "calculations were a little off." There was no invoice submitted to support the amount of \$63.68, and he stated that the \$64.95 was a previous balance that was carried over.

The Tenant advised that the bill of \$37.11 is in the new tenant's name.

The Landlord stated that he was looking at the billing date on this bill and that it was put in the new tenant's name on or around February 15, 2022.

The Landlord advised that he was seeking compensation in the amount of **\$71.36** for the cost of the BC Hydro bill from January 16 to February 6, 2022, and he referenced the invoice that was submitted to support this claim. He stated that the new tenant did not move in until February 20, 2022, that they did not take this bill over until well into February 2022, and that the tenancy started on March 1, 2022, but this person was permitted to move in earlier.

The Tenant referenced her documentary evidence where she paid her bill in full even though it was not paid in time, that she received a credit, and that her account was closed on January 15, 2022, with a \$0 balance.

The Landlord advised that he was seeking compensation in the amount of **\$57.26** for the cost of the gas utilities from January 16 to February 9, 2022, and he referenced the bill submitted to corroborate this claim.

The Tenant initially did not make any submissions on this claim. However, she later stated that she paid this bill up until the point that she cancelled the utilities on January 15, 2022.

The Landlord advised that he was seeking compensation in the amount of **\$90.72** because the Tenant abandoned the rental unit in December 2021 “sometime”. He stated that there was no heat in the rental unit, so the pipes froze, causing the hot water tank to split. He testified that this cost was to pay for a heater that was rented to thaw the water lines. He referenced the invoice submitted to support the cost of this claim.

The Tenant advised that she did not abandon the rental unit, and the Landlord was aware that she left on December 1, 2021. She stated that she was not responsible for the hot water tank breaking.

Finally, the Landlord advised that he was seeking compensation in the amount of **\$1,858.19** for the cost of replacing the broken hot water tank. He replaced this for the next tenant, and he referenced the invoice submitted to substantiate this amount.

The Tenant did not make any further submissions on this claim, other than to reiterate what she stated above.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulation* (the “*Regulation*”) outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenant have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit or pet damage deposit is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenant must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the inspection reports, as the undisputed evidence is that neither a move-in inspection report nor a move-out inspection report was conducted, I am satisfied that the Landlord did not comply with the requirements of the *Act* in completing these reports. As such, I find that the Landlord has extinguished the right to claim against the deposit.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant’s forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, a forwarding address in writing was never provided to the Landlord by the Tenant. Section 39 of the *Act* permits the Landlord to keep any deposit if a forwarding address has not been provided to the Landlord in writing within a year of the tenancy ending. As such, even if a security deposit had been paid by the Tenant, which there is no indication that this had been done, I am satisfied that the Landlord would have been permitted to keep this anyways.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenant fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

Moreover, I note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Landlord's claim for compensation in the amount of \$1,250.00 for December 2021 rent, when reviewing the tenancy agreement that was signed by both parties, while the Landlord did not check off the box 2(c) indicating that this was a fixed-term tenancy agreement, the Landlord did note beside it that the tenancy would end on June 30, 2022. Had the intention of this agreement to be a month-to-month tenancy, it makes no logical sense to state that there would be a specific end date. Moreover, the *Act* does not permit a Landlord to end a month-to-month tenancy in this manner. As such, I am satisfied that the intention of this tenancy was to be a fixed-term tenancy for a period of one year.

While I am satisfied that the parties entered into a fixed-term tenancy agreement from July 1, 2021, ending on June 30, 2022, the tenancy effectively ended when the Tenant gave notice to end her tenancy on November 1, 2021, that was effective for November 30, 2021. However, I do not find that either party has submitted evidence to specifically corroborate when the Tenant eventually gave up vacant possession of the rental unit.

I find it important to note that Policy Guideline # 5 outlines the Landlord's duty to minimize their loss in this situation, and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. In claims for loss of rental income in circumstances where the Tenant ends the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

As well, I have included the following excerpts from this policy guideline that are relevant to this Decision.

Loss of Rental Income

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
2. re-rent the unit as soon as possible.

D. PROOF OF EFFORT TO MINIMIZE DAMAGE OR LOSS

The person claiming compensation has the burden of proving they minimized the damage or loss. If a landlord is claiming compensation for lost rental income, evidence showing the steps taken to rent the rental unit should be submitted or the claim may be reduced or denied. If a landlord is claiming a loss because they rented the rental unit for less money than under the previous tenancy, or they were unable to rent the unit, evidence like advertisements showing the price of rent for similar rental units, or evidence of the vacancy rate in the location of the rental unit may be relevant.

Sections 44 and 45 of the *Act* set out how tenancies end, and also specify that the Tenant must give written notice to end a tenancy. As well, this notice cannot be effective earlier than "one month after the date the landlord receives the notice, not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month, or in the other period on which the tenancy is based, that

rent is payable under the tenancy agreement.” Section 52 of the *Act* sets out the form and content of a notice to end a tenancy.

There are few ways under the *Act* that the Tenant could break a fixed term tenancy without consequences. One would be if there was a signed mutual agreement to end the tenancy. The other would be if there was a breach of a material term of the tenancy, and if the Tenant then asked the Landlord in writing to correct this breach within a reasonable period of time. Moreover, in that warning letter, the Tenant would stipulate that they would be ending the tenancy if the Landlord did not correct this breach of a material term within that time period. However, there is no evidence before me of either of these scenarios.

Given that the Tenant signed a fixed-term tenancy agreement binding her to the terms of that agreement, I find the Tenant did not validly end this tenancy without consequences. Ultimately, I am satisfied that the Tenant was not permitted to break the fixed term tenancy early in the manner that she did. As such, I do not find that the Tenant ended the tenancy in accordance with the *Act*. Therefore, I find that the Tenant vacated the rental unit contrary to Sections 45 and 52 of the *Act*.

Furthermore, I find that the evidence indicates that as a result of the Tenant’s actions, the Landlord could have suffered a rental loss. In addition, it is evident that the Tenant gave the Landlord insufficient notification that she was ending the tenancy and not honouring the tenancy agreement. Given that the Tenant gave written notice on November 1, 2021, to be effective for November 30, 2021, I am satisfied that the Landlord was given little notice to start advertising to re-rent the unit.

As the Landlord had been given minimal notification that the Tenant would be ending the fixed term tenancy early, and as this was done contrary to the *Act*, I am satisfied that the Landlord was put in a position that it would have likely been difficult to re-rent the unit for December 1, 2021, because by that point, most prospective tenants would have already found a new place to live. As such, I grant the Landlord a monetary award in the amount of **\$1,250.00** to satisfy this claim.

Regarding the Landlord’s claim for compensation in the amount of \$1,250.00 for January 2022 rent, I note that both parties were not persuasive in their testimony or evidence regarding when the Tenant specifically gave up vacant possession of the rental unit. Regardless, the Landlord stated that he first advertised the rental unit on or around December 15, 2021, and given the time of year that the Tenant gave her written notice, I find it reasonable that there would be few prospective tenants looking to rent for

January 1, 2022. As such, I accept that the Landlord likely suffered a rental loss due to the Tenant ending the tenancy contrary to the *Act*. As a result, I grant the Landlord a monetary award in the amount of **\$1,250.00** to remedy this matter.

With respect to the Landlord's claim for compensation in the amounts of \$195.60, \$43.56, and \$136.57 for the cost of the water utilities, I find it important to reiterate that the burden of proof is on the Landlord to make his claims clear, and to substantiate them with relevant documentary evidence. As well, it is not my role to act as a forensic accountant and attempt to comb through the Landlord's documentary evidence to calculate and verify the legitimacy of his claims. Given that it appeared as if the Landlord did not submit all the correct invoices to support his claim, and that he acknowledged that his "calculations were a little off", I cannot be satisfied that he even knows the specific losses that he suffered. As such, I dismiss these claims in their entirety.

Regarding the Landlord's claim for compensation in the amounts of \$71.36 and \$57.26 for the cost of the BC Hydro and gas bills from mid January to February 2022, it is evident to me that the Tenant was not residing in the rental unit during this time period. As such, I dismiss these claims without leave to reapply.

With respect to the Landlord's claim for compensation in the amount of \$90.72 for the cost of renting a heater, I am satisfied that the Tenant broke the fixed term tenancy early and that the Landlord received vacant possession of the rental unit sometime in December 2021. Given that the Tenant ended the tenancy early contrary to the *Act*, and given that the Landlord should have been monitoring the rental unit after receiving vacant possession of it back, I find that both parties are negligent for this loss. As such, I find it appropriate to award the Landlord a monetary award in the amount of **\$45.36** to rectify this matter.

Finally, regarding the Landlord's claim for compensation in the amount of \$1,858.19 for the cost to replace the broken hot water tank, as noted above, I am satisfied that both parties were negligent for the pipes freezing. However, the Landlord did not provide any evidence for the age and condition of the old hot water tank. As such, I am not satisfied that the Landlord should be awarded the replacement cost of a brand-new hot water tank. Moreover, as this problem would not likely have occurred had the Tenant not ended the fixed-term tenancy early, I am satisfied that the Tenant was partially negligent for this damage. As such, I find it appropriate to grant the Landlord a monetary award in the amount of **\$150.00** to offset the loss in value of the old hot water tank.

As the Landlord was partially successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

| | |
|-------------------------------|-------------------|
| Rental loss for December 2021 | \$1,250.00 |
| Rental loss for January 2022 | \$1,250.00 |
| Heater rental | \$45.36 |
| Hot water tank damages | \$150.00 |
| Filing fee | \$100.00 |
| TOTAL MONETARY AWARD | \$2,795.36 |

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$2,795.36** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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.

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 8, 2023

Residential Tenancy Branch