



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Landlord: MNRL-S, MNDL-S, MNDCL-S, FFL
Tenant: MNSD, MNEVC, FFT

Introduction

The Landlord filed an Application for Dispute Resolution (the “Application”) on October 7, 2022 seeking compensation for unpaid rent, damage caused by the Tenant, other money owed, and the filing fee.

The Tenant filed an Application for Dispute Resolution on October 27, 2022. Because the Landlord’s Application was already in place, the Residential Tenancy Branch crossed this with the Landlord’s Application for the same hearing. The Tenant seeks the return of the security deposit and pet damage deposit that they allege the Landlord is holding without cause.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on July 4, 2023. Both the Landlord and the Tenant attended the hearing. At the start of the hearing, each party confirmed they received the Notice of Dispute Resolution Proceeding for the other’s application, as well as prepared evidence.

Preliminary Matter – Tenant’s non-applicable issue

On their Application, the Tenant indicated that they “want compensation from the landlord related to a fixed term tenancy with a requirement to vacate the rental unit at the end of the term.” In the hearing, the Tenant clarified that they indicated this reason on their Application in order to provide a statement related to the end of the tenancy.

I find this issue does not apply in this hearing, based on the fact pattern and submissions of the parties, and amend the Tenant's Application to omit this issue. Below, my full review of issues and associated evidence sets out all points covered by the parties.

Preliminary Matter – Tenant's amended issue

In the hearing, the Tenant raised an issue of utility amounts they paid and were owed from the downstairs tenant, who was also the Landlord's family member. I amend the Tenant's Application, being satisfied they provided the evidence associated with these amounts to the Landlord as part of their evidence package. I make this amendment, in the interest of finalizing and concluding all extant matters between the parties, on the authority provided to me by s. 64(3)(c) of the *Act*.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for unpaid rent, and/or damage to the rental unit, and/or other money owed, pursuant to s. 67 of the *Act*?
- Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?
- Is the Tenant entitled to the return of their security deposit and/or pet damage deposit, pursuant to s. 38 of the *Act*?
- Is the Tenant entitled to recover the filing fee for this Application, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant provided a copy of the tenancy agreement in their evidence. This shows the tenancy started on June 1, 2016, for an initial one-year fixed term. The rent amount was set at \$1,600 per month. This agreement also shows the Tenant paid a security deposit of \$800, and a pet damage deposit of \$400.

The parties signed updated agreements throughout the tenancy, with the final agreement signed on January 10/11, 2022. This final rent amount was set at \$1,700, payable on the 1st of

each month. This agreement notes the tenancy would continue until April 30, 2023, and at the end of this time, “the tenancy is ended and the tenant must vacate the rental unit.” The reason provided on the agreement, where required, is “mutual agreement.”

i. Landlord’s claim for rent – September 2022

On their Application, the Landlord indicated September 30, 2022 as the final end-of-tenancy date. The Tenant provided this same end-of-tenancy date.

In the hearing, the Landlord described meeting with the Tenant approximately one month prior to September, when they gave the Tenant a “verbal notice.” The Landlord’s family member was going to move into the rental unit eventually, and this was “whenever the tenants were moving out” as the Landlord stated in the hearing. The Landlord stated that the Tenant conveyed their understanding that the final month of the tenancy would be rent-free, relating to the reason of the Landlord’s family member moving into the rental unit.

The Tenant confirmed this recall by the Landlord in the hearing. They stated that the Landlord had said to them at the time that “there was no breaking of any lease.”

The Landlord set out that their family member was living in the lower part of the rental unit property, with the Tenant residing in the upper part. The original design was that a fixed one-year agreement was in place, and the Landlord always had the design that their family member would move into the upper rental unit at the end of that fixed-term lease.

The Tenant in the hearing confirmed their understanding that the reason the tenancy was ending was because the Landlord’s family member was moving. The Tenant confirmed that the Landlord did not issue an end-of-tenancy formal notice, i.e., there was no Two-Month Notice to End Tenancy for Landlord’s Use of the rental unit.

The Tenant provided a written submission dated January 16, 2023. The Tenant described the Landlord stating they had “forfeited” that rent-free month because the Landlord provided “longer than 2 months’ notice to leave”. They also paraphrased the Landlord as stating: “I guess I needed to do better with my paperwork and my tenancy processes.”

The Tenant pointed to a text message in their evidence, dated September 5, 2022. This is the Landlord stating “I will not be pursuing rent for September.” The Landlord in the hearing clarified that they sent this message to the Tenant after a “heated conversation” on the issue of September rent; this message indicated that the Landlord would not be pursuing that

September rent from the Tenant at that time, with the plan being that they would seek resolution at the Residential Tenancy Branch through a dispute resolution proceeding.

The Landlord pointed to the Tenant's own January 16 written submission as confirming that the likelihood of a dispute resolution process. The Tenant pointed again to the Landlord's September 5 message.

ii. Landlord's claim for damages to the rental unit

As set out above, the tenancy ended when the Tenant moved out on September 30, 2022. The Landlord stated they were present at the rental unit on that day, and offered to do a "walkaround" inspection with the Tenant to review the condition of the rental unit at the end of the tenancy.

The Landlord completed an "itemized list", dated October 7, 2022, totalling \$7,065 including:

- house cleaning = \$450
- appliance cleaning = \$392
- 3 bedroom floors, pee stains dog, sealer = \$180
- laminate flooring – gouges, water damage, original cost \$1,303, excessive damage to flooring = 25% of material cost = \$325.75
- wall damage – base boards, trim – nail holes, excessive, above average wear & tear, \$200 per room = \$800
- oven repair, service call, not notified by Tenant, not usable as oven door does not close = \$200
- yard maintenance & cedar tress (backyard) & ornamental tree (front yard) = \$1,175.61 + \$87.75
- blinds (window), 1 year old at start of tenancy, 2 slats broken, not cleaned = \$80
- fridge, one year old at start of tenancy, puncture in base of freezer, crack of shelf = \$150
- exterior deck area, dart holes in siding, fill & paint = \$100
- garage door, puck marks & dents, fill & paint = \$100
- dryer lint filter torn, not reported = \$74.41
- baseboard hallway, poorly fixed, wrong size = \$50
- baseboard master bed, AC looked to have leaked, damage wall & swell, baseboard time & material = \$75
- main bath chip in tub at drain, epoxy fill & paint = \$75
- garbage left in recycling, inappropriate, lawn sprinkler, backyard debris = \$50

On the Landlord's Application, they provided the amount of \$2,000 for "damage, repairs, cleaning. Material. Time."

The Landlord provided a completed "Condition Inspection Report", dated September 30, 2022 for the move-out inspection on that date. The form itself is incomplete for the start of the tenancy, aside from entries listing specific appliances as one-year-old at that time. The 2022 completed report lists room-by-room Landlord observations. The Landlord provided another itemized list, reproducing the separate October 7 document. On this sheet, the Landlord's total is \$4,525.55.

The Landlord provided letters from their family member that was set to move into the rental unit. This family member attested to "gross fingerprinted walls, holes from picture frames, unwashed floors, and a broken appliance." They noted the Landlord attempted to do a walkthrough with the Tenant "multiple times".

Another letter submitted by the Landlord, from another tenant that was moving in on September 30. At that time the home was not ready, and the Landlord had "offer[ed] multiple times for a walk-through inspection, in which all were declined." This future tenant noted other damage in the rental unit.

Another letter from another tenant that was moving in on September 30 provides similar details.

The Landlord provided a series of images. These include:

- driveway oil stains, driveway sealer, the new fridge receipt from 2015; damage to the interior of the fridge; floor damage; garbage placed in the recycling bin; a cracked floor vent; garage door damage; wall damage; unclean ceiling fan;
- original receipts from 2015, including the oven/stove; refrigerator; floor laminate;
- a quote for drywall (at \$200 - \$550); a quote for interior paint (\$4,700 - \$6,200); replacement cedar trees (35 in total, at \$30 each, total \$1,049.65);

In their written submission, the Tenant stated there was no initial walkthrough to review the state of the rental unit. Specific damages noted to the Tenant at that time were: carpets/cabinets cleaning; over door not sealed; dents/damage to the garage door.

Concerning the final day of the tenancy, the Tenant stated they were not offered a final walkthrough inspection by the Landlord: "It was I who asked [the Landlord] if Friday afternoon, September 30th, would suit [the Landlord]." The "Condition and Inspection Report" provided by the Landlord in their evidence was completed by the Landlord "after the fact", and the Tenant did not see this document until sent to them in January 2023.

The Tenant also described, in the final visit by the Landlord to the rental unit on September 30, instructing the Tenant to stop cleaning the carpet because "the carpets are shot". According to the Tenant, the Landlord then stated they would be "charging [the Tenant] in part to replace them all." The Landlord left, then returned later with a quote to the Tenant: \$3,000 to replace the carpets, and another amount to replace the cedar trees.

The Tenant's family member who was with them on September 30 cited the Landlord's quote for the carpets was not matched with photos of the carpets' state at the start of the tenancy six years prior. As stated, "My parents never received any "before" photographs."

The Tenant also provided an affidavit from the family member of the former downstairs tenant, as well as that former downstairs tenant. They spoke to the Landlord being "very lax in proper maintenance", as well as to the Tenant's ability to maintain and repair things at the rental unit property. They provided specific examples of the "false statements and contrary behaviour" of the Landlord when dealing with routine and repair matters with their family member, *i.e.*, the former downstairs tenant. They also provided detail on their family member's experience with the Landlord when moving, on the matter of cleaning/repairing, and the Landlord withholding the security deposit.

The Tenant in the hearing reiterated that there was no inspection at the close of the tenancy, nor was there a formal inspection process at the start of the tenancy when they initially moved in. They provided their forwarding address to the Landlord within a few days, as shown in the text message they provided in their evidence, showing this occurred on October 5, 2022.

The Tenant also provided their recall of specific aspects of the rental unit property, including the flooring/carpet which the Landlord was embarrassed about initially, the garage door which they described as "absolutely incorrect" in the Landlord's record, the yard/tress for which they did the best with what they had. They also drew on the principle of regular wear and tear to described some of the issues raised by the Landlord at this stage.

iii. cleaning estimate

On their Application, the Landlord provided the amount of \$850 as what they are requesting for cleaning costs. They noted “2 weeks of repairs cleaning, before move in ready.” For this particular section of their Application, the Landlord provided another image of a list that reproduces some amounts of what was listed above.

iv. Tenant’s utilities owing

At the close of the hearing, the Tenant listed specific amounts for utilities that they covered for the final month of the tenancy. The arrangement was a 50-50 split between the rental unit and the downstairs rental unit, which was then occupied by the Landlord’s family member. The Tenant would pay the full invoice, then seek reimbursement from the downstairs tenant.

In the hearing the Landlord acknowledged this was the arrangement that was in place. They were not aware of the Tenant’s amounts as shown in the evidence and claimed in the hearing.

For the final month of the tenancy, the Tenant provided copies of the invoices they received to the downstairs tenant/Landlord’s family member. The Tenant never received reimbursement for half of the full amount they paid for each invoice.

The Tenant provided the following invoices:

- natural gas, a 50% amount from the September 16, 2022 invoice: \$69
- municipality utilities, 50% from the September 29, 2022 invoice: \$115.44

Analysis

i. Landlord’s claim for rent – September 2022

The *Act* s. 51 is the section that sets out a tenant’s right to compensation, in the situation where a landlord ends a tenancy for the landlord’s own use of the rental unit. The process by which a landlord may end a tenancy for this reason is set out in s. 49; this is by giving notice to end the tenancy effective on a date that must be (i) not earlier than 2 months after the date the tenancy receives the notice.”

By s. 49(7), a notice given by a landlord must comply with the s. 52 requirements for form and content. Accordingly, s. 52 provides that “a notice to end tenancy must be in writing and must . . . (e) when given by a landlord, be in the approved form.”

I find as fact that in this present scenario, as claimed by the Landlord, there was no written notice to end the tenancy.

The Landlord did not end the tenancy via written notice; therefore, s. 51 is not applicable and there is no compensation to the Tenant.

In summary, the only way in which a tenant is entitled to compensation, as set in s. 51, is where a landlord issues a written notice to end tenancy. There was no written notice to end tenancy – *i.e.*, no Two-Month Notice to End Tenancy for Landlord's Use – therefore the Tenant here is not entitled to one-month free compensation.

For this reason, I grant the amount of September rent – that is \$1,700 – as compensation to the Landlord.

ii. Landlord's claim for damages to the rental unit

Concerning the condition of the unit at the end of a tenancy, s. 37 specifies that a tenant must "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear."

The *Act* s. 23 sets the obligation for a landlord and tenant to inspect the condition of the rental unit, on the day the Tenant is entitled to possession. A landlord must offer the tenant at least 2 opportunities for this inspection. A landlord also must complete a condition inspection report, which both a landlord and a tenant must sign, with that landlord providing a copy to the tenant.

If a landlord does not comply with the opportunities for inspection, or completion of the condition inspection report, s. 24 states that a landlord's right to claim against a security deposit, or a pet damage deposit is extinguished.

The *Act* s. 35 mirrors s. 23 concerning an end of the tenancy. There must be 2 opportunities offered for an inspection, a completed report that both parties sign, with a copy to a tenant.

A tenant's right to the return of any deposit is extinguished if they do not participate in either of 2 opportunities for inspection. Reciprocally, a landlord's right to claim against any deposit is extinguished if there are no opportunities for inspection, or completion of a report given to a tenant.

In this current scenario, I find the Landlord has no right to claim against the security deposit and the pet damage deposit that they are holding after the end of the tenancy. The Landlord correctly made an application against those deposits within 15 days after the end of the

tenancy, as per s. 38(1). I find that s. 24 applies in this scenario, where the Landlord did not offer an initial condition inspection meeting to the Tenant at the start of the tenancy. I also find that s. 35 applies, and the Landlord did not formally offer two opportunities for a condition inspection meeting at the end of the tenancy.

Because of my findings concerning the mandatory inspections and the documentation for the initial inspection meeting, I order that the Landlord return the security deposit in full, and the pet damage deposit in full to the Tenant. That amount is \$1,200, and I will offset this amount from the amount of rent owed as set out above.

I also consider the Landlord's claim for damage in the rental unit; however, that consideration is separate and does not involve any amount to be retained from the security deposit and pet damage deposit.

Concerning the condition of the unit at the end of a tenancy, s. 37 specifies that a tenant must "leave the rental unit reasonably clean, and undamaged except for reasonably wear and tear."

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

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

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

In summary, I find the Landlord has not established, with sufficient evidence, that damage in the rental unit resulted from the Tenant violating s. 37 of the *Act*. I find the Tenant presented an alternate account on certain pieces of the Landlord's evidence and testimony, and this points back to the condition of the rental unit at the start of the tenancy, which was neither inspected by the parties jointly, nor documented as required. On every piece, the Tenant provided testimony that diminished the weight of the Landlord's evidence.

Also, the Landlord provided three different amounts: \$7,065 in total, as written on their October 7 note, the amount of \$4,525.55 as written on the condition inspection report they provided, as well as \$2,000 on their Application for this hearing. I find there is no proof of the value of the damage or loss, with these three conflicting amounts in place in the record. In the end, I am

not clear of the amount the Landlord is attributing to damage in the rental unit; I find the value is not established.

For these reasons, I dismiss the Landlord's claim for compensation because of damage in the rental unit, without leave to reapply.

iii. cleaning estimate

The Landlord provided the amount of \$850 on their Application; however, I find this is not quantified with evidence. The Landlord referred to 2 weeks of repairs and cleaning; however, there is no evidence to show that in terms of dates, time spent, or cleaning service hired. I find there is no proof of any loss to the Landlord in this category; therefore, I dismiss this piece without leave to reapply. There is also no discernible boundary in this category between repairs and cleaning, which are two separate aspects. This points back to the Landlord's unclear amount for compensation for damage in the rental unit as set out above.

iv. Tenant's utilities owing

I find the Tenant has shown the need for compensation for utilities amounts they paid for at the rental unit property. The Landlord acknowledged the lower unit tenant's obligation to pay 50% of those amounts. I grant the amount of \$184.44 as compensation to the Tenant. As above, I factor this amount into a final award.

In sum, I find the Landlord has a valid monetary claim for a single month of rent owing to them. This is \$1,700 in total. I offset the return of the Tenant's security deposit amount of \$800, and the pet damage deposit amount of \$400, and conclude the Tenant owes the Landlord \$500 for rent owing. The *Act* s. 72(2) is authority for me to order that the Landlord may keep the deposits to offset any compensation owed to them.

I find the Landlord owes the Tenant the amount of \$184.44. I subtract this amount from the \$500 owing from the Tenant, and order the Tenant to pay the amount of \$315.56.

I find the Landlord had to bring their Application in order to resolve the question on the rent amounts owing. I also find the Tenant was successful on their Application for the return of the security deposit and utilities amounts owing. I order the Landlord's Application fee is offset by that I grant to the Tenant, or vice versa. Neither party shall receive a recompense of their respective filing fee.

Conclusion

I order that the Tenant pay to the Landlord the amount of \$315.56. I grant the Landlord a monetary order for this amount. The Landlord may file this monetary order at the Provincial Court (Small Claims) 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: July 10, 2023

Residential Tenancy Branch