Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Landlord: **MNDL-S, FFL**
Tenants: **MNDCT, MNSD, FFT**

Introduction
The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act, (the "Act")* and the singular of these words includes the plural.

This hearing dealt with applications filed by both the landlord and the tenant pursuant the Residential Tenancy Act.

The landlord applied for:

- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenants applied for:

- A monetary order for damages or compensation pursuant section 67;
- An order for the return of a security deposit or pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

This hearing commenced on January 19, 2023, and was adjourned to May 12, 2023 and to today's date due to the landlord's requests for adjournments. Interim decisions from the previous two hearings were issued and should be read in conjunction with this decision.

Both tenants and the landlord attended today's hearing at the appointed time, and each advised that they were capable of proceeding today.

Preliminary Issue

In my first interim decision dated January 23, 2023, I determined that contrary to rule 2.5, the landlord failed to submit copies of all the documentary and digital evidence to be relied upon with his application for dispute resolution. Although rule 3.14 allows the landlord up to the 14th day before the hearing date of January 19th to provide the Residential Tenancy Branch and the tenant with his documentary and digital evidence, he never did so. Consequently, when I adjourned the January 19th hearing, I ordered that the landlord may not provide any further evidence regarding his application for dispute resolution at the reconvened hearing.

At the first adjourned hearing of May 12th, the landlord's agent sought to withdraw the landlord's application however the tenants refused to consent to the withdrawal. At today's hearing, the landlord sought an order that I dismiss his application with leave to reapply so that he could reapply for the same relief within the 2-year time limit. I advised the parties that I would provide my written reasons regarding the landlord's application to dismiss his claim in this decision.

The landlord has failed to comply with a fundamental procedural requirement, which is to exchange evidence within the prescribed timeframes. This failure represents a disregard for the rules of procedure and undermines the integrity of the hearing process. I find allowing the landlord to file another application after having his claim dismissed by me would be unjust and unfair. I find that if I were to grant the landlord's request, the landlord would be given the opportunity to "start fresh" and correct his earlier errors regarding service of evidence. Providing the landlord with such an opportunity would be an abuse of process as it would fail to uphold the rules of procedure, prejudice the respondent and encourage further noncompliance with the rules. For this reason, the landlord's application to have his application for dispute resolution dismissed with leave to reapply is dismissed. The landlord's application (****2454) will be determined at a further hearing, based on the testimony of the parties and the evidence previously submitted. No further documentary evidence from either party will be considered or allowed at the future hearing.

Issue(s) to be Decided

Are the tenants entitled to compensation?
Are the tenants entitled to payment of their security deposit and pet damage deposit back?
Can the tenants recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In

accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

Evidence provided indicates the tenancy began on May 1, 2021, and ended on April 30, 2022. The tenants provided their forwarding address to the landlord on March 24, 2022 when giving their 1 month notice to end the tenancy and it was acknowledged by email by the landlord on the same date. The landlord filed his application for dispute resolution on the 15th day after the tenancy ended, on May 15, 2022.

The tenant S.H. gave the following testimony. When she moved in, the landlord had many space heaters provided to her, although the unit was to be centrally heated with a furnace. The tenant had to use the space heaters regularly as the furnace never functioned properly. She had to seek an emergency order from the Residential Tenancy Branch and the arbitrator ordered that the landlord turn on the furnace. Despite the order, the landlord only came to turn it on twice and both times the furnace shut down. The tenant testified she felt trapped as she had to remain in the house to monitor the space heaters all day for fear of them starting a fire. Finally, after realizing the landlord wouldn't fix the furnace, she decided to move out. The tenant seeks 5 months at $1,000.00 per month for her discomfort plus $431.69 for the excessive hydro paid to heat the unit with electric space heaters.

The tenant seeks to have her moving expenses reimbursed by the landlord, including the tip she gave ($150.00) and the cost of feeding the movers. The tenant testified that the landlord told her he would be selling the unit and the tenant believed she would be entitled to the equivalent of a month's rent.

When the tenancy ended, the landlord didn't return her daughter's scooters which she acknowledges were over 5 years old and stored in the shed. The landlord also wants to recover the cost of a plastic tarp she purchased to hide the landlord's appliances all over the yard and left behind as the landlord refused to return it.

The landlord stopped allowing the tenant to park in the driveway in mid-January 2022 and both tenants had to park their cars on the street until the tenancy ended on April 30th. The tenant seeks $50.00 per car per month as reimbursement.

The landlord gave the following testimony. The central heating was turned off after the tenant told him it was a fire hazard. He turned it back on in accordance with the director's order. The landlord called the next tenant occupying the rental unit as a witness and this witness testified that there are no heating or cooling issues with the house and that everything works fine. Hydro for the year, between June 10, 2022 and June 7, 2023 was $2,314.69 which works out to $192.89 per month. This tenant has had no issues with the landlord. The landlord's second witness, the realtor who sold the unit to him, testified that he attended the unit on January 11, 2022 and the tenant verified the heating was working during his visit.

Regarding the scooters and tarp, the landlord has never seen the tenant's scooters. Storage in the garden shed was not included in the rent. The landlord doesn't know why the tenant didn't take the tarp when she left, as it was offered to her.

Regarding parking, there became an issue between the neighbouring property and the landlord's property and the landlord asked the tenants to park their cars on the street. Their cars also leaked oil and it was damaging the driveway. Lastly, parking was not included in the tenancy agreement.

Analysis

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C:

In order to determine whether compensation is due, the arbitrator may determine whether:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;

3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

[the 4-point test]

The tenant's monetary order worksheet will be used to categorize each item she seeks compensation for.

- Scooters and tarp

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.
I find the tenant has provided insufficient evidence to satisfy me of the loss of the scooters. I have only the tenant's testimony that she had stored the scooters in the shed and this testimony was contradicted by the landlord who stated there were none there. Moreover, the tenant acknowledged that the scooters were several years old, and I find the value of the scooters has decreased to the point of not having any value. This portion of the claim is dismissed.
The landlord acknowledged the tarp purchased by the tenant was not returned, although he gave her the opportunity to do so. I find the tenant was fully capable of taking the tarp she purchased when she vacated the rental unit, and that the landlord did not breach any part of the Act, regulations or tenancy agreement in not returning it. This portion is likewise dismissed.

- Parking for 3.5 months - Jan 20 - April 30 2022 (3.3 months)

I have reviewed the tenancy agreement and I note that parking was not specifically included in the rent. While the landlord may have allowed the tenants to park on the property at the beginning of the tenancy, providing onsite parking was not a term of the tenancy agreement. Only when a landlord takes away a service or facility specifically noted on the tenancy agreement can a tenant claim a loss for its removal. I find no breach (point 1 of the 4-point test) and dismiss this portion of the tenants' claim.

- BC Hydro - Reimbursement for BC Hydro overages caused by landlord

During the hearing, I asked the tenant to explain to me how she arrived at the $431.69 sought as reimbursement for additional hydro. The tenant provided a confusing and complicated explanation of her calculations and referred to her invoices with handwritten notes on them and stated she used a baseline for her calculations. When I asked what the baseline was, the tenant stated it depended on the month. Finally, the

tenant acknowledged she was unable to explain her calculations and that the details are in the evidence.
When an applicant provides confusing, contradictory or misleading evidence, it is not the role of the arbitrator to reconcile the evidence, only to determine whether the applicant has provided sufficient clear evidence to establish their claim. In this case, I am not satisfied that the applicant has provided sufficient evidence to establish this portion of her claim because her evidence was convoluted and confusing and I dismiss it.

- Moving expenses - (move+tip+lunch+PO change of address)

The tenancy ended with the tenant giving the landlord a notice to end tenancy. Although the tenant may have had a good reason for leaving, there is no obligation under the Act for the landlord to pay for the tenant's moving expenses. During the hearing, the tenant gave testimony regarding the landlord's discussions about selling the property, however unless the landlord serves the tenant with a 2 Month Notice to End Tenancy for Landlord's Use, the tenant is not entitled to a month's rent compensation. This portion of the tenant's claim is dismissed.

- Rent rebate 5 months - for Dec 2021 - April 2022 for lack of a central heating system & discomfort caused

The primary heating system is necessary for the health and safety of a rental unit, pursuant to section 33 of the Act. I have reviewed the text exchanges between the parties during the tenancy and find that the tenant repeatedly asked the landlord to ensure the furnace was providing sufficient heat to the rental unit. While the landlord argues that he shut down the furnace due to safety concerns mentioned by the tenant; the text exchanges between the parties reveals to me that the tenant consistently asked for the landlord to ensure the furnace system was fulfilling its function of providing heat and the landlord failed to do so. The daily screenshots of the furnace falling below the setting of 68 degrees or not operational at all corroborate the tenant's version of the facts.
Despite the testimony of the landlord's witness who stated that the heating system worked "fine", I find the documentary evidence provided by the tenant to be substantially more persuasive. I find that the landlord failed to provide the essential service of primary heating to the tenant and breached section 32 of the Act by failing to provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The tenant did not provide any reasoning for the $1,000.00 per month she sought as compensation, and I find insufficient evidence to support it. For a rent set at $2,140.00, I find the lack of primary heating to be a serious hinderance to the tenants' well being during the winter months and affected their ability to enjoy the unit and freely come and go due to the requirement to monitor the electric space heaters during the day so the unit is warm at night. I find compensation to be in the range of $750.00 per month for each of the five months, and I award the tenants the sum of **$3,750.00,** pursuant to section 67 of the Act.

The landlord acknowledges he did not return the tenants' security deposit and pet damage deposit at the end of the tenancy. I note that he filed his application for dispute resolution seeking to retain the deposits within 15 days of the tenancy ending and receiving the tenants' forwarding address, so there will be no doubling of the security deposit. The landlord is ordered to return the deposits, in the sum of **$2,140.00** pursuant to section 38 of the Act.

As the tenant's application was successful, the tenant is also entitled to recovery of the **$100.00** filing fee for the cost of this application.

Item	**Amount**
Compensation for not providing primary heating for five months	$3,750.00
security deposit and pet damage deposit	$2,140.00
Filing fee	$100.00
TOTAL	**$5,990.00**

Conclusion

I award the tenants a monetary order in the amount of **$5,990.00.**

The landlord's application, file (****2454) will be reconvened for a future hearing, no further evidence is allowed.

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: October 10, 2023

Residential Tenancy Branch