



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNRL-S, MNDCL-S, FFL
Tenant: MNDCT, MNSD, FFT

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to section 38;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- a Monetary Order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

Landlord S.W. and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Service

Both parties agreed that they were each served with the other's application for dispute resolution and evidence via registered mail. I find that the parties were each served in accordance with section 88 and 89 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit?
2. Is the tenant entitled to a Monetary Order for damage or compensation?
3. Is the tenant entitled to recover the filing fee for this application from the landlord?
4. Are the landlords entitled to a Monetary Order for damage or compensation under the Act?
5. Are the landlords entitled to a Monetary Order for unpaid rent?
6. Are the landlords entitled to retain the tenant's security deposit?
7. Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts:

- this fixed term tenancy began on April 1, 2023
- the end of the fixed term was August 31, 2023
- monthly rent in the amount of \$1,000.00 was payable on the first day of each month
- a security deposit of \$500.00 was paid by the tenant to the landlord on March 9, 2023
- the subject rental property is a basement suite, and the landlords live in the remainder of the house

A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant testified that while the tenancy started on April 1, 2023, and she paid rent for that month, she didn't move in until May 1, 2023. This was not disputed by landlord S.W. Both parties agree that the tenant paid rent for April and May 2023. The tenant testified that on May 14, 2023, when she returned home from work, she found a mouse caught in a mousetrap. Both parties agree that on May 14, 2023 the tenant told the

landlords of same and landlord B.W. came over that day and removed the mouse from the subject rental property.

The tenant testified that when landlord B.W. attended at the subject rental property he told her that in the fall of 2022 there was a previous mouse infestation that the landlords tried to take care of. The tenant testified that landlord S.W. told her that because they live rurally and have animals, its not possible to completely get rid of all of the mice.

Landlord S.W. testified that in the fall of 2022 she found a mouse in her house. Landlord S.W. testified that at that time she free-fed her dog and that this attracted a mouse and the landlords learned that they could not feed their dog in that manner. Landlord S.W. testified that at that time they dealt with the problem, and it was resolved and since then they have not had any further signs of mice inside their home. Landlord S.W. testified that the tenant had possession of the subject rental property for 40 days before any mouse or mouse droppings were reported. Landlord S.W. testified that the subject rental property sits on ten rural acres of land and it is not possible to eradicate all mice from the entire ten acres.

The tenant testified that the landlords did not advise of her of the previous infestation when she entered into the tenancy agreement. Landlord S.W. testified that they did not inform the tenant that they caught a mouse in their house months prior to the tenancy agreement being entered into because the issue was dealt with at that time and was not an issue when the tenancy agreement was entered into.

Both parties agree that on May 15, 2023 the tenant reported to the landlords the presence of mouse droppings in her belongings at the subject rental property including in her unpacked boxes, bedding and pots and pans. The tenant testified that from May 15, 2023 onwards she did not sleep in the property due to the mouse problem.

Landlord S.W. testified that on May 16, 2023 she entered into a three month contract with an exterminator to deal with the mouse issue. The landlord entered into evidence a receipt for same dated May 16, 2023 which states in part:

Contract Detail

- Service for control of rodents

- Project overview: setup station around exterior of property. 5 exterior stations set up around perimeter 2 stations inside, 1 in suite laundry room, 1 in furnace room. Perimeter spider application.
- Two follow up visits included. Scheduled 1 month apart

Landlord S.W. testified that the only mouse ever caught in the subject rental property was the one found by the tenant on May 14, 2023.

The tenant testified that after May 15, 2023 the next time she returned to the subject rental property was May 20, 2023 and she found more mouse poo. The tenant testified that she didn't want to live with mice and so ended the tenancy. Both parties agree that on May 25, 2023 the tenant sent the landlord the following email:

Due to a mouse infestation the sweet that you rented to me (from April 1 - May 25, 2023) is uninhabitable. Since the mouse droppings were initially found on May 15 (two weeks after I officially moved in) I have not slept at the rental unit but have been back to try and clean up, and continue to find new droppings in my belongings throughout the unit period since speaking with you this past week in hearing that there is no permanent fix to this issue since you have animals, I have now found another residence and removed all my belongings, including those damaged from the mice.

Please forward my damage deposit (\$500) and the rent that I paid for April and May (\$2000) via e-transfer. I'm hopeful we can part ways amicably without me having to take any further action.

Both parties agreed that the landlords did not agree to return any amount to the tenant. In the hearing, the tenant did not provide testimony on the provision of a forwarding address in writing at the end of this tendency. The tenant's application for dispute resolution states that she provided her forwarding address to the landlords on May 25 2023. The only correspondence in evidence dated May 25, 2023 is the e-mail reproduced above.

The tenant testified that she is seeking the following damages from the landlord for items contaminated by mouse feces:

Item	Amount
Pillow	\$234.08

Sheets	\$145.59
Throw blanket	\$173.59
Duvet cover	\$230.00
Down duvet	\$362.00
Pot and pan set	\$559.99
Suite case	\$418.33

The tenant entered into evidence screenshots of advertisements and online shopping carts with the above items in them. No receipts for same were entered into evidence. The tenant testified that she has not replaced any of the above items except for a suitcase. The tenant did not enter into evidence a receipt for the suitcase or state how much she paid for it.

The tenant is seeking to recover \$250.00 for staying in a hotel for two nights. No receipts for same were entered into evidence. The tenant is seeking to recover double the value of her security deposit.

Landlord S.W. testified that the landlords are seeking \$1,000.00 in loss of rental income for the month of June 2023 because the tenant breached the fixed term tenancy agreement.

Landlord S.W. testified that she started advertising the subject rental property for rent at the start of June 2023 and found a new tenant to move in July 1, 2023. Landlord S.W. testified that the subject rental property was advertised at a rental rate of \$1,100.00 per month. Landlord S.W. testified that the new tenant entered into a fixed term tenancy agreement ending on December 31, 2023.

Both parties agree that the tenant did not clean the subject rental property on move out and left garbage and food at the subject rental property. The landlord testified that she spent two hours and 15 minutes cleaning the subject rental property and is seeking to be compensated for her time at a rate of \$25.00 per hour for a total of \$56.25.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party

not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

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.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Tenant's Claim

The tenant testified that she has not replaced any of the items allegedly contaminated by mouse feces except for a suitcase. I find that the tenant has not suffered a loss for the items not replaced as no financial loss has been incurred. I therefore find that the tenant is not entitled to compensation under section 67 of the Act and the claim for items claimed but not replaced is dismissed without leave to reapply. The tenant did not enter into evidence a receipt of the suitcase allegedly replaced. I find that the tenant has not proved the value of the loss allegedly suffered and so this claim is dismissed without leave to reapply.

I also find that the tenant has not proved, on a balance of probabilities, that the items allegedly thrown out due to mouse poo contamination could not have been

cleaned rather than being thrown-out. I find that the tenant has not proved that she mitigated her alleged damages by having the allegedly damaged items cleaned and so the claim fails on this point as well.

The tenant did not enter into evidence any receipts for the alleged hotel stays. I find that the tenant has not proved the value of the alleged loss and so this claim is dismissed without leave to reapply.

I find that the tenant has not proved, on a balance of probabilities that she provided the landlord with her forwarding address. I find that the May 25, 2023 email does not provide the landlord with a forwarding address but states that the landlord can return the security deposit by way of an e-transfer. The May 25, 2023 email does not state what e-mail address the tenant will accept the e-transfer at. In any event, I find that for the purposes of the Act, an e-mail address is not a forwarding address and thus, pending the outcome of this hearing, the landlord has not been obligated to return the tenant's security and the tenant is not entitled to double its value under section 38 of the Act.

As the tenant was not successful in this application for dispute resolution, I find that the tenant is not entitled to recover the filing fee from the landlords in accordance with section 72 of the Act.

Landlord's Claim

Section 45 of the *Act* sets out when and how a tenant may end a tenancy. Section 45(2) states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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.

Pursuant to section 45(2) of the Act, the earliest date the tenant was permitted to end the tenancy was August 31, 2023, the end of the fixed term stated in the tenancy agreement.

Section 45(3) of the Act states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Residential Tenancy Policy Guideline 8 states that to end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof.

I find that none of the tenant's correspondence to the landlord provides the landlord with a reasonable deadline to correct the alleged material breaches of the tenancy agreement (rodent problem). I also find that none of the correspondence from the tenant to the landlord explicitly states that if the corrections are not made by a fixed deadline, that the tenant will end the tenancy. The May 25, 2023 email simply ended the tenancy without providing the landlord with an opportunity to rectify the alleged breach. I find that the tenant has not met the requirements set out in Residential Tenancy Policy Guideline 8 to end the tenancy for breach of a material term and thus breached section 45(2) of the Act.

I find that the landlords acted promptly and reasonably to the tenant's rodent related concerns which were not noticed until mid-way through the second month of the tenancy. I find that there is no evidence to suggest that at the start of the tenancy or when the tenant moved in there was any rodent activity.

I find that in promptly hiring an exterminator the landlords complied with their obligations to maintain the subject rental property under section 32 of the Act and the tenant was not permitted under the Act to unilaterally end the tenancy prior to the end of the fixed

term. I find that in breaching the fixed term of the tenancy agreement the tenant caused the landlord to suffer a loss of rent for the month of June 2023.

Policy Guideline 3 states that attempting to re-rent the premises at a greatly increased rent will not constitute mitigation. Pursuant to Policy Guideline 5, if I find that the party claiming damages has not minimized the loss, I may award a reduced claim that is adjusted for the amount that might have been saved.

I accept the landlord's undisputed testimony that she started advertising the subject rental property for rent in early June 2023 at a rental rate of \$1,100.00 per month and found a new tenant for July 1, 2023 at a rental rate of \$1,100.00 per month. Based on the foregoing, I am not satisfied that the landlords did everything reasonable to minimize June 2023 rent, since the landlords listed the rental unit for a slightly higher rent than that paid by the tenant. Nevertheless, I accept landlord S.W.'s testimony that she started re-listing the rental unit at the start of June 2023, which was not long after she received notice of the tenant's departure from the subject rental property. Therefore, I conclude that the landlords partially mitigated their loss of rental income for June 2023. I find that a 10% reduction in lost rental income owed to the landlord is appropriate for the month of June 2023 because the landlords raised the rent from the \$1,000.00 paid by the tenant to \$1,100.00 in the rental advertisements.

Residential Tenancy Policy Guideline #3 states that in a fixed term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term than would otherwise have been received, the increased amount of rent is set off against any other amounts owing to the landlord for unpaid rent.

I find the landlords' new tenants paid \$100.00 more in rent per month from July to August 2023, for a total of \$200.00 over two months. I find this amount should be set off against the amount owing by the tenant to the landlords for loss of rental income in June 2023, as per Policy Guideline #3 above. Accordingly, I award the landlords $(90\% \times \$1,000.00) - (\$200.00) = \$700.00$ for loss of rental income in June 2023.

Section 37(2)(a) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the testimony of the parties I find that the tenant did not clean the subject rental property at the end of the tenancy and left food and garbage at the subject rental property contrary to section 37(2)(a) of the Act. I accept the landlord's undisputed testimony that she spent 2 hours and 15 minutes cleaning the subject rental property and is entitled to compensation for her time. I find that the sought rate of \$25.00 per hour is reasonable. I find that there are no mitigation issues. I award the landlord \$56.25 for damages for cleaning.

Section 38(1) of the *Act* states that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(a) and 38(1)(b) of the *Act* as the tenant did not provide a forwarding address at the end of the tenancy to the landlords.

I find that the landlord is entitled to retain the entire security deposit of \$500.00 and accrued interest in part satisfaction of the landlords' monetary claim against the tenant in accordance with section 72(2) of the *Act*.

As of the date of this hearing, I find that the interest accrued on the security deposit totals \$7.51.

As the landlords were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, in accordance with section 72 of the Act.

Conclusion

I issue a Monetary Order to the landlords under the following terms:

Item	Amount
Loss of rental income June 2023	\$700.00
Cleaning	\$56.25
Filing Fee	\$100.00
Less security deposit and	-\$507.51

interest accrued	
TOTAL	\$348.74

The landlords are provided with this Order 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: December 20, 2023

Residential Tenancy Branch