



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Landlord: OPN, MNR, MNDC, FF
Tenant: CNC, MNDC, AAT, PSF, LRE, LAT, OLC, FF

Introduction

This hearing convened to deal with the applications for dispute resolution (application) of both parties seeking remedy under the Residential Tenancy Act (Act).

The landlord applied for the following:

- an order of possession of the rental unit based upon the tenant's written notice
- compensation for a monetary loss or other money owed
- a monetary order for unpaid rent
- recovery of the filing fee

The tenant applied for the following:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord
- compensation for a monetary loss or other money owed
- an order requiring the landlord to allow access to the rental unit for the tenant and their guests
- an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act
- an order suspending or setting conditions on the landlord's right to enter the rental unit
- authorization to change the locks to the rental unit
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement

- recovery of the filing fee

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The landlord provided evidence that the tenant was served their application for dispute resolution, evidence, and notice of hearing (proceeding package) and their amended application by registered mail to the forwarding address provided by the tenant. The representative confirmed receipt. The amended application removed the landlord's request for an order of possession of the rental unit.

The landlord received the tenant's application, but they said they did not receive the tenant's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Preliminary and Procedural Matters-

Since the tenant filed their application on October 28, 2023, the tenancy ended on or about October 31, 2023. For this reason, apart from their monetary claim, I find all issues of dispute listed in the tenant's application are now moot, as these are issues relating to an ongoing tenancy. As a result, I dismiss all of the tenant's claims apart from their monetary claim, without leave to reapply.

As to the tenant's monetary claim of \$23,760, the tenant wrote the following:

Space heaters \$200 3m rent reimbursed plus damage deposits to stay 12m reimbursement to vacate plus damage deposit. Forcing me to Breaking lease To Hire movers/ truck \$500 Gas to and from my residence friends Extra groceries for wintesss Missed work \$500apeox weekly 4 weeks \$2000 100% all utilities reimbursed until vacate. Take out reimbursement for unable to cook Hiring help to care for basic duties and damages to our physical mental health Loss of the ability access Internet

I find this claim to be unclear and confusing. Specifically, at the time of filing, the tenancy was not yet one month old and therefore, the tenant could not be reimbursed for 3 months or 12 months of rent.

Further, the landlord said they were not served with the tenant's extensive amount of evidence.

I have refused the portion of the tenant's application seeking monetary compensation, pursuant to section 59(5)(c) of the Act because their monetary claim, I find, did not provide sufficient particulars, as is required by section 59(2)(b) of the Act. This is due to the unclear and inconsistent information contained in their claim. For example, under Monetary Order Worksheet in their evidence, the tenant provided only a text message containing a photograph of a garbage bag.

The tenant is at liberty to re-apply for a monetary claim as a result, but is reminded to include full particulars of their monetary claim when submitting their application, and is encouraged to use the "Monetary Worksheet" form located on the Residential Tenancy Branch website.

For the reasons noted above, I dismiss the tenant's claim for recovery of the filing fee, without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant and recovery of the filing fee?

Background and Evidence

The evidence taken at the hearing was that the month-to-month tenancy began on October 1, 2023, ended by October 31, 2023, monthly rent was \$1850, and the tenant paid a security deposit of \$925 and a pet damage deposit of \$125. Filed in evidence was the written tenancy agreement.

The landlord retained the tenant's security deposit and pet damage deposit having made this claim against them.

The rental unit was in the basement, or lower level, of a home owned and occupied by the landlord and family on the upper level.

The landlord's monetary claim is comprised of \$1989 for loss of rent revenue for November 2023 and unpaid utility charges, and \$250 in general costs.

In support of their claim the landlord testified to the following:

Unpaid rent –

The tenant failed to provide proper notice to end the tenancy. There were issues with the tenancy from the start and the parties recognized that perhaps the tenancy was not working out. They offered the tenant an opportunity to end the tenancy early without penalty, at the end of October 2023, if the tenant gave them notice by October 10, 2023. Instead, the tenant informed the landlord on October 26, 2023, they were vacating on October 31, 2023. For this reason, the landlord claims they are entitled to the loss of rent revenue for November 2023.

Unpaid utilities –

The tenant was responsible for 50% of the utilities for the home, and for this reason, the landlord seeks monetary compensation for that amount.

General compensation –

The tenant failed to return the key, which required that the landlord replace the lock. The charge was \$110. The tenant failed to properly clean the rental unit and they were required to remove the items and take them to the dump.

The tenant's agent testified to the following in response –

They moved the tenant's belongings out of the rental unit and left maybe a mattress and a few other things. There was some kitty litter left. The tenant and landlord communicated several times and the landlord told the tenant not to worry about the next month's rent.

In response, the landlord reiterated they gave the tenant a deadline to inform them they were leaving and the tenant did not make that deadline.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Unpaid, or loss of rent, \$1850 –

Under section 45(1) of the Act, a tenant may end a month-to-month tenancy by giving the landlord notice to end the tenancy effective on a date that is at least one clear calendar month before the next rent payment is due and is the day before the day of the month that rent is payable. Instead, the tenant sent the landlord a text message on October 26, 2023, of their intent to vacate at the end of the month. While the landlord offered to not hold the tenant responsible for the next month's rent, that offer expired on October 10, 2023.

I find that by giving insufficient notice as noted above, the tenant is obligated under the Act to pay the monthly rent for November 2023, and they did not.

I find the landlord submitted sufficient evidence that the tenant breached the Act by failing to give a proper written notice that they were vacating, and that the insufficient notice caused the landlord to suffer a loss of rent revenue for the following month of November 2023.

I find the landlord established a monetary claim of \$1850.

Unpaid utilities, \$139 –

Having reviewed the written tenancy agreement, the tenant is responsible for the payment of utilities for electricity and natural gas, among others, according to this term. I

find the term is unclear. I find this term could be interpreted to require the tenant to be fully responsible for the entire residential property, rather than half the costs, when it is shared with the landlord in the upper level. Having said that, I find it reasonable to accept the landlord's position that the tenant was to pay half the utilities. I find the landlord submitted sufficient evidence to support their claim of \$139 for unpaid utility charges for the month of October 2023 through their documentary evidence and undisputed testimony. I find the landlord has established a monetary claim of \$139.

I caution the landlord to be clearer as to a tenant's obligation for utilities in future written tenancy agreements.

General compensation, \$250 –

I find the landlord submitted undisputed, sufficient evidence that the tenant failed to return the keys to the rental unit as required under the Act and I find a reasonable response from the landlord was to replace the lock. The landlord filed a copy of a receipt for \$92.38, which I find established the value of that cost.

As to the remaining claim of \$157.62, I find the landlord submitted insufficient evidence of the actual loss. However, having reviewed the landlord's photographic evidence, I find the tenant failed to leave the rental unit reasonably clean after the tenancy ended, as required. For instance, a mattress, garbage, and other items of personal property were left, all of which the landlord had to remove. Further, the refrigerator was full of the tenant's food, which had to be removed and cleaned. For these reasons, I find the costs of \$157.62 were reasonable under the circumstances and I find the landlord established a monetary claim of \$157.62.

Due to their successful application, I grant the landlord recovery of their filing fee of \$100.

Using the offsetting provisions contained in section 72 of the Act, the landlord may withhold the tenant's security and pet damage deposits and interest in partial satisfaction of the monetary award.

Conclusion

I issue a monetary order of **\$1281.44** in favour of the landlord as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid (loss of) rent, November 2023	\$1850.00
2. Unpaid utility charges	\$139.00
3. Lock change, cleaning, garbage removal	\$250.00
4. Filing fee	\$100.00
5. <i>Less security deposit and interest</i>	<i>(\$931.66)</i>
6. <i>Less pet damage deposit and interest</i>	<i>(\$125.90)</i>
TOTAL	\$1281.44

The landlord is provided with a Monetary Order (Order) in the above terms and the tenant must be served with this Order as soon as possible to be enforceable. 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: January 31, 2024

Residential Tenancy Branch