



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL, MNSD, MNDCT, FFT

Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security and pet deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to obtain a return double their security and pet deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not 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.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. 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.**

Preliminary Issue – Landlords Claim exceeds \$35,000.00

At the outset of the hearing the landlord advised that he was seeking \$40,216.37. I explained to the landlord that it exceeded the limit that the Branch could deal with and provided information about filing an application at Supreme Court to address the claim. The landlord advised that he would amend his claim and reduce the amount to \$35,000.00. The tenants were not opposed to the reduction in his claim, accordingly; the application is amended pursuant to section 64(3)(c) of the Act. The hearing proceeded and completed on that basis.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damages and losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security and pet deposits in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Are the tenants entitled to a monetary award as compensation for loss or damage?

Are the tenants entitled to a monetary award equivalent to the amount of their pet damage and security deposits as a result of the landlord's failure to comply with the provisions of section 38 of the Act?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord's testimony is as follows. The one-year fixed term tenancy began on July 1, 2021 and renewed for another one year term but ended early on December 31, 2022. The tenants were obligated to pay \$5024.25 per month in rent in advance and at the outset of the tenancy the tenants paid a \$2475.00 security deposit and a pet deposit of

\$2475.00 which the landlord still holds. AG testified that written condition inspection reports were not conducted at move in or move out. AG testified that on November 6, 2022 the tenants called him to let him know that the furnace wasn't working. AG testified he had a heating contractor attend that day and was told that the furnace needed to be replaced at a cost of \$6000.00 and that it could be done the following day. AG testified that he decided to get a second opinion and had another heating technician come and inspect and was told that the furnace wasn't repairable. AG testified that he decided to get one more quote and on November 8, 2022 had another company come and inspect the heating system. AG testified that the technician advised that it was a high-end system and may still be under warranty.

AG testified that he made inquiries and the unit was in fact under a full warranty. AG testified that due to supply chain issues at that time, the parts were delayed, and the furnace wasn't repaired until December 2, 2022. AG testified that he told the tenants from the outset that they should always run the two gas fireplaces and that he would gladly pay for space heaters and the electricity bill until the issue is resolved. AG testified that the tenants were not happy with the offer and ultimately ended their lease six months early and gave notice on November 30, 2022 that they would be vacating on December 31, 2022. AG testified that after they moved out, he noticed that the tile by the front entrance was broken, the toilet seat was broken, two-bathroom lights damaged, kitchen flooring damaged, carpets stained and smelled so bad that they need to be replaced, and damage to walls that required painting. AG testified that despite his best efforts he couldn't re-rent the suite until August 2023.

The landlord is applying for the following:

1.	Tile Repair	\$105.00
2.	Toilet Seat Repair	161.77
3.	Bathroom Light	400.00
4.	Kitchen Floor	1120.77
5.	Carpet Cleaning	307.22
6.	Carpet Replacement	7309.21
7.	Painting and Walls	567.00
8.	Unpaid Rent	30,145.50
9.	Filing Fee	100.00
	Total	\$40,216.47

SM testified that the landlord's timeline was correct in terms of the heating technicians attending. SM testified that the matter was an emergency, but the landlord did not treat it as such. SM testified that the landlord did not address the issue on an urgent basis as he should have. SM testified that the home did not heat up with the two gas furnaces sufficiently and that if they ran more than two space heaters the breakers would constantly trip. SM testified that the damages claimed by the landlord are not true. SM testified that despite making two requests, no written condition inspection report was done. SM testified that many receipts are missing for the claims and that the ones submitted are vague and lack specificity of the work completed. SM testified that the tenants seek compensation for not being able to live in the home for almost a month and the costs they incurred. SM testified that they gave the landlord ample and proper written notice of his "breach" of contract and not providing the heating as required and therefore are not responsible for any loss of revenue after they moved out and were entitled to end the tenancy early on that basis. SM seeks the return of double the deposits as the landlord has not acted in accordance with the Act.

The tenants are applying for the following:

1.	Forits BC Gas	\$231.65
2.	Shaw	70.00
3.	Holiday Inn – accommodations	426.02
4.	1 Month Rent Compensation	5025.25
5.	Econo Moving	5529.91
6.	Return of double security and pet deposit \$4950.00 x 2	9900.00
7.	Filing Fee	100.00
	Total	\$21, 282.83

Analysis

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. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or

damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Firstly, I address the landlords claim and my findings as follows.

Bathroom Light, Carpet Replacement and Painting

The landlord advised that he has not conducted this work and therefore is unable to provide sufficient evidence of any “out of pocket costs” or losses. The landlord advised that he rented the unit for \$7500.00 per month which indicates that he has not had difficulty renting at a higher rate in the same condition as when the tenants moved out. In addition, without the condition inspection report or any other sufficient supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support this portion of his claim and I therefore dismiss this portion of their application.

Tile Repair, Toilet Seat Repair, Kitchen Floor, Suite Cleaning

The tenants adamantly dispute these claims and stated that much of the damage was pre-existing or simple wear and tear. Again, as noted above, in relation to the condition of the rental unit, I find that in the absence of a documented move in Condition Inspection Report or other documentary evidence to confirm the condition at the start of the tenancy the landlord cannot provide sufficient evidence to support that the tenants caused any damage to the rental unit at all; accordingly, I dismiss this portion of the landlords claim.

Loss of Rent

I must first address whether this tenancy ended early. Section 45 of the Act states the following:

Tenant's notice

- 45** (2)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.

(3) 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.

The tenants submit that the landlord should have accepted the first technicians offer of replacing the heating system within 24 hours at a cost of \$6000.00 to the landlord. The landlord submits that if there were no other heating sources in the home, he would have done so, but since there were two gas fireplaces and his offer of space heaters and his offer to cover the gas and electricity costs, the matter wasn't an emergency.

I find that the landlord was addressing the issue in a diligent and expeditious manner. The landlord had no control over supply chain issues. It would be illogical to expect the landlord to pay \$6000.00 when it was fully covered under warranty and that there was alternative heating sources and offers made by the landlord to cover those costs but were ultimately refused by the tenants. Based on the above, I find that there was not a material breach by the landlord and that the tenants ended the tenancy prematurely.

However, based on the evidence presented, the landlord did not attempt to the extent that was reasonable, to re-rent the premises after receiving written notice of the tenant's intention to vacate the rental unit. The landlord testified that he "thinks" he posted an online rental advertisement shortly after receiving notice. However, I find that the landlord has not attempted to fully minimize its losses. The landlord did not provide documentation to show what websites he advertised on and how often. In addition, the landlord did not reduce the rental price of the rental unit or offered a shorter fixed term lease or a month-to-month tenancy, as incentives to try to attract potential tenants. In fact, the landlord raised the asking price to \$6500.00 and then attempted to run it as an Airbnb for several months. As such, **I find that the landlord has failed to fully mitigate its losses under section 7(2) of the Act.**

The landlord is claiming for 6 months of rental loss from January 2023 until June 2023 inclusive, the period during which the property could not be re-rented due to the tenant's breach. I find that had the landlord attempted to decrease the rent or the fixed term period, that potential tenants would have been more likely to rent the unit at an earlier

time than August 1, 2023 at a rate of \$7500.00. Based on the above, I dismiss this portion of the landlords claim.

As the landlord has not been successful in their application, I dismiss their request for the recovery of the filing fee without leave to reapply.

I address the tenants claim and my findings as follows.

Fortis Gas

The landlord advised that he agreed with this claim, accordingly; the tenants are entitled to \$231.65.

Shaw

The tenants request \$70.00 for the time they were unable to use their internet as they felt the home was uninhabitable. The tenants did not provide sufficient evidence to support that position. The landlord made offers to the tenants to help with the heating issues, which they refused and therefore failed to mitigate losses, accordingly; I dismiss this portion of their claim without leave to reapply.

Holiday Inn

The tenants request the cost of providing accommodation for MM parents visiting during the time in question as they were unable to stay in the home. The tenants have failed to provide sufficient evidence that the home could not be occupied. In addition, the landlord is not obligated to ensure tenants guests are provided accommodation, accordingly; I dismiss this portion of the tenant's application without leave to reapply.

One Month Rent Compensation

As noted above, the tenants failed to provide sufficient evidence that the home was uninhabitable and failed to take reasonable steps to mitigate the losses, accordingly; I dismiss this portion of the tenants claim without leave to reapply.

Moving Costs

As I have already stated in this decision, the tenants ended the tenancy prematurely and therefore are not entitled to moving costs, accordingly; I dismiss this portion of the tenant's application without leave to reapply.

Double the Deposits

The tenants submit that since the landlord did not conduct move in and move out inspections, he forfeited his right to claim against the deposit. Residential Tenancy Policy Guideline 17 addresses this issue as follows:

A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;

The landlord was seeking loss of rental revenue and therefore was entitled to still apply for the deposit. Furthermore section 38 of the Act addresses this as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Both parties confirmed that the tenancy ended on December 31, 2022. The landlord filed an application for dispute resolution on January 6, 2023, within the legislated 15 days and therefore the doubling provision does not apply.

However, as the landlord has not been successful in his application, he is to return both the pet \$2475.00 and security deposit \$2475.00 back to the tenants plus the accrued interest of \$113.96. The tenants are also entitled to the recovery of the filing fee for this application in the amount of \$100.00. The tenants total monetary award is \$5395.61.

Conclusion

The tenants have established a claim for \$5,395.61. I grant the tenants an order under section 67 for the balance due of \$5,395.61. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord's application is dismissed in its entirety without leave to reapply.

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: February 15, 2024

Residential Tenancy Branch