



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

Decision

Introduction

Dispute codes: MNDCT, FFT (Tenant's Application) and MNDCL, FFL (Landlord's Application).

This hearing was convened under the *Residential Tenancy Act* (The **Act**) in response to cross applications from the parties.

The Tenant filed their application on April 22, 2024. The Tenant seeks compensation for monetary losses pursuant to section 67 of the *Act*, as well as their filing fee, to be collected from the Landlord, pursuant to section 72 of the *Act*.

The Landlord filed their application on June 3, 2024. The Landlord also seeks compensation for monetary losses, pursuant to section 67 of the *Act*, as well as their filing fee, to be collected from the Tenant, pursuant to section 72 of the *Act*.

The Tenant attended the hearing alongside their advocate DW. RP attended the hearing for the Landlord.

Service of Records

- *Tenant's records to the Landlord*

The Tenant submitted a copy of an email, dated April 26, 2024, with 14 visible attachments, including the Proceeding Package. RP acknowledged receipt of this email and testified that the parties had an agreement to be served records, for the purposes of the *Act*, by email. RP acknowledged receipt of a video file included in the Tenant's April 26, 2024, email.

RP testified that they received a second email on July 4, 2024, with a Google Drive link visible in the body of the email. The Tenant testified that all the records submitted to the Residential Tenancy Branch website were sent to RP on July 4, 2024.

The parties agreed that the Tenant sent another email to the Landlord on July 11, 2024, with additional records. The Tenant testified that the records sent on July 11, 2024, were new records submitted to the Residential Tenancy Branch in relation to the Landlord's application.

Based on RP's acknowledgment of receipt of the Tenant's emails containing the Tenant's Proceeding Package and documentary evidence in relation to the Tenant's application, RP's acknowledgement that the parties had an agreement to serve and be served records by email, and RP's acknowledgement of receipt of records in relation to their own application, I find the Tenant served the Landlord with all the foregoing records as required and in accordance with sections 88 and 89 of the *Act*, and section 43 of the *Residential Tenancy Regulation*.

- *Landlord's records to the Tenant*

RP testified that on June 7, 2024, they served their application to the Tenant and to their advocate by registered mail, and they provided Canada Post Customer receipts bearing the tracking number (copied on the cover page of my decision). The Tenant acknowledged receipt of the Landlord's application.

RP testified that they served additional records to the Tenant, by registered mail, on June 25, 2024, and they provided a tracking number in relation to the second registered package. The Tenant testified that they never received a second registered package. The Landlord did not submit a Canada Post Customer Receipt in relation to their second package.

RP testified that on July 1, 2024, they emailed the Tenant with all their documentary evidence. RP testified that in total they sent the Tenant seven emails. The Tenant testified that they have received eight emails from the Landlord. I informed the Tenant that the Landlord has submitted approximately 60 individual files to the Residential Tenancy Branch. The Tenant testified that they have "more than 60" records from the Landlord in relation to this dispute.

Based on the Tenant's acknowledgment of receipt of the initial registered package containing the Landlord's application, I find the Landlord served the Tenant with the Proceeding Package in accordance with section 89 of the *Act*.

Based on the Tenant's testimony that they have received eight emails containing more than 60 documents in relation to this dispute, as well as RP's testimony that they emailed the Tenant with every record in their possession in relation to this dispute, I find the Landlord served the Tenant with their documentary evidence in accordance with section 88 of the *Act* and section 43 of the *Regulation*.

- *Lack of organization*

The Tenant submitted nearly 40 individual files under their own application and the Landlord submitted 64 individual files in response. Both parties' records were unorganized, lacking page numbers or a centralized index. The parties' submitted files under the Landlord's application were equally unorganized.

The Branch's *Rules of Procedure* outline what evidence must be submitted and the way it must be submitted.

Rule 3.7 states that evidence must be organized, clear and legible. Rule 3.15 states that the respondent's evidence should be served on the other party in a single complete package.

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible. In future applications, I advise the parties to combine all their documents in one file, to number their pages, and to include an index at the beginning of their document.

Notwithstanding the parties' lack of organization, I have not used my discretion to exclude any records.

Preliminary Matter: Landlord's Name

Prior to my amendment, the Tenant had named RP, as a respondent, in their personal capacity, notwithstanding the fact that in the parties' tenancy agreement the Landlord is the corporate entity PIL.

I asked RP if PIL is the Landlord and they testified that they are an agent of PIL and PIL should have been named as the respondent, not RP personally.

The Tenant's response was that in the past they had named RP personally and it was accepted.

Section 64(3)(c) of the *Act* states that, subject to the *Rules of Procedure*, the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

I find it appropriate and necessary to amend the Tenant's application to change the respondent's name from RP, in their personal capacity, to PIL, the corporate entity named as the Landlord in the parties' tenancy agreement.

The style of cause on the cover page of my decision reflects my amendment.

Background Facts, Evidence, and Preliminary Findings

I have considered the parties' testimonies and submitted records, but I will refer only to what I find relevant to my decision.

The parties initially agreed that this tenancy began on September 15, 2023, and it ended on May 14, 2024. The Tenant then testified that:

- From September 15, 2023, to April 1, 2023, they rented the entirety of the Rental Unit (a single-family home), for \$4,650.00, due on the 15th day of every month; and
- From April 1, 2024, until the end of the tenancy, they rented the upper floor of the Rental Unit only, for \$3,350.00.

RP disputed the above testimony and testified that:

- The Tenant did not vacate the lower floor of the Rental Unit until April 4, 2024 (contrary to the Tenant's testimony that they moved on April 1, 2024).

RP did agree with the Tenant that the Tenant's monthly rent in April 2024 and in May 2024 was \$3,350.00.

The parties agreed that they have dealt with the issue of the security deposit in this tenancy. The Tenant testified that they authorized the Landlord to retain \$313.75 from the security deposit (for unreturned keys and "split cost" of landscaping) and they received \$2,054.91 back from the Landlord.

The parties agreed that they completed a start of tenancy condition inspection report, but they did not complete an end of tenancy condition inspection report. RP testified that they attempted to organize an end of tenancy condition inspection report on four or five occasions, but the Tenant never agreed to take part. The Tenant testified that on June 1, 2024, the Landlord attempted to complete an end of tenancy condition inspection of the entire Rental Unit.

The Tenant submitted a monetary order worksheet, dated April 22, 2024, wherein they have itemized the following items totaling \$18,853.00:

No.	Receipt/Est. From	For	Amount
1	TLL	"Moving"	\$2,108.00
2	A	"Bed frame replacement"	\$1,700.00
3	N/A	"Key cut"	\$7.00
4	N/A	"Overpayment"	\$488.00
5	N/A	"Overpayment"	\$9,900.00
6	N/A	1 month rent	\$4,650.00
Total			\$18,853.00

Notwithstanding the above, in their application, the Tenant is only seeking \$15,024.00. The Tenant submitted a second monetary order worksheet, dated July 3, 2024, and titled "Monetary_worksheet_page_1_updated.jpg", wherein they seek the following items totaling \$14,924.00:

No.	Receipt/Est. From	For	Amount
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1	Monday Jan. 22/24 Email Conversation	"1 month rent covered"	\$4,650.00
2	Email conversation	"not able to sublet overpayment"	\$9,900.00
3	N/A	Overpayment of rent	\$374.00
Total			\$14,924.00

The parties' testimonies in relation to the above claims are outlined in the "Analysis" section of my decision, below. In making my decision, I have only considered the Tenant's updated July 3, 2024, monetary order worksheet. In addition to the above claims, the Tenant is seeking their \$100.00 filing fee.

The Landlord also submitted a monetary order worksheet, dated June 18, 2024:

Document Number	Receipt / Estimate From	For	Amount
#1	Tenant did not move out of suit on correct date + I was unable to rent suit out to sanitary conditions of home.	Tenancy Agreement	\$2600
#2	Pest Control - Pest Zap	Pest management	\$1365
#3			\$
#4			\$
#5			\$
#6			\$
#7			\$
#8			\$
#9			\$
#10			\$
Total monetary order claim			\$3965

The parties' testimonies in relation to the above claims are outlined in the "Analysis" section of my decision, below. In addition to the above claims, the Landlord is seeking their \$100.00 filing fee.

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim has the responsibility to provide evidence over and above their testimony to prove their claim.

The standard of proof in this tribunal is balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

- *Security deposit*

The parties affirmed that they have dealt with the security deposit in this tenancy on their own; consequently, it is not necessary for me to make any orders in relation to the security deposit.

- *Tenant's application*

Section 7 of the *Act* states that if a party does not comply with the *Act*, the *Regulations* or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results and that the party who claims compensation must minimize the losses.

Section 67 of the *Act* allows a monetary order to be awarded for damage or loss when a party does not comply with the *Act*. The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred.

The Residential Tenancy Branch Policy Guideline 16 outlines the criteria to be applied when determining whether compensation for a breach of the *Act* or the tenancy agreement is due. It states that the applicant must prove that (1) the respondent failed to comply with the *Act* or the tenancy agreement; (2) the applicant suffered a loss resulting from the respondent's noncompliance; (3) the applicant proves the amount of the loss; and (4) that they reasonably minimized the losses suffered.

Item #1: "1 month rent covered"-\$4,650.00.

The Tenant testified that the above claim is for one month of rent, based on an agreement that they reached with the Landlord on January 22, 2024. The Tenant and their advocate invited me to locate an email dated January 22, 2024, sent at 8:29 pm, by RP to the Tenant. The email reads as follows (underlining mine for emphasis):

Hi [Tenant]

Thanks for your email. While I appreciate your email and concern. I do not appreciate your lack of communication. On many occasions you have repeatedly not paid rent on time. Last month you said the reason for not paying rent was due to the fact that your account had been locked due to fraud.

I have made several and various attempts to fix the rodent issue. My family has been \$140,000 on renovations on the home. We truly do care about the home and your family. I have spent over \$1000 on pest control, not including coming in with my dad do try our own preventative measures on two occasions. I will provide another \$1000 in pest control (paid directly by myself). I am willing to help the situation but it is also out of my control. My family has done everything it's

obligated and needed to do - with over 4 visits of pest control. My dad has put screens on all exterior openings and continues to spray for rodents around the property.

My parents live next door and are familiar with the rodent situation. On various occasions in september my parents closed your doors after being left open for over 4 hours. This did not help the rodent situation. I also messaged you in October to be cautious of the sanitary conditions you had left your home.

Although I sympathize with your family you are bound to your rental agreement. Otherwise your more than welcome to leave the residence and I will provide your deposit back.

If I don't receive a response back I will be filing an eviction notice. Please let me know how you would like to proceed in terms of our tenancy agreement. As per the tenancy agreement I would be willing to give you one month free rent if you move out.

I would like to also point out to section 32(2) of the Residential Tenancy Act (RTA), tenants must maintain reasonable health, cleanliness, and sanitary standards in their rental unit.

On various occasions it has been noted you have not maintained these standards. I have sent you pictures and messages asking you to keep these standards. You leave doors opens, you have so many boxes and items in your residence that it would almost be beneficial for a rodent to occupy the space.

Although I do not want you or your children without a home. I have gone above and beyond to make sure I can provide a habitable home. If you feel that is not enough I think you should leave and find a more suitable home. I truly think your family and sons are nice people and I wanted to build a relationship but you have failed to want to do that. My mom came over with a Christmas gift on various occasions and you avoid us.

I am willing to cover \$1000 in pest control to your choice. You can tell me how/what you would like to choose. But rent is payable now.

Thanks

[RP]

I asked RP to explain what they meant by the following statement (copied from above) "[a]s per the tenancy agreement I would be willing to give you one month free rent if you move out". RP testified that they meant if they chose to ask the Tenant to move, then they would be willing to pay the Tenant one month of free rent, because "that is the rule under the Residential Tenancy Act."

On January 23, 2024, at 4:43 pm, the Tenant sent the following response to RP:

Hi [RP],

While I sympathize with you that you took the day off, as per our conversation, you told me that I have 2 days to communicate with you regarding making a decision whether I want to leave or have you pay \$1000. As this email thread communication shows in the attachment below, I am and have been in communication and you said I have 2 days. It hasn't been 2 days. It hasn't even

been 24 hours. So I will speak with you tomorrow evening once I've made my decision, as discussed on whatsapp.

Have a wonderful evening.

[the Tenant]

On January 23, 2024, at 4:52 pm, RP sent the following response to the Tenant (underlining mine for emphasis):

Hi [Tenant]

I have not asked you for \$1000. I am offering \$1000 for a pest removal company of your choice. I am willing to do what work is needed but I need you to communicate with me. If you are struggling financially, which you stated you are, then let me help you and make a payment plan.

You are late of paying rent which is in violation of your rental agreement and the RTB. I need proper notice of the end of your tenancy. I will require payment of rent as well. I didn't mean you have two days to respond - I meant you have two days until I submit your eviction notice and I would really not want to do that to you.

RTB has also made it aware that you are running a business from my house and that is in direct violation of our tenancy agreement. This is something we would need to discuss.

Thanks

The Tenant testified that they accepted the Landlord's offer on January 24, 2024, at 12:03 pm. I asked the Tenant to identify the file name for the foregoing email, but they could not identify the file name. Both during the hearing and after the hearing I spent considerable time attempting to locate the foregoing email, but I was only able to find RP's response to the Tenant, which was sent by RP to the Tenant at 10:25 pm on January 24, 2024. I then asked the Tenant to read their response to the Landlord. The Tenant testified that on January 24, 2024, they wrote the following to the Landlord:

I've chosen the option that you have provided me. Move out with my damage deposit being returned and a free month. The tenancy board says that I can choose February 15th to move out and be reimbursed or stay until March 15th. I have chosen the March 15th option to move out.

In response, the Landlord stated:

I think there is some confusion and you must confer with the RTB to know your rights and responsibilities. I meant if I ask you to leave I am not responsible for the last month of rent. You have chosen to leave in which I am not obliged to pay. I truly and honestly believe you were never capable of paying the rent. You have on multiple occasions not paid on time (mostly being almost a week late). According to the RTB I am in my rights to end tenancy in the case of late payment of rent after 3 times. You have never paid the rent on time since you moved in (Sept 15). Even before the rodent issue.

An agreement between two individuals requires a meeting of the minds. When I read the chain of emails sent and received by the parties and consider the context provided

by RP during the hearing, I find it more likely than not that on January 22, 2024, the Landlord was threatening the Tenant with a section 49 two-month eviction notice, pursuant to which the Tenant would receive one month of free rent. On January 24, 2024, the Landlord had not served the Tenant with an eviction notice.

However, in the alternative and if I am wrong in my analysis above, in their offer the Landlord states: "...As per the tenancy agreement I would be willing to give you one month free rent if you move out." The parties previously attended arbitration before a Residential Tenancy Branch arbitrator, in relation to this tenancy, on April 22, 2024 (the **Previous Dispute**). The file number for the Previous Dispute is copied on the cover page of my decision. The Previous Dispute resulted in a settlement, outlined in Arbitrator VH's written decision, dated April 22, 2024 (approximately three months after the parties' January 2024 correspondence). The Tenant moved out of the Rental Unit in accordance with the terms of the settlement reached in the Previous Dispute. In addition, prior to RP's response on January 24, 2024, the Tenant never served the Landlord with a notice to end tenancy in accordance with sections 45 and 52 of the Act, which states that a notice to end tenancy by a tenant must be in writing, it must be signed and dated, and it must give the address of the Rental Unit.

Finally, and perhaps most importantly in this case, a claim for compensation pursuant to section 67 of the *Act* can only be successful if the claimant proves the following four elements: (1) the respondent failed to comply with the *Act*, the *Regulation* or the tenancy agreement; (2) the applicant suffered a loss resulting from the respondent's noncompliance; (3) the applicant proves the amount of the loss; and (4) that they reasonably minimized the losses suffered.

In this case, it is unclear to me which section of the parties' tenancy agreement, or which section of the *Act* or the *Regulation* the Landlord purportedly contravened, and the Tenant did not suffer any damages because of the Landlord's January 24, 2024, refusal. The Tenant remained at the Rental Unit and this tenancy continued.

For all of the above reasons, I find the Tenant is not owed any compensation and this portion of the Tenant's claim is dismissed, without leave to reapply.

Item #2: "not able to sublet overpayment"-\$9,900.00.

The Tenant testified that at the start of the tenancy, they made an agreement with the Landlord that, to supplement their costs, they may sublet the lower unit of the Rental Unit to a "family member or a student".

The Tenant testified that they reached an agreement with their sister for their sister to move into the Rental Unit, beginning on December 1, 2023, but because of the rat infestation at the Rental Unit, their sister never moved into the Rental Unit.

The Tenant testified that their sister was supposed to pay them \$1,650.00 from December 1, 2023, until the end of the tenancy (a period of 6 months).

The parties provided extensive testimony regarding a rat infestation at the Rental Unit. The Tenant testified that on November 27, 2023 (mere days prior to the purported starting date of their sister's tenancy agreement) they discovered the rat infestation at the Rental Unit. The Tenant testified that within two days, the Landlord had brought a pest control company to mitigate the issue.

The Tenant submitted a letter from their sister, dated April 30, 2024:

To whom this may concern:

My name is [LB]. I am [the Tenant's] sister. [the Tenant] and I had pre-arranged plans to live together starting December 2023. This decision was made back in October 2023, as I wanted to be closer to my work (I work in [redacted for privacy] but live in [redacted for privacy]) and wanted to be closer to school, as I have plans on attending university in September to get my Masters Degree. I can testify that there were rats living inside the walls of [the Tenant's] home and inside the home itself. The reason that I didn't move in is because of rats. I did stay over for sister sleepovers, but I could not justify moving out and into a home with rodents. I was willing to pay \$1650/month to live in the downstairs suite. This price included utilities (gas, hydro, tv). Every month, there were still rats living in the home and in the walls. Even with sleepovers, I could hear the rats scratching away in the walls or gnawing on [the Tenant's] bed frame, or running around the room. As a result, I unfortunately didn't move in. I acknowledge that if the landlord had done his proper due diligence, [the Tenant] would have been able to sublet the unit to me and I would have been able to move in.

Please let me know if you require any more information.

Warm regards

I find this portion of the Tenant's application entirely meritless and, for the reasons that follow, I dismiss their claim, without leave to reapply.

The Tenant's sister did not attend the hearing to provide testimony. In the above hearsay statement, the Tenant's sister describes spending time at the Rental Unit without the need to pay rent. As RP testified during the hearing, the Tenant never sublet the Rental Unit prior to the discovery of rats at the Rental Unit nor did they provide any testimony or evidence that they even made a cursory attempt to do so. I find the Tenant's testimony that they had a verbal agreement with their sister to begin tenancy at the lower unit of the Rental Unit on December 1, 2023, self serving and convenient, considering the fact that prior to the discovery of the pest infestation, the Tenant never attempted to sublet the Rental Unit, and after the discovery of the infestation they made no attempts to sublet the Rental Unit to third parties.

The Tenant provided no testimony regarding their communication with their sister in the four days between November 27, 2023 (when they first discovered the rats), and December 1, 2023 (the supposed start date of their sister's tenancy). In the above letter,

the Tenant's sister makes no mention of how the purported agreement collapsed in the four days between November 27, 2023, and December 1, 2023. In short, the Tenant has failed to establish that they had an agreement with the third party that they identified as their sister, or that this agreement failed because of any rodents at the Rental Unit. There is no evidence before me that the Tenant's sister knew about the rodent infestation in the period between November 27, 2023, and December 1, 2023.

Even if I am wrong in the above analysis, the Tenant's claim will fail because the Tenant made no efforts to mitigate their damage by attempting to sublet the Rental Unit to third parties after their sister purportedly backed out of the deal.

In addition to all the above, from April 1, 2024, onwards, the Tenant had no access to the lower level of the Rental Unit as they were no longer renting the entire Rental Unit. Consequently, the Tenant could not possibly sublet the lower level of the Rental Unit, nor were they paying rent pursuant to their original tenancy agreement. I fail to understand why the Tenant believes they could mount a claim for six months in the circumstances.

For all the above reasons, this portion of the Tenant's claim is dismissed, without leave to reapply.

Item #3: "overpayment of rent"-\$374.00.

The Tenant testified that throughout the tenancy they overpaid their monthly rent on several occasions. RP generally agreed that in certain months, the Tenant overpaid rent, but they could not tell me which months and how much the Tenant overpaid their rent. I note that the claimant (in this case, the Tenant) has the onus to prove their claim.

The Tenant testified that in November 2023, they made two rent payments on November 16, 2023, and on November 17, 2023, in the amounts of \$2,325.00 and \$2,650.00, respectively, resulting in a \$325.00 overpayment.

The Tenant testified that in December 2023, they made the following payments, resulting in a \$20.00 overpayment:

- December 26, 2023: \$1,400.00 (sent from a friend's account)
- December 27, 2023: \$1,620.00
- December 28, 2023: \$1,400.00
- December 28, 2023: \$250.00

The Tenant, in their application, cited the amount of overpayment as \$488.00. In their updated monetary order worksheet, they reduced their claim to \$374.00. During the hearing, the Tenant was unable to account for the \$29.00 remainder of their \$374.00 claim.

The Tenant referred to a typed statement submitted under the file name "Breakdown.pdf". As with their testimony during the hearing, in this statement the Tenant only accounts for two monthly rent overpayments.

At the 01:29:33 mark of the hearing the Tenant testified as follows: "I can't find the difference right now of the \$29.00. I will have to [...] Go through the bank statement to find it."

The Tenant testified that they submitted a copy of their bank statement for the above periods to prove they overpaid rent.

After reviewing the Tenant's bank statement, in relation to their claim of overpayment of rent in the month of November 2023, I find as follows: the Tenant sent two transfers to RP in November 2023 in the total amount of \$4,975.00, resulting in an overpayment of \$325.00. RP agreed that the Tenant overpaid their rent in certain months, but they were unable to testify as to which months the Tenant overpaid their rent. Based on all the foregoing, and pursuant to section 67 of the *Act*, I find the Landlord breached section "3." of the parties' tenancy agreement by collecting excess rent in the month of November 2023, in the amount of \$325.00. **I award the Tenant \$325.00.**

With respect to the Tenant's claim in December 2023, in the amount of \$20.00, I find as follows: the Tenant's bank statements show $\frac{3}{4}$ of the payments testified to by the Tenant at the hearing. The Tenant's evidence is that the \$1,400.00 payment sent to the Landlord on December 26, 2023, came from a friend's bank account. I do not have a copy of the Tenant's friend's bank statement before me. Considering the Tenant's lack of organization and their inability to recount events accurately, I find I am unable to accept their testimony in the face of the Landlord's disagreement with the claim. The Tenant has the burden to provide records beyond their oral testimony to prove their claim.

In summary, I award the Tenant \$325.00 and dismiss the balance of the \$374.00 claim, without leave to reapply.

Filing fee

The Tenant was minimally successful. The filing fee is a discretionary award issued by an arbitrator, pursuant to section 72 of the *Act*, usually after a hearing is held and the applicant is successful on the merits of the application.

I award the Tenant \$50.00 for their \$100.00 filing fee, for their partial success at the hearing.

- *Landlord's application*

Section 7 of the *Act* states that if a party does not comply with the *Act*, the *Regulations* or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results and that the party who claims compensation must minimize the losses.

Section 67 of the *Act* allows a monetary order to be awarded for damage or loss when a party does not comply with the *Act*. The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred.

The Residential Tenancy Branch Policy Guideline 16 outlines the criteria to be applied when determining whether compensation for a breach of the *Act* or the tenancy agreement is due. It states that the applicant must prove that (1) the respondent failed to comply with the *Act* or the tenancy agreement; (2) the applicant suffered a loss resulting from the respondent's noncompliance; (3) the applicant proves the amount of the loss; and (4) that they reasonably minimized the losses suffered.

Section 32(2) of the *Act* states that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Section 32(3) of the *Act* states that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37 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, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Item #1: "Tenant did not move out of suite on correct date + I was unable to rent suite out [due] to sanitary conditions of home"-\$2,600.00.

RP testified that the Tenant did not vacate the lower level of the Rental Unit on April 1, 2024, as they had promised, resulting in a monthly loss of \$1,300.00.

RP testified that the Tenant moved out of the lower unit on April 4, 2024.

RP testified that had the Tenant moved out on April 1, 2024, the Landlord would have been able to rent the lower unit to another individual.

When I enquired about the Landlord's efforts to rent the Rental Unit for April 1, 2024, the Landlord testified that their claim is not entirely because of the Tenant's delay, but also because they hampered the Landlord's pest mitigation efforts.

RP testified that they began marketing the lower unit sometime in March 2024, but they cancelled the listing at the end of March 2024, because they “did not feel that I could” rent it out considering the Tenant’s lack of communication.

RP did not submit a copy of their purported March 2024 advertisement.

Whether the Tenant moved out on April 1, 2024, or on April 4, 2024, is irrelevant, because even if the Landlord did suffer damages, the Landlord has not mitigated their losses.

However, as with the Tenant’s self-serving claim that, but for rats, they would have rented the lower-level unit to their sister, I find the Landlord’s claim to be self-serving and without merit. The Landlord did not submit a copy of their purported March 2024 advertisement. There is no evidence before me that the Landlord intended to rent the lower level of the Rental Unit beginning on April 1, 2024.

However, if I am wrong in my analysis above, the Landlord failed to mitigate their losses by continuing to advertise the Rental Unit. By their own submissions, by April 4, 2024, they had access to the Rental Unit. I fail to understand why the Landlord did not continue to advertise the Rental Unit.

The Landlord failed to establish, on a balance of probabilities, that the Tenant caused the rat infestation or that their lack of communication resulted in the Landlord’s purported loss of revenue for the lower unit in April 2024 and May 2024. This claim is dismissed, without leave to reapply.

Item #2: “pest control – pest zap”-\$1,365.00.

RP testified that the Tenant made it difficult to access the Rental Unit in April 2024. The Landlord referred to several emails where the Tenant would change appointments for pest control.

Whether the Tenant caused a minor delay or not, the Landlord has not suffered a loss, because RP testified that the associated invoice in the amount of \$1,365.00 is for “future work” and the pest control company has continued to attend the Rental Unit, even after this tenancy ended. In addition, during the hearing, RP testified that when the pest control company had to reschedule to accommodate the Tenant, they would reschedule to another date within the same month. There is no evidence before me that because of one or more rescheduled appointments, the Landlord suffered a loss.

Put in another way, the Landlord paid \$1,365.00 to a third party for pest control, and the Landlord has received and continues to receive services from the pest control company, irrespective of the Tenant’s rescheduling or the causing of the rescheduling of one or more appointments in April 2024.

This claim is dismissed, without leave to reapply, because the Landlord failed to prove they suffered a loss.

Filing fee

The Landlord's claims are dismissed in their entirety, consequently their claim for the filing fee is also dismissed, without leave to reapply.

Conclusion

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

The Tenant's application is partially granted. I grant the Tenant \$325.00 for overpayment of rent in November 2023, and an additional \$50.00 for their filing fee. The Tenant is provided with a Monetary Order (attached) in the amount of **\$375.00** for the two foregoing awards.

The Tenant is provided with the attached Monetary Order in the above terms, which must be served to the Landlord as soon as possible. Should the Landlord 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: August 15, 2024

Residential Tenancy Branch