



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNDC, MNSD, RR, DRI, FF

The landlord and the tenant convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

- For a monetary order for unpaid rent;
- For a monetary order for compensation for money loss or other money owed;
- For a monetary order for damages to the rental unit;
- To keep all or part of the security deposit; and
- To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

- To cancel a 10 Day Notice to End Tenancy for Unpaid Rent and utilities;
- To have the landlord provide services or facilities required by the tenancy agreement;
- To have the landlord make repairs to the unit;
- To reduce rent for repairs;
- To dispute an rent increase that does not comply with the Act;
- For a monetary order for compensation for loss or other money owed;
- For the return all or part of the security deposit; and
- To recover the cost of filing the application.

This matter commenced on July 19, 2017, an interim decision was made and should be read in conjunction with this decision.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

At the outset of parties agreed that the tenant vacated the rental property. Therefore, I find it not necessary to consider the following issues in the tenant's application:

- To cancel a 10 Day Notice to End Tenancy for Unpaid Rent and utilities;
- To have the landlord provide services or facilities required by the tenancy agreement;
- To have the landlord make repairs to the unit; and
- To reduce rent for repairs.

At the outset of the proceeding both parties were informed that any issues related to when the tenancy commenced in 2014, will not be considered. Since the parties have a duty to mitigate their loss and bring those matters forward with reasonable time, not after the tenancy ended.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and utilities?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Is the tenant entitled to dispute a rent increase that does not comply with the Act?

Is the tenant entitled to a monetary order for compensation for loss?

Is the tenant entitled to the return all or part of the security deposit?

Background and Evidence

The tenancy began on November 1, 2014. Rent in the amount of \$3,300 was payable on the first of each month. The tenant paid a security deposit of \$1,650.00. The tenancy ended on June 12, 2017. Filed in evidence is a copy of the tenancy agreement.

The landlord's application

The landlord claims as follows:

a.	Unpaid rent for May 2017	\$3,650.00
b.	Loss of rent for the tenant overholding	\$1,330.00
c.	Unpaid utilities	\$1,935.81
d.	Cleaning	\$1,500.00
e.	Filing fee	\$ 100.00
	Total claimed	\$8,515.81

Unpaid rent for May 2017

At the outset of the hearing the tenant admitted that they did not pay rent for May 2017.

Loss of rent for the tenant overholding

The landlord's agent testified that the tenant was required to vacate the premises on May 30, 2017, as that was the effective date of the 10 Day Notice to End Tenancy for Unpaid Rent, issued on May 19, 2017. The landlord's agent stated that the tenant overheld the rental premises for 11 days. The landlord seeks to recover pro-rated rent in the amount of \$1,330.00.

The tenant testified that the landlord's agent stated that they would not charge them rent for the time they were overholding the rental unit. Filed in evidence are emails, which support the tenant's position.

Unpaid utilities

The landlord testified that the tenant had the utilities in their name and they collected \$200.00 from the occupants in the lower unit. The landlord stated that the tenant failed to pay the utilities for March 2017, in the amount of \$512.89.

The landlord testified that the tenant did not pay the electricity account for the garage that was 100% the tenant's responsibility. The landlord seeks to recover the amount of \$562.64.

The landlord testified that the tenant placed a stop payment on a cheque to the electrical company, when they opened an account in their name. The landlord stated that nonpayment now shows on their credit report. The landlord seeks to recover the amount of \$563.28. Filed in evidence is an email thread, dated June 7, 2017, from the electricity company.

The landlord testified that the tenant vacated on June 12, 2017 and they should be entitled to utilities for those 11 days. The landlord seeks a nominal award of \$300.00.

The tenant testified agreed that they owe utilities to the landlord; however, the amount calculated by the landlord is incorrect.

The tenant testified that actual bill for March 2017, was \$504.07 and their portion of that bill is the amount of \$378.05. The tenant stated that they did not collect any money for the lower occupants as they were not living there at the time and the landlord is responsible for their portion.

The tenant acknowledged they are responsible for the full utility bill for the garage in the amount of \$562.64.

The tenant testified that cancelled cheque was paid by credit card. The tenant stated that this is shown in an email dated June 7, 2017, from the electricity company in the landlord evidence package.

The tenant testified that the landlord claim for 11 days of utilities is unreasonable as the prorated amount equals the amount of \$61.02.

Cleaning

The landlord's agent testified that the tenant left garbage behind and furniture items such as a bedframe, and box spring. The agent stated that the tenant also failed to clean the rental unit to a reasonable standard. The landlord seeks to recover \$1,100.00, which was for 21 hours of labour for garbage removal and \$400.00 for cleaning for a total amount of \$1,500.00. Filed in evidence is a receipt. Filed in evidence are photographs.

The tenant testified that they did leave items in the rental unit as shown. The tenant stated that the rental unit was left reasonable clean. The tenant stated that the invoice the landlord's agent provided is not for their unit and is related to another property they own.

The tenant testified that at the most they believe the cost of removal for the items left behind would not exceed \$100.00. Filed in evidence are photographs of the entire rental unit. These photographs also show the items left behind.

The tenant's application

The tenant claims as follows:

a.	Loss of items	\$ 1,206.05
b.	Reduction in value of tenancy 10% for 31 months	\$10,230.00
c.	Return of illegal rent increase \$350.00 for 19 months	\$ 6,650.00
d.	Canada post and copy fees	\$ 60.00
e.	Filing fee	\$ 100.00

Total claimed	\$18,246.05
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Loss of items

At the outset of the tenant indicated that they are reducing their monetary claim for loss of items to the amount of \$525.00.

The tenant testified that at the end of the tenancy they left behind the following items:

A barbeque that was five years old and seek compensation in the amount of \$250.00; a gas hose and regulator that was three years old and seek compensation in the amount of \$75.00; a chair, ottoman that was 7 years old and seek compensation in the amount of \$50.00; and 16 set of Christmas lights that were still on the house when they left, and seek compensation in the amount of \$150.00.

The landlord's agent testified that the tenant told them that they were too tired and all items left behind were garbage. The agent stated that they did tell the tenant that when they took the Christmas lights down that if they were salvable they would return them; however, many of the strings were damage when they were remove as a result they disposed of them.

The tenant responded that they did tell the landlord's agent that they were too tired to remove the balance of the items; however, landlord had a duty to return the items left behind.

Reduction in value of tenancy 10% for 31 months

The tenant indicated that they are reducing their reduction in value of the tenancy. The tenant indicated that they would let me, the Arbitrator, determine the loss of value; however, the tenant was informed that it is not my roll to make their claim for them.

Further, I am not satisfied that the tenant provided the full particulars in their application as required by section 59 of the Act. As there was no detailed calculation as to how the tenant arrived at the amount claimed. Simply indicating 10% reduction for their entire tenancy is not sufficient details. Nor was there sufficient detail of the particulars, such as date, time, or the actual incident they were claiming. Proving some examples in the details of dispute in not sufficient.

A party who claims compensation must provide the full particulars, this includes a detail calculation. The principles of natural justice require that a person be informed and given particulars of the claim against them. I find it would be unfair and prejudicial to the landlord to allow this portion of the claim to proceed. Therefore, I dismiss this portion of the tenant's claim without leave to reapply.

Return of illegal rent increase

The tenant testified that the landlord gave them an illegal rent increase of \$350.00, in December 2015. The tenant stated that they were unaware that there was a limit that the landlord could request for rent. The tenant stated that they were threatened that if they did not pay the rent increase they would be evicted. Filed in evidence are emails and text messages.

The landlord testified that the original tenancy agreement did not include a garage. The landlord stated that this was not a rent increase. This was the rent for the additional space as the tenant took over the garage for their use. The landlord stated that the tenant agreed to this amount and has been paying this amount for 19 months. The landlord stated that this only became an issue at the end of the tenancy and that they had the right to rely upon the action of the tenant.

The landlord testified that the tenant's email support that they were earlier discussion that the tenant was considering renting the carriage house, which is the garage. The landlord stated that the utility history show that the utilities for the garage increase significantly after the rental arrangement was made, which the tenant agreed they were responsible for; this is also in the email. Filed in evidence is an electricity history report for the subject building, I note refers this as a shop.

The tenant responded they have always had the use of the garage. Filed in evidence are letters of support.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, each party has the burden of proof to prove their respective claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Landlord's application

Unpaid rent for May 2017

Section 26 of the Residential Tenancy Act states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

At the outset of the hearing the tenant acknowledged that they did not pay rent for May 2017. I find the tenant breached the Act and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$3,650.00**.

Loss of rent for the tenant overholding

I accept the tenant overheld the premises for 11 days, as the tenancy legally ended on May 30, 2017, as stated in the 10 Day Notice to End Tenancy for Unpaid rent.

Although a landlord is entitled to compensation when a tenant overholds the premises, I am satisfied that the landlord's agent waived this amount, as this is supported by emails. Therefore, I dismiss this portion of the landlord's claim.

Unpaid utilities

I am not satisfied that there was a balance due from a cancelled cheque as the email for the electricity company reads in part,

"I have included a copy of the cancelled cheque information I have received from our Payments Department. ... She paid the same amount by credit card shortly after and discussed why it was returned by the bank with us."

[Reproduced as written]

The above email is dated after June 14, 2017, which is after the invoice dated February 6, 2017. Therefore, I dismiss this portion of the landlord's claim.

I accept the evidence of the tenant over the landlord that the balance owed for utilities is the total amount of \$1,001.71. This is support by invoices. Therefore, I find the landlord is entitled to recover the amount of **\$1,001.71**.

Cleaning

Section 37 of the Residential Tenancy Act states:

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find that the tenant breached the Act, when they failed to remove furniture and garbage from the rental unit; however, I find the amount claimed for 21 hours of labour, unreasonable and not supported by the evidence.

I further question the validity of the invoice that the landlord's agent submitted, as it appears it could be related to a different property.

Since I found the tenant breached the Act, and this caused losses to the landlord, I grant the landlord a nominal amount for removing the furniture and garbage left behind in the amount of **\$100.00**.

Further, I am not satisfied the tenant failed to leave the rental unit reasonably clean. The tenant's photographs support that it was left reasonably clean. I find the landlord has failed to prove a violation of the Act. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$4,851.17** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of 1,650.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$3,201.71**.

Tenant's application

Loss of items

Under the Residential Tenancy Regulations, 25(2) a landlord may dispose of the property if the landlord reasonably believes that the property has a total market value of less than \$500.00.

The market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts, such as age and condition.

I accept the landlord's version over the tenant's version that they disposed of these items as the tenant told them they were too tired and that this was garbage, as it has the ring of truth.

Further, the evidence of the tenant was the value of the property was \$525.00, after they apply what they considered depreciated value. However the tenant provided no documentary evidence to support the market value.

I find it more likely than not that the items left behind had less than \$500.00 market value, if any at all, as a five year old barbeque likely had no market value. I find the tenant has failed to prove a violation of the Act by the landlord. Therefore, I dismiss this portion of the tenant's claim.

Return of illegal rent increase

In this case, I accept the landlord's evidence over the tenant's evidence that the tenancy changed in December 2015, adding the garage/carriage house to the existing tenancy agreement for an additional amount of \$350.00 per month.

I am satisfied this was not in the original tenancy agreement, while other smaller items were missed such as window covering, that was more likely than not because the window covers had not yet been installed. I find it would be highly unlikely and unreasonable to exclude an entire separate building.

I am satisfied by the email sent by the tenant on April 14, 2015, to the landlord that the garage/carriage house was under negotiation for rent. The email reads in part,

“As far as the carriage home goes what are you thinking? I may possibly consider it for the \$300 or \$400 that we were talking about but would not pay any more than that, as I do not really need it. Plus I'd have to hook up the electricity and pay for that so my cost would increase and I'd be restricted to the city bylaws....”

[Reproduced as written]

I am satisfied that the tenant had the electricity hooked up some time after December 21, 2015, which corresponded with this additional amount for renting the garage. I do not accept the tenant's version that it was only because they did not realize that the garage electricity could be turned on, and that this is merely a coincident. The premise billing history shows the garage was using electricity prior to their tenancy commencing, as it shows in February 2014, 3059 kWh was used. I find it more likely than not the tenant is simply fabricating their evidence.

I also note in the tenant's evidence at age 82 reads in part,

“I have had my lawyer review the lease and it is unacceptable as written. The lease as written contains a vacancy clause that is away for the landlord to avoid paying the compensation this is required under the current lease... My lawyer has explained that the verbal agreement I have with the landlord... to extend the lease for six months.... The landlord ... cannot alter or change any terms of our agreement without my consent”

[Reproduced as written]

The lease filed in the landlord's evidence at page 19, support that the landlord was adding a vacancy clause. However, it further leads me to believe that there was prior consent to change the terms of the tenancy agreement. As the tenant did not question the rent, or the fact the garage was added.

While the letters in support of the tenant indicated the tenant had the use garage at the start of the tenancy. The writers of the letters had no direct knowledge of the contact that was made between the landlord and tenant, such as the tenancy agreement which did not include the garage. This simply could have been a temporary arrange while work was being completed in the rental unit.

I have also have reviewed the email, text message submitted as evidence by the tenant. I find there were no threats made for eviction that if the tenant did not pay the additional rent for the garage that they would be evicted. I also have reviewed the voice recording, these were not made in 2015, and it appears the tenant is attempting to convince the landlord of their position of an illegal rent increase.

Based on the above, I find the tenant has not met the burden of proof. Therefore, I dismiss the portion of the tenant's claim.

As the tenant was not successful with any portion of their claim, I decline to award the tenant their filing fee.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

The tenant's application is dismissed.

Dated: November 8, 2017