



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. For a monetary order for loss or rent and other money owed;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. For a monetary order for damages and other money owed;
2. Return all or part of the security deposit; and
3. To recover the cost of filing the application.

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.

Preliminary and procedural matters

Tenant's application

In this matter, I decline to hear the tenant's application. The tenant's application does not comply with section 59 of the Act, as they are required to provide the full particulars of their claim. This would include the detail calculations. The tenant's application shows that they seek \$10,850.00 in compensation; however, they have submitted two

separate monetary worksheets. Neither of these matches the amount claimed in their application and they are significantly different. The tenant did not amend their application. Therefore, I dismiss the tenant's application with leave to reapply.

Evidence issues

The tenant submits they were not served with the landlord's evidence in person or by registered mail. The tenant stated they were found posted. The tenant stated that the documents were also late as the landlord was required to provide them at least 14 days before the hearing

The landlords submits the documents were posted in a conspicuous place and they were received by the tenant. The landlord stated that they filed their evidence on time as it was related to the tenant's application and it only had to be given 7 days prior to the hearing.

The landlord submits they received a USB from the tenant; however, they did not attempt to view the USB as they were worried about viruses.

I find the tenant was served with the landlord's evidence. There is no requirement for evidence to be served in person or by registered mail. Section 88 of the Act allows for documents to be posted in a conspicuous place, which they were because they were received.

I find the landlord was served with the tenant's evidence. The Act allows for evidence to be submitted in this method. I find it unreasonable that if a virus was a concern to the landlord that they would not contact the tenant or have an anti-virus program installed in their computer.

However, having found the above, I find most of the evidence is not relevant as it is related and filed on the tenant's application; however, I will may refer to some of the relevant evidence that I was directed to at the hearing.

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.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to monetary compensation for damages?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on March 1, 2020 and was to expire on February 28, 2021. Rent in the amount of \$2,000.00 was payable on the first of each month. The tenant paid a security deposit of \$1,000.00. The tenancy ended on May 31, 2020.

The landlords claim as follows:

a.	Unpaid rent for May 2020	\$2,000.00
b.	Loss of rent for June and half of July	\$3,000.00
c.	Tenant's portion of utilities	\$ 85.07
d.	Realtor commission for tenant replacement	\$1,050.00
e.	Filing fee	\$ 100.00
	Total claimed	\$6,235.07

Unpaid rent for May 2020

The landlord testified that the tenant was living in the rental unit for the month of May 2020 and did not pay the rent. The landlord seek to recover unpaid rent in the amount of \$2,000.00.

The tenant testified that they did not have the money to pay rent for May 2020, as they needed to use that money to vacate the premise at the end of May 2020. The tenant stated that there was an agreement that the rent would be paid at the end of the month with their security deposit.

Loss of rent for June and half of July

The landlord testified that the tenant breached the fixed term agreement when they gave notice on April 28, 2020, to end their tenancy on May 31, 2020. The landlord stated that they immediately advertised the rental unit at the same rent the tenant was paying and they were limited to the number of showing, due to the tenant's health concerns and the state of emergency that was issued. The landlord stated that they

had some showings; however, they were not able to find a new renter until July 15, 2020. The landlord seeks to recover loss of rent in the amount of \$3,000.00.

The landlord testified that a term of the tenancy agreement clause 14 in the addendum stated that the tenant is responsible for the cost of the real estate agent fee which is charge for finding a new tenant. Filed in evidence is a copy of the tenancy agreement and the addendum.

The tenant testified that they gave notice to end the fixed term tenancy on the basis that the landlord breached a material term of the tenancy agreement. Specifically, section 28 of the Act due to unreasonable and ongoing noise and section 32 of the Act due to health and safety and housing standards required by law.

The tenant stated that the landlord was notified on March 9, 2020, of unreasonable and ongoing noise of constant banging. The tenant stated that the landlord did not fix the problem. The tenant stated that they suffer from prior medical issues and the noise does not allow them to sleep affected their health. Filed in evidence is a video recording of noise. Filed in evidence is a medical document dated August 13, 2019.

The tenant testified that on April 3, 2020, they informed the landlord that they had a rat problem in the rental unit. The tenant stated that on April 7, 2020 the pest control company attended and confirmed they had rats in the rental unit. The tenant stated that they had not heard from the landlord and they contact the pest control company who informed them that the landlord was notified; however, they have not heard back from the landlord.

The tenant testified that on April 20, 2020, they gave the landlord notice by email that if the above issues were not resolved in seven days, by April 27, 2020 they would be ending their tenancy. Filed in evidence is an email dated April 20, 2020.

The tenant testified that on April 28, 2020, they gave notice to end the tenancy as the issues were not resolved. Filed in evidence is a copy of the notice to end the tenancy.

The tenant testified that the landlord is not entitled to any damages for loss of rent as the landlord's had breached the Act.

The tenant testified that the landlord did not mitigate the loss of rent, as they posted the rent for the rental unit at the amount of \$2,200.00, not \$2,000.00 which was the amount

in their tenancy agreement. The tenant stated that this was not lowered until the end of May or beginning of July.

The landlord argued that the tenant did not have the right to end the tenancy as there were no breaches of a material term of the tenancy agreement.

The landlord argued that the subject building is an old character building and is 108 years old. The landlord stated the noise the tenant is hearing is simply the expansion of the pipes which is a normal for a building of this age. The landlord argued that the video the tenant provided was taken in the laundry room and recorded against the pipes and was not within the rental unit.

The landlord argued that once they were notified that there was a rat in the tenant's unit, and they contact the pest control company. The landlord stated that they have never had any report of a rats in the units prior to this tenancy. The landlord stated that they did have the pest control company contact the tenant on April 6, 2020, to arrange a time to attend the premise. The landlord stated that they had the pest control company out several times over a month, they laid traps and baits; however, what was very odd is that the rats never ate any bait and there were no rats trapped. The landlord stated that the tenant was also leaving food out which was an attractant.

The landlord stated that the pest control company found no evidence of rats in the rental unit, except for what the tenant presented which was suspicious. The landlord stated that on April 28, 2020, the pest control company called the tenant to arrange and inspection and the tenant informed the pest control company that they were busy and that it was no longer an issue as they were moving out. The landlord stated that this was still an issue for them, and they had the pest control company attend an they found no rats. Further to that there have been no reports of rats in the rental unit since the tenant has vacated. Filed in evidence are emails and pet control report from the pest control company.

Tenant's portion of utilities

The landlord testified that they seek to recover the tenant's portion of utilites in the amount of \$85.07.

Realtor commission for tenant replacement

The landlord testified that clause 14 of the tenancy agreements states that if the tenant terminates the lease before the expiry date, the tenant will be liable for all cost including but not limited to agent's commission for rental. The landlord stated that they had to pay the amount of \$1,050.00 which was half the monthly rent, plus GST. The landlord seeks to recover the cost of realtor commission in the amount of \$1,050.00. filed in evidence is a copy of the agreement.

The tenant testified they are not responsible for the fee, as they ended the tenancy based on a breach of a material term.

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, the landlord has the burden of proof to prove their claim.

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-comply 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.

Unpaid rent for May 2020

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

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.*

...

In this case, rent is due on the 1st of each month. The tenant did not pay rent for May 2020, when due and owing. The tenant withheld the rent because they would have moving costs. However, the tenant had no authority under the Act to withhold the rent simply because they felt entitled to do so. I find the tenant breached the Act, when they failed to pay rent, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent for May 2020, in the amount of **\$2,000.00**.

Loss of rent and cost of real estate fee

The first thing I must considered is whether the tenant had the right to end the tenancy for a breach of a material term of the tenancy agreement pursuant to section 28 and 32 of the Act.

I accept the property is a character home that is approximately 108 years old. I accept that the pipes in the premises make noise when they expand, this is not uncommon for a building of this age and is simply a character of this structure. This is normal noise considering the age and character of the premise. I find the tenant has failed to prove an unreasonable disturbance, as an example of such a disturbance would be a person purposely blaring their music loud and the landlords does not take reasonable efforts to stop the noise from occurring, which is not the case before me.

I accept that the tenant may have had an issue with a rat, which the landlord was notified on April 3, 2020, and a pest control person attended on April 7, 2020 and there was a short delay in treatment as this did not commence until May 3, 2020.

In this case the tenant served the landlord by email on April 20, 2020 that the problem must be rectified within 7 days, (April 27, 2020) or they would end the tenancy. However, I find email is not considered received until 3 days later, under the Ministerial Order, which would be April 23, 2020. This would give the landlord 4 days to rectify the problem, I find 4 days or even 7 days was unreasonable.

This is a pest control issue not a repair and there are many factors that may be the cause of rats. Such as in this case the building is 108 years old and it would be reasonable that there may be more access points. Furthermore, with food left out by the tenant, such as fruit which is shown half eaten in the photograph is an attractant.

Further, I find it unreasonable for the tenant not to give access on April 28, 2020, when they informed the pest control company that they were busy and that it was no longer a

concern as they had ended their tenancy. I find this was unreasonable, if this truly was a major concern for their health, even if they were leaving.

However, on May 3, 2020, the pest control company attended, and traps and bait were installed. However, even after multiple follow ups there were no signs of any rats or mice eating the bait or been trapped. This leads me to believe that this was not a major infestation. This appears to have been an isolated issue, to only the tenant's rental unit. The building had no other occupants reporting a rat problem and no reports have occurred since the tenant vacated.

I am satisfied that the landlord was taking reasonable and appropriate steps to rectify the problem, if one existed. Therefore, I find the tenant did not have the right to end the tenancy.

Based on the above, I find the tenant breached the Act, when they gave notice to end their tenancy earlier than the Act allowed.

The evidence of the landlord was that they are seeking loss of rent for June and half of July 2020. I am not satisfied that the landlord mitigated the loss. The tenant present an advertisement which show the rental unit was advertised at a higher rent. The landlord did not provide any documentary evidence to support their version that it was advertised at the same rent. I find the landlord has not met the burden of proof that they did what was reasonable to mitigate the loss due to insufficient evidence. Therefore, I dismiss this portion of the landlord's claim.

Tenant's portion of utilities

The landlord did not provide sufficient testimony on this issue. The landlord provided no documentary evidence to support their claim. Therefore, I dismiss this portion of the landlord's claim.

Realtor commission for tenant replacement

As I am satisfied that the tenant breached the fixed term agreement and the tenant sign in their tenancy agreement that they would be responsible for the realtor commission if they did not fulfill their obligation under the Act. Therefore, I find the landlord is entitled to recover the fee that was associated with re-renting the premise in the amount of **\$1,050.00.**

I find that the landlord has established a total monetary claim of **\$3,150.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,000.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$2,150.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

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.

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: September 11, 2020

Residential Tenancy Branch