Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, RPP, MNSD

Introduction

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

- authorization to obtain a return of all his security and pet damage deposits pursuant to section 38;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $2,246 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant called one witness ("**BP**").

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution form, amendments, and supporting evidence package. The landlord testified, and the tenant confirmed, that the landlord served the tenant with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue – Claim for Return of Tenant's Property

During the hearing, the tenant stated that he no longer wanted the property which he left at the rental unit returned to him. He stated that this portion of his application could be dismissed.

The landlord testified that he had already returned the property to the tenant.

I make no findings as to whether this property was returned. Per the tenant's request, I dismiss this portion of the tenant's application, without leave to reapply.

Issues to be Decided

Is the tenant entitled to:

1) the return of his security and pet damage deposits ($300);
2) a monetary order of $2,246; and
3) recover his filing fee ($100)?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, month-to-month tenancy agreement starting February 15, 2019. Monthly rent is $900 and is payable on the first of each month. Monthly rent includes laundry, heat, and furniture. On April 1, 2019, the tenant paid the landlord a security deposit of $150 and a pet damage deposit of $150 (collectively, the "**Deposits**"), which the landlord continues to hold in trust for the tenant.

The rental unit is a basement suite of a single detached home. The landlord resides in the upper unit.

The tenancy ended on June 16, 2020, when the tenant moved out of the rental unit in accordance with an order of possession issued June 2, 2020 by another arbitrator following an application for an early end to the tenancy.

The tenant seeks the return of the Deposits, as well as a monetary order for $2,246, representing the following:

5% retroactive rent reduction for loss of use of laundry (April 1, 2020 to June 16, 2020)	$114.00
40% retroactive rent reduction for loss of heat from furnace (April 1, 2020 to June 16, 2020)	$912.00
Return of balance of June 2020 rent	$420.00
Retroactive rent reduction of $50/month for loss of use of furniture (February 15, 2019 to June 16, 2020)	$800.00
Total	**$2,246.00**

I will address each of these in turn.

1. Retroactive Rent Reduction – Laundry

The tenancy agreement includes a provision that "free laundry" is included in the monthly rent. The tenant testified, and the landlord agreed, that the landlord prevented the tenant from using the shared laundry room on March 30, 2020. He did so by placing

a padlock on the electrical panel located in the laundry room and disengaging the fuse to the washer and dryer when he was not using them.

The landlord testified that he did this due to COVID-19 concerns. He testified that he did not feel comfortable sharing the laundry room with the tenant during the pandemic and testified that the tenant did not self-isolate for two weeks after returning from a vacation. The tenant did not dispute this.

The tenant claims a 5% retroactive reduction to his monthly rent, from April 1 to June 16, 2020, in compensation for the loss of use of the laundry.

The landlord opposes any reduction as argued restricting the tenant's access to the laundry room was necessary to maintain his own safety.

2. Retroactive Rent Reduction – Loss of Heat

The tenancy agreement includes a provision that "heat" is included in the rent. The tenant testified that the landlord cut off the houses' central heating to the rental unit on March 30, 2020. He testified that, prior to this date, he was able to control the central heating system via a switch located in the furnace room and a thermostat in the rental unit.

The switch allowed control of the central heating system to be toggled between the thermostats in the upper and rental units. The tenant testified that the landlord installed a padlock on the furnace room door and shut the central heat off to the rental unit. He testified that the only source of heat in the rental unit was an electric fireplace that was insufficient to warm the entire unit.

The tenant called BP to confirmed this. She testified that the she was a friend of the tenant and was at the rental unit approximately once a week. She testified that the tenant could not control the temperature by using the thermostat in the rental unit and that the rental unit had "no heat" from April 1 to June 16, 2020.

The landlord agreed that he installed a padlock on the furnace room door, and toggled the switch located therein to allow the central heating system to be controlled by the upper unit thermostat only. However, he denied that this cut the heat off from the rental unit. He testified that the rental unit continued to be heated by the central heating system while he controlled it from the upper unit.

The landlord submitted a copy of his natural gas bill for June 2020, which shows a slightly higher usage in June 2020 from June 2019. He argued that this shows he did not cut heating off to the rental unit, as, if he did, the natural gas bill would be have been lower in June 2020 than it was in June 2019 (when the central heat could be controlled by the rental unit).

The landlord argued that the central heating system controlled by him upstairs, coupled with the electric fireplace, was more than sufficient to keep the rental unit at an adequate temperature.

No documentary evidence regarding the specifications of the electric fireplace were entered into evidence, so I am uncertain as to its heating capacity. The tenant did not submit any documentary evidence regarding specific temperature of the rental unit (such a log or journal entry) or copies of text messages or other communications with the landlord notifying him that the temperature of the rental unit was unacceptable to him.

The tenant claims a 40% retroactive reduction to his monthly rent, from April 1 to June 16, 2020, in compensation for the loss of heating to the rental unit.

The landlord opposes any rent reduction, as he argued that the rental unit remained heated throughout the time the tenant did not have access to the toggle switch in the furnace room.

3. Retroactive Rent Reduction – Furniture

The parties agree that:

1) at the start of the tenancy:
    a. the rental unit was furnished with the furniture of the prior occupant of the rental unit;
    b. the tenant was aware that the prior occupant would be returning at some point shortly after the start of the tenancy to collect his furniture; and
    c. the tenant moved some of his furniture into the rental unit and pushed the prior occupant's furniture to an unused part of the rental unit.
2) The rental unit was advertised as furnished and the tenancy agreement indicated that furnishings were included in the rent.
3) On May 1, 2019, the prior occupant of the rental unit retrieved his furniture.

The landlord testified that he offered to bring in new furniture to the rental unit to replace the furniture that the prior occupant had removed. He testified that the tenant stated he did need this to be done, as he had his own furniture.

The tenant testified that, after the prior occupant removed the furniture, the landlord only offered to provide the tenant with a new couch. He stated he brought his own furniture into the rental unit because he did not want to use someone else's' furniture. He testified that his furniture was in storage prior to this as he was in the process of separating from his wife, and that he had to "pay" his wife for the furniture out of his share of the family property being divided as part of the separation. He did not testify as to the value of the furniture.

The tenant argued that the monthly rent of the rental unit ought to be reduced by $50 per month for the entire duration of the tenancy to compensate him for the fact that the rental unit was not furnished as advertised.

As stated above, the landlord argued that he offered to furnish the rental unit fully when the prior occupant removed his furniture, and the tenant refused. As such, he argued that the tenant should not be granted any rent reduction.

4. June 2020 Rent

As stated above, the tenant vacated the rental unit on June 16, 2020 pursuant to an order of possession issued June 2, 2020. The tenant paid June's rent on June 1, 2020. He seeks the return of the portion of June's rent after he vacated the rental unit. He argued that, as he was not living in the rental unit during this time, he should not have to pay for it.

The landlord agreed that the tenant vacated the rental unit on June 16, 2020 but argued that the tenant is not entitled to the return of any portion of June's rent.

The landlord testified that he believed the tenant has improperly withheld rent March 2020. He testified that prior to the COVID-19 pandemic, he served the tenant with a notice to end tenancy pursuant to section 49 of the Act (landlord's use of property), and consequently the tenant was entitled to an amount equal to one month's rent pursuant to section 51(1) of the Act.

However, he argued that as the tenancy was not ended by the notice to end tenancy, but rather by an order of an arbitrator following an application for an early end to the tenancy, the tenant is not entitled to a free month's rent. He believes that the balance of June 2020 rent should be credited to the amount owed for March 2020 rent.

The landlord has not made any application to the RTB to recover March 2020 rent.

5. The Deposits

The parties agree that the landlord has not returned the Deposits to the tenant. The tenant testified that he provided his forwarding address (a PO Box, listed on the cover of this decision) to landlord by way of an amendment to this application changing his address for service. This amendment was served on landlord on or about July 22, 2020.

The tenant completed the second section of the amendment form titled "Change of Service Address", indicated that his "address for service has changed" and provided a PO Box number. He also wrote "I am not comfortable giving my street address, but I can be reached at [redacted phone number] for service in person".

The tenant asserted that the service of this amendment constituted the service of his forwarding address on the landlord.

The landlord testified that he did not return the Deposits because, as stated above, he believes he is entitled to recover March 2020 rent. The landlord has not made any application to the RTB to retain the Deposits.

Analysis

1. June 2020 Rent

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement. The tenancy agreement requires that rent be paid on the first of the month. On June 1, 2020, the tenancy agreement remained in place. The tenancy ended on June 16, 2020, when the tenant moved out, per section 44(1)(d) of the Act. As such, rent of $900 was due and owing on June 1, 2020.

Sections 65 and 67 of the Act grant an arbitrator the authority to issue monetary orders to compensate a party for damage or loss resulting from a party not complying with the Act.

In this case, the landlord has not breached the Act with regards to June 2020 Rent. I am not aware of any section of the Act that stands for the proposition that a landlord must return a pro-rated amount of rent if a tenancy ends mid-way through a month. When the landlord collected the rent on June 1, 2020, he did so in accordance with the Act.

As such, there is no basis in the Act to allow me to order the return of a portion of June 2020 rent. I dismiss this portion of the tenant's application. I note that the consequence of this dismissal is that that any retroactive rent reduction awarded to the tenant will be calculated using the entire month on June 2020, and not just the portion of the month he occupied the rental unit.

2. Rent Reduction

Section 27 of the Act sets out the landlord's obligations regarding the provision and termination of services or facilities:

> **Terminating or restricting services or facilities**
> **27**(1) A landlord must not terminate or restrict a service or facility if
> (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
> (b) providing the service or facility is a material term of the tenancy agreement.
> (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

> (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
> (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Section 1 of the Act defines “service or facility”:

> "service or facility" includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:
> (a) appliances and furnishings;
> […]
> (f) laundry facilities;
> […]
> (l) heating facilities or services;

This definition captures all three of the bases upon which the tenant claims retroactive rent reductions (laundry, heat, and furnishings). It is not necessary for me to determine whether these services or facilities are “essential” or if their provision are “material terms” of the tenancy agreement, as the remedy for either is the same: monetary compensation.
Policy Guideline 22 sets out how a tenant is to be compensated the in the event a service or facility is terminated in breach of section 27 of the Act:

> Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.

I must also note that, per Rule of Procedure 6.6, the tenant bears the onus prove the allegations made are more likely than not to be true. It states:

> **6.6 The standard of proof and onus of proof**
> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

a. Laundry

It is common ground that the landlord prevented the tenant from using the laundry services as of April 1, 2020. The provision of laundry is included in the tenancy agreement. The landlord did not discount the tenant's rent by any amount after he terminated the tenant's use of the laundry facilities. Accordingly, he breached section 27 of the Act (either section 27(1), if laundry is essential or material, or 27(2) if it is not). Health concerns are not a legitimate reason for a landlord to terminate a service or facility without a corresponding reduction in rent.

Per Policy Guideline 22, I find that a retroactive rent reduction is appropriate to compensate the tenant for the loss of use of the laundry facilities. The landlord made no submissions as to the amount of rent reduction sought by the tenant (5%). I find that this amount is reasonable.

Accordingly, I order that the landlord pay the tenant $135, representing the return of 5% of the monthly rent collected for April, May, and June 2020.

b. Loss of Heat

Heat is included in the tenancy agreement. The tenancy agreement does not specify the delivery mechanism for the heat. It is common ground that the landlord restricted the tenant's access to the furnace room, which prevented the tenant from access the switch which allowed him to toggle the control of the central heating system from the thermostat in the rental unit. It is also common ground that the rental unit has an electric fireplace that provides at least some heat in the rental unit.

The tenant and BP both testified that the rental unit had "no heat" from April 1 to June 16, 2020. This is inaccurate. On the tenant's own evidence, the rental unit had the electric fireplace as a source of heat. He testified it was inadequate. The landlord disagreed and testified it was sufficient to heat the entire rental unit. I have no documentary evidence which would assist me in determining the sufficiency of the fireplace to heat the rental unit. As stated above, as this is the tenant's application, he bears the onus to prove that the fireplace was insufficient to heat the rental unit. He has not done this.

In any event, even if it were the case that the fireplace was insufficient to heat the entire rental unit, I would not find that the landlord breached the tenancy agreement by terminated heat to the rental unit. I accept the landlord's testimony that the effect of restricting the tenant's access to the furnace room was not to turn off of the heat to the rental unit, but rather it was to remove the tenant's ability to control the central heating system. I find that after April 1, 2020, the landlord had exclusive control of the central heating system for the entire house, and that his continued operation of the heating system in the months following would have necessarily caused the central heating system to heat the rental unit.

I have no documentary evidence (such as logs, text messages, or emails) before me as to the temperature of the rental unit in April, May or June 2020. I have no evidence to suggest that the tenant was running the electric fireplace when BP visited the rental unit. As such, I assign BP's evidence that there was "no heat" little persuasive weight.

I am satisfied that the electric fireplace and the central heating system, working in tandem, provided adequate heat to the rental unit in April, May, and June 2020.

As such, I do not find that the landlord terminated or restricted the heating service guaranteed to the tenant by the tenancy agreement. The tenant is therefore not entitled to any rent reduction for this portion of his application.

c. Furniture

It is common ground that the rental unit was to be provided as "furnished" pursuant to the tenancy agreement and that, at the start of the tenancy it was furnished. The parties also agree that the shortly after the tenancy started, despite the fact the rental unit was furnished, the tenant brought in his own furniture to use in place of the furniture provided by the landlord. They also agreed that the prior occupant of the rental unit removed his furniture from the rental unit on May 1, 2019.

The parties disagree as to what happened next. The landlord testified he offered to replace all the furniture removed by the prior occupant and that the tenant declined. The tenant testified that the landlord only offered to replace the couch.

I find the landlord's version of events more likely to be true than the tenant's. I have no documentary evidence before me as to any efforts made by the tenant to have any of the non-couch furniture replaced by the landlord. I would have expected him to contact the landlord to try to get replacements for the other furnished he lacked at some point during the tenancy. I have no evidence to suggest this occurred. Additionally, there is no evidence that the tenant took any steps with the Residential Tenancy Branch regarding this alleged breach until over one year after the furniture was removed.

I infer from this that the fact the rental unit was furnished and that the furniture was later removed was not important to the tenant during the tenancy, as he had furniture of his own that he was content to use. As such, it would make sense that he would decline the landlord's offer to replace the removed furniture.

Accordingly, I find that the tenant failed to act reasonably to minimize the damage or loss he alleges to have suffered as a result of the removal of the furniture, as he is required to do by section 7(2) of the Act. I find that, had the tenant wanted, he could have had replacements for all the furniture that was removed from the rental unit. He declined. As such, he is not entitled to a retroactive rent reduction. I dismiss this portion of the tenant's application.

3. The Deposits

Section 38(1) of the Act states:

> **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.

Based on the testimony of the parties, I find that the tenancy ended on June 16, 2020. The landlord's obligation to return the Deposits does not arise until he is served with the tenant's forwarding address.

I accept that on or about July 22, 2020, the tenant served the landlord with an amendment to this application which indicated a change in his address for service. However, there is nothing on the amendment to indicate that the new address for service is to be considered his forwarding address.

I find that, in order for a landlord to be considered served with a tenant's forwarding address, the tenant must advise the landlord that the address given to him is the tenant's forwarding address. This did not occur here. The landlord had no indication that the PO Box provided to him was the tenant's forwarding address. Indeed, the tenant's comment on the amendment that he did not feel comfortable giving the landlord his street address would give rise to a reasonable doubt that the PO Box was intended as a forwarding address.

As such, I do not find that the landlord had any obligation to return the Deposits prior to this hearing.

Based on the testimony of the tenant, I find that he is able to receive mail at the PO Box and intends that address to be his forwarding address. In light of this, I order that the tenant serve the landlord with a copy of this decision in accordance with the Act and deem that the landlord is served with the tenant's forwarding address on the date he is served with the decision.

As such, per sections 38(1) and 62 of the Act, I order that, within 15 days of being served with this decision by the tenant, the landlord either return the Deposits to the

tenant or make an application for dispute resolution claiming against the Deposits. The landlord is cautioned that, if he takes neither of these steps, section 38(6) of the Act may apply and he may be liable to pay the tenant double the amount of the Deposits.

I explicitly make no findings as to whether March 2020 rent is due and owing, as alleged by the landlord. The landlord must make an application of his own if he believes he is entitled to that amount. A simple assertion of entitlement to March 2020 rent is not sufficient to satisfy my order above.

I dismiss this portion of the tenant's application with leave to reapply in the event the landlord fails to comply with my order above.

4. Filing Fee

As the landlord has been substantial successful in this application, I decline to order that he reimburse the tenant his filing fee.

Conclusion

I order that the tenant serve the landlord with a copy of this decision and attached order as soon as reasonably possible upon receiving them from the Residential Tenancy Branch.

Pursuant to section 67 of the Act, I order that the landlord pay the tenant $135, representing the reimbursement of 5% of the rent for the months of April, May, and June 2020 as compensation for the termination of laundry facilities for those months.

Pursuant to sections 38(1) and 62, I order that, within 15 days of being served with this decision by the tenant, the landlord either return the Deposits to the tenant or make an application for dispute resolution claiming against the Deposits.

I dismiss the tenant's application for the return of the Deposits with leave to reapply on the conditions set out above.

I dismiss all other portions of the tenant's application, 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: October 23, 2020

Residential Tenancy Branch