Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, MNDL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on October 13, 2020 (the "Application"). The Landlords applied as follows:

- For compensation for monetary loss or other money owed;
- To recover unpaid rent;
- For compensation for damage to the rental unit; and
- To keep the security deposit.

The Landlord appeared at the hearing with A.G. The Tenants appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlords sought to amend the Application to add loss of rent for December and January. The Tenants opposed the amendment. I did not allow the amendment for the following reasons. I found the Landlords should have filed an Amendment prior to the hearing and served it on the Tenants so the Tenants were aware loss of rent for December and January would be addressed at the hearing. I acknowledge rule 4.2 of the Rules of Procedure (the "Rules") allows for amendments at the hearing; however, this is "in circumstances that can reasonably be anticipated". I was not satisfied the Tenants could reasonably have anticipated that the Landlords would seek loss of rent for December and January as I do not see how the Tenants could have known that the Landlords lost rent for these months.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to compensation for monetary loss or other money owed?
2. Are the Landlords entitled to recover unpaid rent?
3. Are the Landlords entitled to compensation for damage to the rental unit?
4. Are the Landlords entitled to keep the security deposit?

Background and Evidence

The Landlords sought the following compensation:

Item	Description	Amount
1	Dents on the fridge door	$200.00
2	Unpaid utilities	$1,191.70
3	October and November rent	$4,305.00
	TOTAL	**$5,696.70**

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The most recent tenancy agreement started July 01, 2020 and was for a fixed term ending June 30, 2021. Rent was $2,152.50 for July to September and then $2,208.47 per month. Rent was due on the first day of each month. The Tenants paid a $1,050.00 security deposit.

The parties agreed the tenancy ended September 30, 2020.

The parties agreed the Tenants provided a forwarding address on the Condition Inspection Report (the "CIR") on September 29, 2020.

A.G. testified that the parties did a move-in inspection and completed the CIR and that Tenant W.M. signed the CIR but in the wrong place.

Tenant W.M. testified that a move-in inspection was done and the Landlord completed the CIR. The Tenants testified that they did not sign the CIR at move-in. Tenant W.M. acknowledged that section Y of the CIR contains the Tenants signatures.

The parties agreed the CIR in evidence is accurate as it relates to a move-out inspection.

#1 Dents on the fridge door $200.00

A.G. testified as follows. The fridge was dented at the end of the tenancy as noted on the CIR. The Tenants did not agree they dented the fridge. The Landlords obtained an estimate to fix the dent which was $400.00 to $500.00. The fridge was one year old when the Tenants moved into the rental unit.

Tenant W.M. testified as follows. The fridge dent was not the Tenants fault. The previous tenant must have dented the fridge and the Landlords did not catch this.

#2 Unpaid utilities $1,191.70

A.G. testified as follows. The tenancy agreement shows the Tenants were required to pay utilities. The October 11, 2020 email in evidence shows the amount owing for utilities. The Tenants never paid the amount outlined in the email.

Tenant W.M. testified as follows. The Landlord had two businesses running at the rental unit address and the utility usage for these is included in the amount owing. The Tenants did not know the Landlord had two businesses running at the rental unit address. There are duplicate charges in the calculation of utilities. The Landlords were negligent and left their lights on all the time. The Landlords had air conditioning, but the rental unit did not.

Tenant W.M. acknowledged that the amount sought by the Landlords for utilities is correct based on the invoice amounts.

In reply, the Landlord testified that he simply has a home office and his businesses are registered to the rental unit address. The Landlord testified that people are not coming and going or using resources at the rental unit address for his businesses.

#3 October and November rent $4,305.00

A.G. testified as follows. The Tenants breached the fix term tenancy by ending the tenancy early. The Landlords tried to re-rent the unit and advertised it on multiple platforms. The Landlords only found new tenants two days before the hearing. The Landlords lost rent due to the Tenants ending the fixed term tenancy early.

Tenant W.M. testified that the tenancy was for a fixed term, but the Landlord told the Tenants they could move out with one month notice. Tenant W.M. said there is no documentary evidence showing the Landlord told the Tenants this.

Tenant W.M. testified that the Tenants provided the Landlord a breach letter on August 17, 2020 and pointed to a letter in evidence. Tenant W.M. said the Tenants disagree with owing the Landlords for loss of rent for two months given what the Tenants suffered during the tenancy.

In reply, the Landlord confirmed he received the August 17, 2020 letter in evidence. The Landlord denied he agreed to the Tenants ending the fixed term tenancy early.

The Landlords submitted the following relevant documentary evidence:

- Email correspondence between the parties including emails about utilities with bills attached
- Photos of the dent in the fridge
- An email quote to replace the fridge door
- The CIR

The Tenants submitted the following relevant documentary evidence:

- Documentation about the Landlord running businesses from the rental unit address
- Written submissions
- A typed document dated August 17, 2020 outlining the reasons the Tenants moved out of the rental unit
- Email correspondence and letters between the parties

Analysis

Security deposit

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of the parties and the CIR, I accept that the Tenants participated in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlords extinguished their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage to the rental unit and the Landlords have claimed for utilities and loss of rent.

Based on the testimony of the parties, I accept that the tenancy ended September 30, 2020.

Based on the testimony of the parties and CIR, I accept that the Tenants provided a forwarding address on the CIR on September 29, 2020.

Pursuant to section 38(1) of the *Act*, the Landlords had 15 days from the later of the end of the tenancy or the date the Landlords received the Tenants' forwarding address in writing to repay the security deposit or claim against it. The Application was filed October 13, 2020, within 15 days of the end of the tenancy and the date the Landlords received the Tenants' forwarding address in writing. I find the Landlords complied with section 38(1) of the *Act*.

Compensation

Section 7 of the *Act* states:

> 7 (1) If a…tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying…tenant must compensate the [landlord] for damage or loss that results.
>
> (2) A landlord…who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules, it is the Landlords as applicants who have the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

#1 Dents on the fridge door $200.00

Section 37 of the *Act* states:

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

The CIR shows the fridge was undamaged at the start of the tenancy. I find that the Tenants signed the CIR at move-in in section Y which specifically relates to move-in and not move-out. Further, section Y of the CIR indicates that the Tenants agreed with the CIR. Based on the CIR, I find the fridge was undamaged at the start of the tenancy.

Based on the photos in evidence, I am satisfied the fridge was dented at the end of the tenancy. The dent is also noted on the CIR.

I am satisfied the Tenants dented the fridge given I am satisfied it was not dented at the start of the tenancy and was dented at the end of the tenancy. I am satisfied the Tenants breached section 37 of the *Act* by denting the fridge.

However, I find based on the photos that the dent is very small and in a location that does not impact either the functioning or aesthetic of the fridge. I do not find it reasonable that the Landlords would replace the fridge door due to the dent given the size and location of the dent.

Policy Guideline 16 at page two states:

> An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:
>
> - "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find the Landlords have not experienced significant loss given the size and location of the dent. Therefore, I award the Landlords nominal damages of $25.00.

#2 Unpaid utilities $1,191.70

I am satisfied based on the tenancy agreement that the Tenants were required to pay 25% of BC Hydro bills, Fortis bills and internet bills during the tenancy.

I am satisfied based on the testimony of A.G. and email correspondence between the parties that the Tenants owed $1,191.70 for utilities as of October 11, 2020. I am also satisfied of this because, at the hearing, Tenant W.M. acknowledged that the amount sought by the Landlords for utilities is correct based on the invoice amounts.

In my view, the Tenants are disputing the amount of utilities owed based on other people's usage of utilities. However, the Tenants agreed to pay 25% of the utilities listed in the tenancy agreement and therefore the Tenants are required to pay 25% of those utilities. I do not accept that the Tenants can now point to reasons why they should not have to pay 25% of the utility bills such as that the Landlords left their lights on or worked from home.

The Tenants mention duplicate charges in their written submissions and mentioned this at the hearing. However, it is not clear to me from the Tenants' testimony or written materials what amounts were duplicates or where this is evident. Further, Tenant W.M.

acknowledged at the hearing that the amount sought by the Landlords is 25% of the invoice amounts. Therefore, I do not accept that there are duplicate charges.

There is no issue that the Tenants did not pay the outstanding amount for utilities as the Tenants did not state that they did. Therefore, I am satisfied the Tenants owe the Landlords $1,191.70 for utilities and I award the Landlords this amount.

#3 October and November rent $4,305.00

I am satisfied based on the written tenancy agreement that the parties entered into a fixed term tenancy ending June 30, 2021.

I do not accept that the Landlord told the Tenants they could end the fixed term tenancy early. The parties gave conflicting testimony about this. I find it unlikely that the Landlord would have had the Tenants sign a fixed term tenancy if the Landlord agreed to the Tenants moving out prior to June 30, 2021. I would expect to see such an agreement in writing. The Tenants could not point to any documentary evidence to support their testimony on this point. In the absence of documentary evidence to support the Tenants' testimony, I do not accept that the Landlord told the Tenants they could end the fixed term tenancy early.

There is no issue that the Tenants ended the fixed term tenancy prior to June 30, 2021.

Section 45 of the *Act* states:

> (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
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> > (a) is not earlier than one month after the date the landlord receives the notice,
> >
> > **(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and**
> >
> > (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
>
> (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant

> gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.
>
> (emphasis added)

Policy Guideline 8 deals with ending a tenancy for breach of a material term and states:

> To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:
>
> - that there is a problem;
> - that they believe the problem is a breach of a material term of the tenancy agreement;
> - that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
> - that if the problem is not fixed by the deadline, the party will end the tenancy.
>
> Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement2, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

During the hearing, I asked the Tenants if they complied with section 45(3) of the *Act* and Tenant W.M. pointed to the August 17, 2020 letter in evidence. I have read this letter. I do not accept that this letter is a breach letter because it does not mention that the problems outlined are breaches of a material term of the tenancy agreement and does not provide a deadline for the Landlords to address these issues. The August 17, 2020 letter is really a notice ending the tenancy, not a breach letter. Therefore, I am not satisfied the Tenants complied with section 45(3) of the *Act*.

Given the above, I find the Tenants breached the tenancy agreement and section 45(2) of the *Act* by ending the tenancy prior to June 30, 2021.

I am satisfied the Landlords lost rent given the Tenants' breach as the Landlords would have received rent from the Tenants for October and November had the Tenants not ended the fixed term tenancy early. I am satisfied based on the testimony of A.G. that the Landlords did not re-rent the unit for October and November as I did not understand the Tenants to dispute this.

The Landlords were required to mitigate their loss which includes attempting to re-rent the unit. Although I am satisfied the Landlords tried to re-rent the unit based on the testimony of A.G., which again I did not understand the Tenants to dispute, I am not satisfied as to the extent of the attempts made to re-rent the unit because the Landlords have not submitted any documentary evidence to show the attempts made. The Landlords have not submitted documentary evidence of the rental advertisements or any documentary evidence showing what steps the Landlords took to re-rent the unit when it remained empty for October, such as reducing rent or providing other rent incentives.

In the absence of further evidence, I award the Landlords one month of loss of rent only as I am not satisfied the Landlords took reasonable steps to mitigate their loss after October. I award the Landlords $2,152.50 for loss of rent for October. I note that this rent amount does not accord with the amount in the tenancy agreement; however, it is half of what the Landlords sought and therefore it is the amount they are awarded.

I acknowledge that the Tenants raised many issues about the tenancy. However, the Tenants were required to comply with section 45(3) of the *Act* if they wished to end the tenancy early for breach of a material term of the tenancy agreement. The Tenants did not do so and therefore they breached the tenancy agreement and *Act* and are responsible for the resulting loss.

Summary

In summary, the Landlords are entitled to the following:

Item	Description	Amount
1	Dents on the fridge door	$25.00
2	Unpaid utilities	$1,191.70
3	October and November rent	$2,152.50
	TOTAL	**$3,369.20**

The Landlords can keep the $1,050.00 security deposit pursuant to section 72(2) of the *Act*. The Landlords are issued a monetary order for the remaining $2,319.20 pursuant to section 67 of the *Act*.

Conclusion

The Landlords are entitled to $3,369.20. The Landlords can keep the security deposit. The Landlords are issued a monetary order for the remaining $2,319.20. This Order must be served on the Tenants. If the Tenants fail to comply with this Order, it 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 *Act*.

Dated: March 04, 2021

Residential Tenancy Branch