# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

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

Introduction

The landlord filed an Application for Dispute Resolution on April 14, 2021 seeking an order to recover monetary loss for unpaid rent, damage to the rental unit, and other money owing.

The matter proceeded by way of a hearing on October 15, 2021 pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*"). In the conference call hearing I explained the process and provided both parties the chance to ask questions. The landlord and tenant both attended the hearing.

Preliminary Matter

At the outset, the landlord confirmed they delivered their prepared evidence to the tenant via email with attachments. In a written submission dated October 3, 2021, the tenant stated they only received notice of this hearing, with the landlord's evidence, via email. They provided an image of the Notice of Dispute Resolution they received, highlighted the phrase: "Evidence cannot by submitted by email."

On my review, I see what the tenant highlighted from the Notice of Dispute Resolution were instructions to the landlord on how to communicate with the Residential Tenancy Branch. This is not an explicit instruction to the landlord that they may not utilize email to forward their evidence to the tenant, as they did here. Rather, this is telling the landlord that the Residential Tenancy Branch does *not* accept evidence submissions by email to the branch. Providing evidence to the Respondent (i.e., the tenant here) is a different matter, and is authorized by s. 43(2) of the *Residential Tenancy Regulation*.

The tenant here acknowledged receipt; therefore, I find there is no prejudice or disadvantage to them with this mode of service from the landlord.

Reciprocally, the landlord received the tenant's evidence in advance of the hearing date. Based on confirmation from either party, the hearing proceeded as scheduled.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent, compensation for damages, or other monetary loss, pursuant to s. 67 of the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement for this hearing and spoke to the terms. The parties made the agreement on July 30, 2020 for an original fixed term of one year commencing on August 1, 2020. The rent amount was $1,050 per month. The landlord received a security deposit of $525 and a pet damage deposit of $525 on July 17, 2020.

The addendum to the tenancy agreement specifies that the "tenant may keep existing pet(s). . ." They needed the landlord's permission for any kind of additional pet. The landlord presented that the tenant had "5 cats, 1 large dog, and 1 lizard." A separate Pet Agreement attached lists the tenant as already having one pet cat.

The addendum also sets out a specific clause relating to the prompt payment of rent. Stated thus: "[The landlord] will have the right to assess a penalty of $10.00 per day for any amount of rent outstanding until fully paid."

The tenancy ended on April 12, 2021. The landlord had issued a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities on April 5, 2021. Prior to this, the parties entered a separate dispute resolution process wherein the Arbitrator set the end-of-tenancy date on April 30, 2021.

The landlord specified April 12th was the date when the tenant returned the key to the rental unit. The landlord had the forwarding address of the tenant as shown in an email from the landlord in the evidence. The landlord asked the tenant to join in a unit inspection for April 13, 2021.

The tenant acknowledged they cleaned the rental unit and returned the keys to the landlord on April 12th. They did not have a move-out inspection upon leaving; rather, the landlord stated there would be a dispute resolution process to decide the matter of any amounts owing from the tenant.

Because of this move-out date, after the ordered date of April 30, the landlord claims for the amount of April rent, $1050 in its entirety. In their written submission the landlord referred to the tenancy agreement.

On their Application, the landlord calculated as “interest” the amount of $10 per day of late rent that is set out in the tenancy agreement addendum. This amount is $110 for the total of 11 days in April with rent unpaid.

The landlord also claims for compensation of water utility amounts owing, left unpaid at the end of the tenancy. When the landlord made their Application, they listed “unpaid water utilities are expected to be $245.30 in January and February, and $200 in March and April.” The landlord provided a snapshot of a water utility service account, showing the account number and balance as of April 1, 2021. This shows the balance of $245.30. The document bears the date of “April-12-21”.

On this point of utilities, in the hearing the tenant responded that they planned to pay this on their own with the city. They informed the landlord of this via email on April 14, as shown in their evidence. They received a bill from the city on May 1st, for $463; however, the landlord already paid this amount, on May 21st. This was prior to the tenant going to pay the bill on May 27th or 28th, by their recollection.

The landlord also claims damaged window blinds, for the cost of $120. This was discovered when they performed their own inspection of the rental unit. In the hearing, the tenant stated they authorized this amount from the security deposit. The tenant provided an email dated April 12 wherein they calculated what they felt the landlord owed to them. This shows their own deduction of $120 for blinds.

The landlord also claims compensation for the cost of bedbug removal, and preparation for those treatments. This was two treatments. The landlord attributed the bedbugs to the extra number of pets in the tenant’s possession, more than what the agreement allowed. This was after the previous tenant moved out, and the landlord had checked the unit prior to this tenancy.

The tenant described the prior dispute resolution wherein the Arbitrator described this as a problem situation. Their complaint started on December 4, 2020, and the landlord visited on December 10th, and then told the tenant to prepare for December 16th. The tenant added that bedbugs were not a problem at their previous abode; however, here "they just had them." This rental unit is one of four in the fourplex town house.

The landlord paid for supplies needed for the treatment, particularly materials for bedding and totes; these receipts appear in their evidence. This claimed total is $469.79. The pest control specialist first visited on January 22nd, and then had a follow-up visit on February 5th. The invoice from the pest control specialist is dated January 22 and shows the paid amount of $1,260.

The tenant claimed they would reimburse the landlord for the preparation materials needed, for the bedding and totes. As stated in the hearing: "I'm not a thief and would reimburse him." They provided emails of the communication specific to this topic. These show the specific instructions on how to prepare for the upcoming treatments. There was an issue with the tenant committing to purchasing special bags for wrapping furniture items. An email dated January 14 has the landlord confirming with the tenant that they had dropped off the needed materials to the rental unit for the tenant to prepare. The landlord specified that the tenant could simply clean and return the totes when the whole process was finished.

Analysis

From the testimony of the parties, I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rental amount and the paid security deposit.

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

I accept the evidence before me that the tenant failed to pay the full amount of rent from April 2021. I accept the landlord's evidence – unchallenged specifically by the tenant – that the end-of-tenancy date was set at April 30. There was no communication from tenant to landlord advising clearly that they were moving out earlier than expected. I find any ruling from an Arbitrator (not in the evidence) that set the finish date does not stand as authority for deduction of any portion of the rent. I find the tenant is required to pay the April rent; I so award this amount to the landlord, $1,050.

The *Act* s. 5 states plainly that "Landlords and tenants may not avoid or contract out of this Act or the regulations." Further: "Any attempt to avoid or contract out of this Act or the regulations is of no effect." The *Residential Tenancy Regulations* s. 6 sets out the particular non-refundable fees a landlord may charge. This includes service fees for returned cheques, and an associated administration fee. The *Regulations* do NOT allow for extra interest fees charged by a landlord as is the case here. I find the landlord setting this term in the addendum is contracting outside of the *Act* and is unfair in a situation where the legislation provides a range of relief where rent is not paid in accordance with the *Act* or the tenancy agreement. For this reason, I deny this $110 portion of the landlord's claim.

To be successful in their other claims for compensation for damage or loss the landlord here has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I am satisfied there is some amount for the water utility owing from the tenant. The tenant described their attempt to pay this directly with the city; however, the landlord had already paid. The only evidence of an amount owing is that of the account snapshot. I find the tenant is acknowledging there is some amount owing; however, the only evidence of the utility amount is that of the screen capture of the account ledger. This amount is $245.30. There is no record for the landlord's estimate of $200; nor is there proof of an amount of $463 they say was paid. I award only the amount of $245.30, with this being the only amount shown in their evidence.

I find the tenant conceded on the amount owing for damage to the blinds. I award this piece of $120 to the landlord.

I find the tenant conceded on reimbursement for materials associated with the treatment for bedbugs. I find the landlord pre-emptively purchased these items; however, I understand it was getting close to a strict timeline for preparation of the rental unit and the landlord obviously took the matter seriously. I award this amount of treatment preparation materials to the landlord, for $469.79.

The *Act* s. 32 sets the obligation for the landlord to maintain the rental unit in a state that "complies with the health, safety and housing standards required by law." The tenant must maintain "reasonable health, cleanliness and sanitary standards throughout the rental unit."

The building structure is a fourplex, of which the tenant occupied one rental unit. The landlord has not shown definitively that the bedbug issue arose from the tenant's rental unit. It is equally likely the problem arose from other units. The issue is not linked substantially to the tenant keeping an extra number of pets within the unit; it is not known if bedbugs arise from pets, or an infestation becomes more likely with an increased number of pets. Here the landlord did not show that the tenant failed to maintain s. 32 health, cleanliness and sanitary standards, to the degree that bedbugs became a problem. I am not satisfied the monetary loss here arose from a breach of the *Act* or the tenancy agreement by the tenant. I make no award for the cost of bedbug treatment.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord withheld the security deposit at the end of the tenancy and legitimately made a claim against it as per s. 38. The landlord has established a claim of $1,885.09. After setting off the security deposit amount of $1,050, there is a balance of $835.09. I am authorizing the landlord to keep the security deposit amount and award the balance of $835.09 as compensation for amounts owing as claimed.

Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of $835.09. I provide the landlord with this Order and they must serve this Order to the tenant as soon as possible. Should the tenant fail to comply with this Order, the landlord may file it in the Small Claims Division of the Provincial Court where it may be enforced as an Order of that Court.

I make this decision on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: November 8, 2021

Residential Tenancy Branch