



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

LL: MNDCL-S FFL

TT: MNSDS-DR FFT

Introduction

This hearing dealt with two applications for dispute resolution pursuant to the *Residential Tenancy Act* (the “Act”). The Landlord made one application (“Landlord’s Application”) for:

- a monetary order for compensation for monetary loss or other money owed by the Tenants pursuant to section 67(1);
- authorization to keep the Tenants’ security deposit pursuant to section 38; and
- authorization to recover the filing fee of the Landlord’s Application from the Tenants pursuant to section 72.

The Tenants made one application (“Tenants’ Application”) for:

- an order to seek the return of the security deposit pursuant to section 38; and
- authorization to recover the filing fee of the Tenants’ Application from the Landlord pursuant to section 72.

The Landlord and one of the two Tenants (“YX”) and an agent (“OL”) for the Tenants, who also acted as interpreter for YX, attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (“RoP”). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Landlord stated he served the Notice of Dispute Resolution Proceeding for the Landlord’s Application and his evidence (collectively the “Landlord’s NDRP Package”) on each of the Tenants by registered mail. The Landlord provided the Canada Post

tracking numbers of service of the Landlord's NDRP Package on each of the Tenants. OL acknowledged the Tenants received the Landlord's NDRP Package. I find the Landlord's NDRP Package was served on each of the Tenants pursuant to sections 88 and 89 of the Act.

OL stated the Tenants served the Notice of Dispute Resolution Proceeding ("Tenants' NDRP") for the Tenants' Application by registered mail on May 16, 2022. OL provided the Canada Post tracking number for service of the Tenants' NDRP. The Landlord acknowledged receipt of the Tenants' NDRP. I find the Tenants' NDRP was served on the Landlord in accordance with the provisions of section 89 of the Act.

OL stated the Tenants served their evidence on the Landlord by registered mail on August 11, 2022. OL provided the Canada Post tracking number for service of the Tenants' evidence on the Landlord. The Landlord acknowledged receipt of the Tenants' evidence. I find the Tenants' evidence was served on the Landlord in accordance with the provisions of section 88 of the Act.

Issues to be Decided

Is the Landlord entitled to:

- compensation for monetary loss or other moneys owed by the Tenants?
- keep the Tenants' security deposit?
- recover the filing fee for the Landlord's Application from the Tenants.

Are the Tenants entitled to:

- the return of their security deposit?
- recover the filing fee for the Tenants' Application from the Landlord?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Landlord's Application and the Tenants' Application and my findings are set out below.

The Landlord submitted into evidence a copy of a signed tenancy agreement dated September 9, 2019 (collectively the "First Tenancy Agreement"). The parties agreed that, pursuant to the terms of the First Tenancy Agreement, the tenancy commenced on September 15, 2019, with a fixed term of two years ending September 14, 2021, with rent of \$3,400.00 payable on the 1st day of each month. The Tenants were required to pay a security deposit of \$1,700.00 by October 15, 2019. The Landlord stated he received the security deposit and that he was holding it in trust for the Tenants. The Landlord submitted into evidence a signed copy of a tenancy agreement dated September 11, 2021, and a one-page addendum, both dated September 11, 2021 (collectively the "Second Tenancy Agreement"). The parties agreed that, pursuant to the terms of the Second Tenancy Agreement, a new tenancy commenced on September 15, 2021, with a fixed term ending June 17, 2023, with rent of \$3,450.00 payable on the 1st day of each month. The parties agreed the Tenants vacated the rental unit on September 30, 2021 and that the Tenants had paid the rent until October 13, 2021.

OL stated the Tenants served the Landlord with a written notice by email on September 22, 2021, to end the tenancy on September 30, 2021 and submitted a copy of the notice into evidence. The Landlord acknowledged he received the Tenants' email on September 25, 2021. OL submitted into evidence a copy of the signed move-in condition inspection report dated September 15, 2019 and the signed move-out condition inspection report dated September 28, 2021. OL stated the Tenants provided the Landlord with their forwarding address on the move-out condition inspection report that was dated September 28, 2021.

The Landlord stated the Tenants breached the Second Tenancy Agreement by ending the tenancy before the end of the fixed term ending September 14, 2023. The Landlord claimed the Tenants owed him compensation for breaching the Second Tenancy agreement before the end of the fixed term. The Landlord stated he advertised the rental unit for rent on Craigslist on October 22, 2021. The Landlord submitted into evidence a copy of the Craigslist advertisement to corroborate his testimony. The Landlord admitted he did not advertise the rental unit for rent before October 22, 2021 because repairs were required to be performed on the rental unit that resulted from a water leak in the rental unit that was not caused by the Tenants. The Landlord stated he re-rented the rental unit to new tenants commencing on December 18, 2021 at rent of \$3,800.00 per month. The Landlord submitted into evidence a signed copy of the

tenancy agreement ("New Tenancy Agreement"), dated December 9, 2021, between the Landlord and the new tenants to corroborate his testimony.

The Landlord testified the rent for the First and Second Tenancy Agreements did not include the BC Hydro electrical or Shaw cablevision utilities. The Landlord stated he was the subscriber for these utilities and the Tenants was required to pay him directly for the utilities. The Landlord submitted into evidence copies of the BC Hydro electrical utility bill for \$71.30 covering the period August 10 to September 28, 2021 and the Shaw cable utility bill for \$78.40 for the period September 17 to October 17, 2021.

The Landlord stated he was seeking total compensation of \$7,247.90 from the Tenants, calculated as follows:

Nature of Claim	Amount Claimed
Rent for October 14 to November 13, 2021	\$3,400.00
Rent for November 14 to December 13, 2021	\$3,400.00
Three days rent for December 14 to 17, 2021 (4 days)	\$340.00
Unpaid Hydro electrical utility (from August 10 to September 28, 2021)	\$71.30
Unpaid Shaw Cable (prorated from September 17 to September 30, 2021)	\$36.60
Total:	\$7,247.90

OL stated there was a water leak in the rental unit that caused damage to a wall and flooring. OL stated that mold started to grow around the wet area. OL stated the Tenants were told by the plumber, who came into the rental unit to check the leak, that he could not fix the leak right away. OL stated the Tenants were concerned for their health as a result of the mold and they elected to vacate the rental unit rather than wait until the repairs were completed.

The Landlord did not deny there was a water leak in the rental unit prior to the Tenants vacating the rental unit. The Landlord stated the damage was not very significant and it did not require replacement of the flooring. The Landlord submitted into evidence a photograph that showed the damage to the wall and flooring where the water leak occurred to corroborate his testimony. The Landlord admitted that he did not advertise the rental unit until October 22, 2021, being approximately three weeks after the Tenants vacated it because the rental unit required repairs that were not related to the Tenants' occupation of the rental unit.

Analysis

1. Landlord's Claim for Compensation

Rule 6.6 Residential Tenancy Branch Rules of Procedure ("RoP") 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. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Sections 7, 37(2) and 67 of the Act state:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement *must do whatever is reasonable to minimize the damage or loss.*
- 37(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, and
 - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.
- 67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy

agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the foregoing, the Landlord must prove it is more likely than not that the Tenants breached section 37(2) of the Act, that he suffered a quantifiable loss as a result of this breach, and that he acted reasonably to minimize his loss.

Residential Tenancy Branch Policy Guideline 16 ("PG 16") addresses the criteria for awarding compensation. PG 16 states in part:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the Residential Tenancy Act for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Accordingly, the Landlord must provide sufficient evidence that the four elements set out in PG 16 have been satisfied.

Sections 23, 24(2), 35, 36, 38(1), 38(2) and 38(5) of the Act state:

- 23(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
 - (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
 - (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b) a previous inspection was not completed under subsection (1).
 - (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
 - (4) The landlord must complete a condition inspection report in accordance with the regulations.
 - (5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
 - (6) The landlord must make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (3), and
 - (b) the tenant does not participate on either occasion.
-
- 24(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
 - (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
 - (b) having complied with section 23 (3), does not participate on either occasion, or
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

- 35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
 - (b) the tenant has abandoned the rental unit.
- 36(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and
 - (b) the tenant has not participated on either occasion.
- (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 35 (2) *[2 opportunities for inspection]*,
 - (b) having complied with section 35 (2), does not participate on either occasion, or
 - (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

- 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.

- (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

[...]

- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

- (6) If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[emphasis in italics added]

The Tenants submitted a signed copy of the completed move-in and move-out condition inspection reports. I find the Landlord and Tenants complied with the requirements of sections 23 and 35 of the Act. As such, the right of the Landlord to seek damages and

other compensation from the Tenants, and the right of the Tenants to seek the return of their security deposit, were not extinguished by sections 24(2), 36 or 38(2) of the Act.

OL stated there was a water leak that resulted in damage to the wall and flooring. The damage to the wall and floor is visible in the photograph submitted by the Landlord. OL stated the Tenants were concerned for their health as a result of the mold that was growing around the wet area of the floor. OL stated the Tenants paid the rent until October 13, 2021 and argued the Tenants should not be required to pay rent or other compensation to the Landlord after that date. The Landlord stated the damage was not very significant and it did not require replacement of the flooring. The Landlord argued the Tenants were not entitled to end the tenancy prior to the end of the fixed term ending on September 14, 2023. Section 45(3) of the Act states:

45(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.

The Tenants did not submit any evidence they served the Landlord with a written notice stating that, if he failed to comply with repairing the water leak and damage within a reasonable period after they gave such notice of the Landlord's failure to perform repairs, the Tenants would end the tenancy effective on a date that was after the date the landlord received the notice. As the Tenants did not comply with section 45(3) of the Act, they were not entitled to end the tenancy on September 30, 2021. Based on the foregoing, I find the Tenants breached the Second Tenancy Agreement.

The Landlord submitted a copy of the New Tenancy Agreement in which the tenancy commenced on December 18, 2021 with rent of \$3,800.00. The Landlord claimed it was difficult for him to rent the unit on an earlier date as the demand to rental units by university students was lower at the time of year that he was trying to re-rent it. The amount of rent the Landlord is receiving pursuant to the terms of the new tenancy agreement of \$3,800 per month was \$350.00 more than the Tenants were required to pay the Landlord pursuant to the terms of the Second Tenancy Agreement.

Residential Tenancy Policy Guideline 3 (“PG 3”) addresses situations where a landlord seeks to hold a tenant liable for loss of rent after the end of a tenancy agreement. PG 3 states in part:

[...]

Where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement (section 7(1) of the RTA and the MHPTA). This can include the unpaid rent to the date the tenancy agreement ended and the rent the landlord would have been entitled to for the remainder of the term of the tenancy agreement.

Similarly, when a landlord ends a fixed term tenancy early as a result of the tenant’s actions (such as not paying rent or most of the grounds for cause), the landlord may also be able to claim the loss of rent for the remainder of the term of the tenancy agreement.

Compensation is to put the landlord in the same position as if the tenant had complied with the legislation and tenancy agreement. Compensation will generally include any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. It may also take into account the difference between what the landlord would have received from the defaulting tenant for rent and what they were able to re-rent the premises for during the balance of the term of the tenancy.

For example, a tenant has entered into a tenancy agreement for a fixed term of 12 months with rent of \$1000 per month. The tenant leaves the premises in the middle of the second month, after not paying rent for that month and having received a notice to end tenancy for non-payment of rent. The landlord re-rents the premises from the first of the next month but only at \$950 per month. The landlord would be able to recover the unpaid rent for the second month and the \$50 difference over the remaining 10 months of the original term.

If instead of a fixed term tenancy, the example involved a month-to-month tenancy, the landlord who issued the notice to end tenancy for non-payment of rent could recover any loss of rent suffered for the next month. That is because a notice

given by the tenant mid-month would not end the tenancy until the end of the subsequent month. If instead the month to month tenancy was ended for cause, the landlord could not claim for loss of rent for the subsequent month after the notice is effective because a notice given by the tenant could have ended the tenancy at the same time.

In all cases, the landlord must do whatever is reasonable to minimize their damages or loss (section 7(2) of the RTA and the MHPTA). A landlord's duty to mitigate the loss includes re-renting the premises as soon as reasonable for a reasonable amount of rent in the circumstances. In general, making attempts to re-rent the premises at a greatly increased rent or putting the property on the market for sale would not constitute reasonable steps to minimize the loss.

[...]

[emphasis in italics added]

I find the Landlord was delayed in advertising the rental unit on Craigslist until October 22, 2021 as a result of the Landlord performing repairs to the rental unit that were not related to any damages caused by the Tenants. I also find the Landlord did not locate new tenants and enter into the New Tenancy Agreement until December 9, 2021, with the tenancy commencing on December 18, 2021, because he sought an additional \$350.00 per month than the \$3,450.00 the Tenants were required to pay for rent pursuant to the terms of the Second Tenancy Agreement. As stated in PG 3, making attempts to re-rent the premises at a greatly increased rent do not constitute reasonable steps to minimize the loss. As such, I find the Landlord did not attempt to mitigate his damages and is not entitled to any compensation from the Tenants for loss of rental income. Based on the foregoing, I find the Landlord has not proven, on a balance of probabilities, that he has suffered a loss of rental income as a result of the Tenants ending the tenancy prior to the end of the fixed term on September 30, 2023. As such, I dismiss, without leave to reapply, the Landlord's claim for compensation for lost rental income.

The Landlord stated the BC Hydro and Shaw Cable utilities were in his name and that the Tenants were required to pay him directly for those services. Section 2(1) of the Act states:

- 2(1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

The Second Tenancy Agreement did not contain any term requiring the Tenants pay the Landlord for the BC Hydro electrical utility or Shaw cablevision utilities. As such, I find the BC Hydro and Shaw Cable utilities are not related to the Second Tenancy Agreement. I find the arrangement for payment of those utilities was a separate contract between the Landlord and Tenants that is outside of the terms of the Second Tenancy Agreement. Accordingly, the requirement for the Tenants to pay the Landlord for those utilities is not within the scope of section 2(1) of the Act. Based on the foregoing, I find that I do not have jurisdiction under the Act to grant an order that the Tenants pay the Landlord for the BC Hydro and Shaw Cable utilities. As such, I dismiss, without leave to reapply, the Landlord's claim for compensation to recover the BC Hydro and Shaw Cable services from the Tenants. The Landlord has the option of seeking recovery of the utilities in another court or tribunal that has jurisdiction over such claims.

2. Return of Tenants' Security Deposit

The Tenants submitted a copy of the signed move-out condition inspection report dated September 28, 2021 which provided the Tenants' forwarding address. As such, I find the Tenants served the Landlord with their forwarding address on September 28, 2021. The parties agreed the tenancy ended on September 30, 2021. Pursuant to section 38(1) of the Act, the Landlord had 15 days, or until October 15, 2021, to return the Tenants' security deposit to them or, alternatively, to make an application for dispute resolution to seek unpaid rent or damages from the Tenants. The records of the RTB indicate the Landlord's Application was made on January 16, 2022. As such, the Landlord did not make the Landlord's Application within 15 days of the date the tenancy ended. I find that section 38(6) of the Act requires the Landlord pay the Tenants double the amount of the security deposit. Based on the foregoing, I find the Landlord must pay the Tenants \$3,400.00, being double the amount of the Tenants' security deposit of \$1,700.00.

3. Recovery of Filing Fees

The Landlord has not been successful in the Landlord's Application. As such, I dismiss the Landlord's claim for recovery of the filing fee for the Landlord's Application.

The Tenants have been successful in the Tenants' Application. As such, I order the Landlord to pay the Tenants the \$100.00 filing fee for the Tenants' Application pursuant to section 72 of the Act.

Conclusion

The Tenants are granted a Monetary Order for \$3,500.00, calculated as follows:

Purpose	Amount
Return of Double the Tenants' Security Deposit \$1,700.00 x 2 = \$3,400.00	\$3,400.00
Tenants' Filing Fee	\$100.00
Balance Owing to Tenants:	\$3,500.00

The Tenants are provided with this Order on the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: September 8, 2022

Residential Tenancy Branch