



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR FFL

Introduction

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

- a monetary order for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlord's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the tenant was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for losses or money owed?

Is the landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

Both parties agree that two tenancy agreements have been drafted for this tenancy. The landlord believes that only the second one is in effect as a new one was signed by both parties on April 1, 2021. The tenant testified that both parties had originally entered into a fixed-term agreement for a tenancy that was to begin on April 1, 2021, and end on January 1, 2022. That tenant argued that the first tenancy agreement contained an addendum, and although not signed, was in effect as the tenant's security deposit was sent and accepted on March 30, 2021. In both tenancy agreements, monthly rent was set at \$1,800.00, payable on the first of the month. A security deposit of \$250.00 was paid by the tenant, which was later returned, and then repaid after the landlord had agreed to continue with the tenancy. The landlord still holds the security deposit.

The first agreement contained an addendum with the following clauses:

1. After the fixed term, the rental is on a month to month basis, the landlord remains the right to end the tenancy if 2-month notice is given to the tenants.
2. This Rental Agreement is based on the mutual understanding and agreement that the property is rented as it is, and the landlord will not cover any expense in upgrading or fixing the property in any way. If the tenants consider the house is no longer safe or pleasant to live in, the tenants have the rights to end the tenancy at any time.

The landlord argued that that the first tenancy agreement was drafted, but not signed and accepted by the landlord. The landlord testified that they had returned the security deposit after deciding not to move forward with the tenancy, but had no choice but to offer the second agreement after the tenant refused to leave. The second agreement was for a fixed-term tenancy beginning on April 1, 2021, and ending on February 1, 2022. A different addendum which included the above two clauses, with some amendments and additional clauses was signed for this tenancy agreement. A copy of this agreement and addendum was also submitted in evidence.

It is undisputed by both parties that this tenancy ended on January 14, 2022, and that no rent was paid for the month of January 2022. The tenant felt that the attached addendum clearly stated that they had the right to end the tenancy at any time. The landlord filed this application in relation to the following claims.

Item	Amount
Unpaid Utilities-Gas--Invoice January 12, 2022	\$215.68
Unpaid Utilities-Gas--Invoice December 9, 2021	127.20
Unpaid Utilities-Gas--Invoice November 9, 2021	112.21
Unpaid Utilities-Gas---Invoice -October 9, 2021	25.61
Unpaid Utilities—Gas-Invoice August 10, 2021	33.32
Unpaid Utilities-Hydro--Invoice January 13, 2022	215.80
Unpaid Utilities-Hydro-November 15, 202	191.30
Unpaid Utilities-Hydro-November 15, 202	176.97
Cleaning Fee & Garbage Dumping Fee	1,100.00
Plumbing Blockage Issue (estimate)	200.00
Unpaid January 2022 rent	1,800.00
Total Monetary Order Requested	\$4,198.09

The landlord is applying to recover the unpaid rent for January 2022, unpaid utilities, to recover the cost of cleaning and dumping of the garbage, and to recover the cost of hiring a plumber to remove a blockage.

Although the landlord confirmed that no move-in or move-out inspection reports were completed for this tenancy, the landlord submitted photos to show that the tenant did not leave the rental unit in reasonably clean condition. The tenant does not dispute that they had left garbage behind, as shown in the photos, but argued that the home was being demolished, and the landlord had agreed that the tenant could leave the home as is. The tenant testified that there were text messages exchanged between the parties, but the tenant could not submit these as they were on an old phone. The tenant submitted statements from friends who claimed to hear this agreement between the parties. The landlord denies giving the tenant permission to leave the home in unclean condition, and notes that they required the home in clean condition to re-rent the home to new tenants.

The tenant does not dispute that they did not pay the above listed utilities. The tenant testified that they were short on funds, and felt that they had the right to withhold the money owed due to the numerous issues in the home.

The tenant also disputed the landlord's claim for the plumbing invoice as they felt that the landlord had failed to maintain the home, and denies causing the blockage. The tenant notes that they had issues with the bathtub during the tenancy, and the landlord had maintained that they would not repair anything during the tenancy.

The tenant testified that based on the addendum, it was unclear to them that at least 30 day's notice was required. The tenant testified that they had moved out as the addendum had allowed them to do so.

Analysis

Section 44 and 45 of the *Residential Tenancy Act* states the following about how a tenancy may end:

- 44** (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];
 - (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
 - (ii) section 46 [*landlord's notice: non-payment of rent*];
 - (iii) section 47 [*landlord's notice: cause*];
 - (iv) section 48 [*landlord's notice: end of employment*];
 - (v) section 49 [*landlord's notice: landlord's use of property*];
 - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
 - (vii) section 50 [*tenant may end tenancy early*];
 - (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
 - (c) the landlord and tenant agree in writing to end the tenancy;
 - (d) the tenant vacates or abandons the rental unit;
 - (e) the tenancy agreement is frustrated;
 - (f) the director orders that the tenancy is ended;
 - (g) the tenancy agreement is a sublease agreement.

(2)[Repealed 2003-81-37.]

(3)If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Tenant's notice

45 (1)A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a)is not earlier than one month after the date the landlord receives the notice, and
- (b)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.

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (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.

In this case, two tenancy agreements were drafted, and it is disputed by both parties as to which tenancy agreement was in effect. In both cases, an addendum was attached containing the following clause:

2. This Rental Agreement is based on the mutual understanding and agreement that the property is rented as it is, and the landlord will not cover any expense in upgrading or fixing the property in any way. If the tenants consider the house is no longer safe or

pleasant to live in, the tenants have the rights to end the tenancy at any time.

The tenant was of the understanding based on the above clause that despite the requirements of the *Act* as stated above, the landlord had given them permission to end the tenancy "at any time". I note the clause did not clearly state how much notice was required, and whether the landlord was waiving the standard requirements to give proper notice in writing. Based on the evidence before me, I find it reasonable that the tenant had interpreted the clause as an agreement for the tenant to move out, without adhering to the standard requirements under sections 44 and 45 of the *Act*. I note that the wording used by the landlord in both versions of the tenancy agreement stated that the tenancy had the right to end the tenancy "at any time", with no clear indication whether this had to be after the end of the fixed-term. Accordingly, I find that the tenant had ended the tenancy in accordance with the mutual agreement recorded and accepted by both parties, and the tenant is not responsible for any rent after January 14, 2021.

Section 26 of the *Act*, in part, states as follows:

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

I note that the tenant did reside in the home from January 1, 2022 to January 14, 2022, and no rent was paid for this period. Although the tenant noted several issues related to the tenancy and the home, the tenant was not in possession of any orders by an Arbitrator allowing them to withhold or deduct any rent. Accordingly, I order that the tenant pay rent for this period. The landlord is granted a monetary order in the amount of \$812.90 ($\$1,800.00/31 \times 14$).

I also find that the landlord had established that the tenant failed to pay the outstanding utilities listed in this application. Similar to the unpaid rent, the tenant was not in possession of any orders by an Arbitrator allowing them to withhold or deduct any rent. Accordingly, I order that the tenant pay the outstanding utilities to the landlord in the amounts claimed.

I will now consider the remaining claims.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenant had caused damage and losses in the amounts claimed by the landlord.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The tenant argued that the home was to be demolished, and therefore the landlord had informed them to leave the home in the condition as depicted in the photos. The tenant also argued that home was not in clean condition when they had moved in. Based on evidence before me, I am not satisfied that the tenant was given permission to leave the home in unclean condition. I am satisfied that the landlord had provided sufficient evidence to support that the tenant moved out without attempting to clean the home, or remove all of their belongings. I do not find that the landlord had given the tenant permission to do so. Although the tenant's friends had provided statements claiming to have the same understanding as the tenant, these parties did not attend the hearing to given testify under oath, nor did the landlord have the opportunity to cross examine these witnesses. I also note that these statements are unsworn, and are written by friends of the tenant. I accept the landlord's testimony that although the home was to be eventually demolished, they still reserved the right to mitigate any rental losses, and attempt to re-rent the home before demolishing the home. I also find that the landlord had provided a receipt to support that they had suffered the monetary loss claimed. I do not find the tenant's position to be supported in the evidence. I find that the evidence clearly shows that the home was left in unclean condition, and that the tenant had left items behind that had to be removed. Although the home may not have been clean when the tenant took possession, this fact does not relieve the tenant of their obligations under section 37(2)(a) of the *Act* to leave the home in reasonably clean condition. I am not satisfied that the tenant had applied for dispute resolution in relation to any of the issues referenced in this application. Accordingly, I allow the landlord to recover the \$1,100.00 paid for cleaning and garbage disposal.

In consideration of the landlord's claim for recovery of the plumbing costs, I accept the tenant's testimony that the home was not maintained by the landlord, and that the tenant had issues with the plumbing during the tenancy. I am not satisfied that the landlord has met the onus of proof to support that this loss is due to the tenant's actions. Accordingly, I dismiss this claim without leave to reapply.

As the landlord's application was successful the landlord may recover their filing fee from the tenant.

In accordance with the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary awards issued in the landlord's favour.

Conclusion

I issue a Monetary Order in the amount of \$2,860.99 in the landlord's favour under the following terms:

Item	Amount
Unpaid Utilities-Gas--Invoice January 12, 2022	\$215.68
Unpaid Utilities-Gas--Invoice December 9, 2021	127.20
Unpaid Utilities-Gas--Invoice November 9, 2021	112.21
Unpaid Utilities-Gas---Invoice -October 9, 2021	25.61
Unpaid Utilities—Gas-Invoice August 10, 2021	33.32
Unpaid Utilities-Hydro--Invoice January 13, 2022	215.80
Unpaid Utilities-Hydro-November 15, 202	191.30
Unpaid Utilities-Hydro-November 15, 202	176.97
Cleaning Fee & Garbage Dumping Fee	1,100.00
Unpaid Rent	812.90
Filing Fee	100.00
Less Security Deposit Held	-250.00
Total Monetary Order	\$ 2,860.99

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the landlord's monetary claims are dismissed 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: November 27, 2022

Residential Tenancy Branch