Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with a landlord's application for monetary compensation against the tenant for unpaid and/or loss of rent, unpaid utilities as well as damage and cleaning costs. The landlord also requested authorization to retain the tenant's security deposit and/or pet damage deposit.

Both parties appeared for the hearing. The landlord was also assisted by his wife. The parties were affirmed and the parties were ordered to not record the proceeding.

The hearing was held over two dates and an Interim Decision was issued on October 7, 2022. The Interim Decision should be read in conjunction with this decision.

As seen in the Interim Decision, I had ordered the tenant to re-serve his evidence to the landlord during the period of adjournment. At the outset of the reconvened hearing, I confirmed the tenant reserved the landlord and the landlord received the tenant's materials. Accordingly, I have admitted and considered all of the evidence provided by both parties in making this decision.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for unpaid and/or loss of rent, as claimed?
2. Has the landlord established an entitlement to unpaid utilities, as claimed?
3. Has the landlord established an entitlement to compensation for damage and cleaning costs, as claimed?
4. Is the landlord entitled to retain the tenant's security deposit and/or pet damage deposit or should they be returned to the tenant?
5. Award of the filing fee.

Background and Evidence

The parties executed a written tenancy agreement for a tenancy set to commence on September 1, 2021. The monthly rent was set at $2200.00 payable on the first day of every month. The tenant paid a security deposit of $1100.00 and a pet damage deposit of $1100.00. The landlord continues to hold both of the deposits while awaiting the outcome of this proceeding.

As for the term of the tenancy, the landlord testified that the parties intended and agreed that the tenancy would be for one year, ending in August 2022. I noted the written tenancy agreement specifies that the tenancy is on a month to month basis. The landlord acknowledged that the written tenancy agreement was not amended to reflect a fixed term set to end in August 2022. The tenant testified that the tenancy was on a month to month basis.

The tenancy ended on January 31, 2022.

The landlord did not prepare a move-in or move-out inspection report.

Below I have summarized the landlord's claims against the tenant and the tenant's responses.

Unpaid rent – February 2022

The landlord submitted that the tenant failed to give one full month of notice to end the tenancy. The tenant gave notice to end tenancy by way of an email dated January 1, 2022. The landlord testified that the notice was received on January 1, 2022 or January 2, 2022; however, the landlord wrote in the details of dispute that it was received on January 4, 2022.

Upon receiving the tenant' notice to end tenancy, the landlord responded to the tenant, via email, on January 4, 2022. With respect to the tenant's notice to end tenancy, the landlord wrote: "…you'll stay till Aug as originally agreed to. Even if you stay a few more months would help as it will be hard to stop losses and have anyone move in this winter."

On January 5, 2022 the landlord also wrote to the tenant, via email: “The agreed term of your stay was 1 year and after one year it would be a month to month which was a benefit to you.”

The parties were also emailing each other with respect to the tenant alleging someone had been in the rental unit and the landlord responding that the security report revealed that nobody had entered the unit.

On January 11, 2022 the landlord requested entry to the unit for a realtor, acting as the landlord’s property manager, to show the unit. The tenant consented and the tenant testified that there were two viewings of the unit in January 2022.

The landlord testified that the rental unit was advertised at the rate of $2200.00 per month but it did not re-rent until May 1, 2022. The landlord did not provide any images of the advertisements or evidence to support his statement that the unit did not re-rent until May 1, 2022.

The landlord submitted that the biggest deterrent to renting the unit more quickly was the time of year as fewer people move in the winter and the rental unit is located near a lake, which is easier to rent in the warmer months.

The tenant submitted that he did give the landlord one month’s of notice by way of the email sent on January 1, 2022 and the landlord did not indicate the tenant’s notice was considered late. The tenant was of the position the rental unit was difficult to rent due to in incomplete driveway and parking difficulties; an unusual floor plan; and distance from town.

The landlord countered the tenant’s statements concerning parking by explaining that he has arranged for tenants to park on a neighbour’s property and he was certain his realtor would have informed prospective tenants of that.

Utilities -- $377.44

The landlord submitted that the tenant was required to pay for 1/3 of the gas and hydro bills. The landlord claimed $377.44 for gas and hydro bills as being the tenant’s share of utilities up until the end of January 2022.

During the hearing, the landlord argued that the tenant also owed utilities for February 2022; however, there was no such claim before me as the landlord did not amend the claim and I did not consider the matter further.

The tenant was agreeable to paying the landlord the amount claimed for utilities of $377.44.

Bathtub damage -- $525.00

The landlord submitted that the bathtub was new at the start of the tenancy and during the tenancy the bottom of the tub was damaged by a chemical spilled in it. The landlord obtained an estimate to have the tub reglazed at a cost of $500.00 plus tax. The landlord acknowledged that the tub has not yet been re-glazed and the unit was re-rented.

The tenant submitted that the tub was damaged when contractors installed a shower door during the tenancy.

The tenant acknowledged that he contacted the landlord during the tenancy to inform the landlord of the tub damage; however, the tenant also made submissions that there was no move-in inspection report and there were people occupying the rental unit before his tenancy started.

The landlord responded that he did have an additional glass panel installed on the tub but that the glass panel is screwed in, and that did not cause a chemical stain. The landlord acknowledged the tenant sent him a message about the tub damage but stated it was not anywhere near the time the glass panel was installed. The landlord also denied that anybody occupied the rental unit, even for a night, before the tenancy started.

Cleaning -- $225.00

The landlord submitted that he expected the tenant to return the rental unit in a condition that was as clean as when the tenancy started.

The landlord paid his “handyman” to clean the unit after the tenancy ended. The landlord pointed to the receipt for payment to the handyman in support of his claim.

In the absence of any details of the cleaning from the handyman or a condition inspection report, I instructed the landlord to point to his other evidence, namely photographs, to demonstrate the state of cleanliness at the end of the tenancy. The landlord was able to point to two photographs showing a smudge on a wall.

The tenant testified that he left the rental unit vey clean.

Wall damage -- $350.00

The landlord submitted that the walls were gouged at the end of the tenancy. The landlord repaired the damage himself which involved filling, sanding and painting the damaged areas. The landlord explained that filling and sanding must be done more than once to fill a gouge. The landlord estimated the claim of $350.00 as being for paint and for his labour. The landlord was unable to recall how much time he spent making the repairs, or recall the hourly rate he was using to calculate the claim. The landlord was of the position that it would have cost more had he paid someone to make the repairs.

The tenant acknowledged causing some minor wall damage from moving the couch in the stairwell and was agreeable to compensating the landlord $200.00 which the tenant considered reasonable.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages 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.

In this case, the landlord is the applicant. As such, the landlord bears the burden to prove an entitlement to the amounts he is claiming against the tenant. The burden of proof is the civil standard of more likely than not, or on a balance of probabilities.

Unpaid and/or loss of rent

The written tenancy agreement executed by both parties clearly indicates the tenancy was on a month to month basis, from the start of the tenancy.

Based on the landlord's statements during the hearing and in the emails he sent to the tenant on January 4 and 5, 2022 it appears the landlord was of the erroneous position the parties had a one year fixed term tenancy that was to continue on a month to month basis after a fixed term tenancy.

Section 45(1) of the Act provides that a tenant in a periodic tenancy (which includes a month to month tenancy) may end the tenancy unilaterally, as follows:

> **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
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> (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.

As provided under section 45(1), a tenant in a month to month tenancy is required to give the landlord one full month of advance written notice. Since the rent was payable on the first day of the month, to end the tenancy on January 31, 2022 the tenant would have had to give the landlord a notice to end tenancy no later than December 31, 2021. The tenant sent his notice to end tenancy on January 1, 2022 and the landlord acknowledged receipt of the tenant's notice on either January 1, 2, or 4, 2022. As such, I find the tenant did give the landlord late or short notice to end the tenancy effective January 31, 2022.

The tenant's notice itself does not confirm to the form and content requirements provided under section 52 of the Act since it does not include the tenant's signature or address of the rental unit. Also, service by email was not an acceptable method of serving a document when this notice was sent. Despite the failings of the form and content, and method of service, the landlord did receive the tenant's notice, apparently understood its meaning as evidenced by his emailed responses to the tenant, and the landlord acted upon it by arranging for his realtor to commence efforts to show the rental unit.

In light of the above, I am satisfied the tenant breached the Act failing to give proper notice and breached the notice requirements, to succeed in his claim against the tenant the landlord must also prove that landlord suffered a loss as a result of the breach and the landlord did everything reasonable to mitigate losses.

The landlord did not provide copies of any advertisements or the subsequent tenancy agreement to corroborate efforts made to re-rent and at what amount of rent and when it was re-rented. However, I was provided emails indicating the landlord's realtor needed access to show the unit and the tenant acknowledged there were two showings of the unit in his last month of tenancy. Accordingly, I am satisfied the landlord undertook steps to re-rent the unit.

The landlord did not put the tenant on notice that the landlord considered the tenant's notice late and that the landlord would hold the tenant liable to pay rent for February 2022 if the unit was not re-tented. Rather, the landlord's responses were more consistent with the landlord's mistaken position that the parties had a one year fixed term tenancy. Had the landlord put the tenant on notice that he may be held liable to pay rent for February 2022, the tenant's decision to vacate the rental unit by January 31, 2022 may have been different and both parties would obtain a benefit of one additional month of occupancy and rental income.

All of the above taken into consideration, I find the landlord has satisfied me that he at least partially mitigated losses by taking some steps to mitigate losses but that he could have certainly taken more steps.

Residential Tenancy Policy Guideline 5: *Duty to Minimize Loss*, provides as follows:

> **Partial mitigation**
> *Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. If in the above example the tenant*

> *reported the leak, the landlord failed to make the repairs and the tenant did not apply for dispute resolution soon after and more damage occurred, this could constitute partial mitigation. In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred.*

In keeping with the policy guideline concerning partial mitigation, I hold both parties equally liable for the loss of rent for February 2022 and I award the landlord one-half of the amount claimed, or $1100.00.

Utilities

The tenant was agreeable to compensating the landlord for the amount claimed and I award the landlord $377.44, as claimed.

Tub damage

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

It was undisputed that the bottom of the bathtub was damaged by way of unsightly stains as seen in the photographs. Upon review of the photographs, it appears to me that the stains are the result of a liquid being dripped on the bottom of the bathtub in several places. It is also undisputed that the tenant reported the damage to the landlord during the tenancy; however, the parties were in dispute as to whether the tenant or someone else caused the damage.

The tenant points to the installation of a shower door during the tenancy as being the cause of the staining; however, the landlord refuted that and submitted the shower panel was screwed in. When I turn to the emails both parties provided as evidence, I do not see the tenant pointing to the damage occurring as a result of the shower door installer's actions. Also, I cannot image the requirement to use a harsh and/or staining chemical or other liquid that a shower door installation would require and the tenant did

not provide evidence of such. Therefore, I find I prefer the landlord's version of events over that of the tenant.

The tenant also pointed to the lack of a move-in inspection report and other people occupying the rental unit before his tenancy started when he was responding to this claim which suggests the tenant takes the position the damage may have been present before the tenancy started. I find this position inconsistent with his position that the damage occurred as a result of the shower door installation.

Given the inconsistency in the tenant's position, I find on a balance of probabilities that the stain occurred during the tenancy and as a result of the tenant's actions or neglect, or that of a person permitted on the property by the tenant.

As for the landlord's burden to provide proof of his loss that resulted from the tenant's actions or neglect, the landlord provided only one estimate. The estimate indicates a tub re-glazing is required but there is not mention of the stains in the estimate or that the stains cannot be removed any other way. Also of consideration is that the landlord did not proceed to re-glaze the tub, the rental unit was re-rented, and one more than year has elapsed. The landlord did not make any submissions that the stained tub resulted in a loss of rental income. Therefore, I limit the landlord's award to a nominal award of $100.00 in recognition the staining likely diminished the value of the tub to some extent.

Cleaning

Section 37 of the Act requires that a tenant leave a rental unit "reasonably clean" at the end of the tenancy. Reasonably clean is a standard that is less than perfectly clean or impeccably clean and it may be less than a standard the landlord provides to an incoming tenant. Where a landlord seeks to bring the rental unit to a level of cleanliness that exceeds "reasonably clean" the tenant is not responsible for the cost to do so.

During the hearing, the landlord acknowledged that he was holding the tenant responsible to leave the rental unit as clean as it was when the tenancy started and I find that is likely a higher standard than the tenant's legal obligation to leave the rental unit "reasonably clean" as it not uncommon for landlord's to provide an incoming tenant with a very clean unit.

With a view to determining if the tenant left the rental unit reasonably clean, the landlord did not prepare a move-out inspection report to demonstrate the level of cleanliness at the end of the tenancy. Nor did the landlord's handyman provide any details as to what

had to be cleaned. Other than the disputed oral testimony of the parties, the only other evidence before me are photographs.

In the photographs presented to me, I see two smudges on the walls in the landlord's photographs but I do not see any other photographs that point to the rental unit being left unclean. As such, I find the landlord did not meet his burden to prove the tenant left the rental unit so unclean that $225.00 had to be expended to bring the rental unit to a "reasonably clean" condition. Considering the landlord was at the rental unit making wall repairs, I am of the view that it would have taken minimal effort to clean the two wall smudges. Therefore, award the landlord a nominal award of $10.00 to clean those areas.

Wall damage

As I explained previously under "Tub damage", a tenant is liable to rectify damage they caused by their actions or neglect.

The landlord submitted and the tenant acknowledged responsibility for gouges in the walls in or near the stairwell, likely from moving a couch.

Other photographs provided by the landlord do not demonstrate wall damage as opposed to ordinary wear and tear, in my view. As such, I limit the landlord's award to an amount to rectify the two larger gouges in and near the stairwell.

At issue was the amount claimed by the landlord and whether it was reasonable. The landlord claimed $350.00 and the tenant suggested $200.00 was more reasonable.

The landlord stated it would have cost more if he paid someone to make the repair but he did not support that with any estimates, pricelists, or the like.

I appreciate that drywall repairs require filling with drywall mud and sanding more than once before the paint is applied; however, considering I only see two gouges that point to damage and the landlord was unable to detail how he arrived at the amount claimed, such as time spent and the amount he was seeking for his time, I find the claim for $350.00 to be insufficiently supported. Nor, did the landlord submit a receipt for paint purchase even though he indicates the claim is for paint as well as labour. Given the lack of sufficient detail and corroborating evidence to support an amount greater than the amount agreed upon by the tenant, I award the landlord $200.00.

Filing fee, deposits and Monetary Order

The landlord was partially successful in his application and I award the landlord recovery of one-half of the filing fee, or $50.00.

The landlord extinguished his right to make a claim against the security deposit and pet damage deposit for damage due to failure to prepare move-in and move-out inspection reports, as provided in sections 24 and 36 of the Act. However, the landlord did make a claim against the security deposit for things other than damage that are not tied to preparation of a condition inspection report such as rent and utilities, which the landlord remained entitled to do. I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the unpaid and/or loss of rent and utilities.

I was not provided any claim that the tenant's pet caused any damage and the tenant is entitled to return of the pet damage deposit in its full amount since a pet damage deposit may not be used for anything other than pet damage.

Section 72 of the Act provides that I may offset amounts owed to one party by amounts owed to the other party, which I have done in providing the Monetary Order with this decision.

Residential Tenancy Policy Guideline 17 also provides that where a landlord's claim against the deposits is dismissed or only partially successful, the Arbitrator will order return of the balance of the deposit(s) and provide the tenant with a Monetary Order for the balance of the deposits that are due to the tenant.

Based on all of my findings and award described above, I calculate the following amounts:

Owed to the landlord:	
Awards for --	
Unpaid and/or loss of rent	$1100.00
Utilities	377.44
Tub damage	100.00
Cleaning	10.00
Wall damage	200.00
Filing fee	50.00
Total award to landlord	$1837.44
Less: security deposit	(1100.00)

Net amount owed to landlord	**$ 737.44**	**A**
Pet damage deposit owed to tenant	**$1100.00**	**B**
Monetary Order to tenant (B less A)	**$ 362.56**	

Conclusion

The landlord was partially successful in his claims against the tenant and was awarded compensation totalling $1837.44.

I authorize the landlord to retain the tenant's security deposit and I order the landlord to return the balance of the tenant's deposits, in the net amount of $362.56, to the tenant without further delay. I provide the tenant is provided a Monetary Order in the amount $362.56 in keeping with Residential Tenancy Policy Guideline 17 and to ensure payment is made.

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: February 09, 2022

Residential Tenancy Branch