



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNDCL-S, FFL
Tenants: MNDCT, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear crossed application regarding a residential tenancy dispute.

On May 20, 2022, the landlord applied for:

- compensation for monetary loss or other money owed, with a request to retain the security and/or pet damage deposit; and
- the filing fee.

On December 2, 2022, the tenants applied for:

- compensation for monetary loss or other money owed; and
- the filing fee.

This hearing was reconvened after it was adjourned on February 2, 2023. This decision should be read in conjunction with the Interim Decision issued on February 2, 2023.

Neither party raised an issue regarding service of the hearing materials.

The Interim Decision and notices of reconvened hearing (containing the call-in numbers for this hearing) were sent to each of the parties using the contact information provided to the Residential Tenancy Branch.

Preliminary Matter

In the reconvened hearing, the tenants testified they wished to withdraw their application. Therefore, the decision will contemplate only the landlord's application.

Issues to be Decided

- 1) Is the landlord entitled to compensation in the amount of \$5,291.00?
- 2) Is the landlord entitled to the filing fee?

Background and Evidence

While I have considered the presented documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars of the tenancy. It began September 1, 2021; rent is \$2,233.00, due on the first of the month; and the tenants paid a security deposit of \$1,100.00 and a pet damage deposit of \$550.00, which the landlord still holds. A copy of the tenancy agreement is submitted as evidence.

The rental unit is a coach house, and this is an ongoing tenancy.

The landlord is seeking \$5,291.00 in compensation. He submitted that the tenants left the heat off while they were away from December 21–28, 2021, which resulted in the heat and water lines freezing and bursting, causing damage to the rental unit and garage below.

The landlord submitted that the tenants breached section 32(3) of the Act, which provides that a tenant must repair damage to the rental unit caused by the actions or neglect of the tenant.

The landlord submitted that the tenants have also breached part 33 of the tenancy agreement, which states that tenants must maintain reasonable health, cleanliness, and sanitary standards throughout the rental unit and must repair damages to the residential property caused by the actions or neglect of the tenant.

The landlord referred to section 45 of the tenancy agreement, which states that the tenant will not do, permit, or fail to do anything that may void the landlord's insurance or cause the landlord's insurance premiums to increase. The landlord submitted that he mentioned this section because he is aware of his insurance

policy requirements. The landlord did not testify that his insurance was void or that his premiums had increased.

The landlord's documentary evidence includes a Monetary Order Worksheet which breaks down his claim, and a plumbing report, dated January 7, 2022, which states: "We found cracks in multiple sections of heating lines on the main and top floor. This was due to the occupants turning off the heat while they went away and pipes freezing."

The landlord submitted that the tenants should have realized that anything can happen, and that they left the unit in a dangerous state.

The tenant testified that the damage was the result of extreme weather. The tenant testified that there was no standard or statutory requirement for them to leave the heat on in winter, and that when they moved in the landlord did not tell them they must do so.

The tenant submitted that after the issue was discovered, it was the efforts of the tenant that resulted in the stoppage of the subsequent water flow, which would have otherwise continued the night of December 28 and 29, 2021.

Each party provided a detailed account of the events surrounding this issue.

Analysis

The landlord seeks compensation in the amount of \$5,291.00.

Section 7 and 67 of the Act and [Policy Guideline 16](#) provide that if damage or loss results from a party not complying with the Act, the Regulation, or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. In this case, the onus is on the landlord to prove entitlement to a monetary award.

Policy Guideline 16 states:

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.

Therefore, I must first consider whether the damage to the water pipes was a result of the tenants' failure to comply with the Act, Regulation, or tenancy agreement.

The landlord testified that the damage to the unit is due to the tenants leaving the heat off while they were away in December 2021, which resulted in the heat and water lines freezing and bursting. The landlord's documentary evidence includes a plumbing report which states that the heating lines cracked in multiple places because the pipes froze as the tenants did not leave the heat on while they were away. The landlord did not point to a part in the tenancy agreement that states that the tenants must leave the heat on in winter.

The tenant testified that the damage was the result of extreme weather, and that when they moved in the landlord did not tell them they must leave the heat on in winter.

There is no part of the Act or Regulation requiring tenants to leave heat on in winter, and the landlord has not presented proof this was a requirement set out in the tenancy agreement.

As the landlord has provided insufficient evidence to prove that the damage was a result of the tenants' failure to comply with the Act, Regulation, or tenancy agreement, I find on a balance of probabilities that the landlord is not entitled to compensation.

As the landlord is unsuccessful in his application, I decline to award the filing fee.

Conclusion

The landlord's application is dismissed.

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: April 11, 2023

Residential Tenancy Branch