Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: Tenant: MNDCT, FFT
Landlords: MNRL, MNDL, MNDCL, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The landlords requested:

- monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*

The tenant requested:

- monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*

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 landlords' names were confirmed during the hearing. With the consent of both parties, the tenant's application was amended to remove the name of the landlords' business.

The landlords confirmed receipt of the tenants' application for dispute resolution ('Application'), amendment, and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord duly served with the tenant's Application, amendment, and evidence.

Although the tenant confirmed receipt of the landlords' application and evidence package at the beginning of the hearing, the tenant testified that they did not receive the photos referenced in the landlords' application. The landlords testified that the photos were served on the tenant along with the rest of their materials. Based on the evidence before me, I am satisfied that the tenant was served with all of the landlords' materials. Accordingly, the landlords' evidence and claims were considered for this hearing.

Issue(s) to be Decided

Are the parties entitled to their monetary claims applied for?

Are the parties entitled to recover their filing fees?

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.

The landlords submitted a copy of a tenancy agreement for a month-to-month tenancy that began on September 1, 2018. Monthly rent was set at $1,300.00, payable on the first of the month. While the tenant testified that they believed that the landlords had collected a security deposit, the landlords testified in the hearing that they did not collect anything. The tenancy agreement in evidence states that the tenant is required to pay a pet damage deposit of $200.00 and a damage deposit of $500.00 by September 1, 2018.

The landlords testified that the tenant had abandoned the rental unit sometime around July 31, 2021. The tenant testified that they were in the hospital from August 2021 to February 2022, and considered the tenancy over as of August 31, 2021. Both parties attended a hearing on December 12, 2022, after the tenant had filed an application on July 21, 2022, requesting the return of their personal belongings.

A settlement decision was issued on December 12, 2022, which confirmed the following agreement between both parties:

1. *The Tenant shall retrieve his personal possessions from the Landlord's property by no later than 4:00 p.m. on December 17, 2022. The parties agree that the Tenant shall attend the residence with movers and a moving vehicle sufficient to transport approximately 500 square feet of belongings.*

2. The parties agree to minimize any verbal interactions on December 17, 2022 with a goal to reducing any conflict.

3. Should the Tenant not attend the Landlord's property by 4:00 p.m. on December 17, 2022 as agreed, the Landlord shall be at liberty to dispose of the Tenant's belongings.

4. The Tenant's request for monetary compensation for recovery of the filing fee is dismissed with leave to reapply.

5. Either party may file an application for monetary compensation from the other provided they comply with section 60 of the Residential Tenancy Act.

The tenant filed an application for reimbursement of moving costs as well as rental of a storage facility, plus recovery of the filing fee paid for this application. The tenant testified they had sent a moving truck to the property on December 16, 2022, but the landlord did not provide access for the tenant to retrieve their persona belongings. The tenant testified that they were informed by the landlords on December 16, 2022 that they did not have the key for the storage where their items were located, and as a result the tenants were unable to retrieve and move their belongings.

The tenant submitted a copy of an invoice in the amount of $469.35 plus a receipt for $459.90 in storage costs. The tenant deducted $115.00 from their claim for storage as they were able to obtain a partial reimbursement the cost of storage. The tenant testified that they were in the hospital, and had made many unsuccessful attempts through their agents to retrieve their belongings, but the landlords failed to accommodate these requests. The tenant submitted letters in evidence, as well as phone records showing their attempts to contact the landlords.

The landlords testified that the agreement reached at the last hearing was that the tenant would arrange for a mover to attend on December 17, 2022. The landlords testified that due to their work schedule and commitments, they were prepared to the tenant to attend on December 17, 2022 with their mover, and not on December 16, 2022. The landlords testified that no prior arrangements were made for the move to take

place on December 16, 2022, and as a result they required time to obtain the key and access the storage facility. The landlords testified that the tenant only stayed 35 minutes, which did not give the landlords sufficient time to arrange the return of the tenant's belongings on December 16, 2022. The landlords testified that they have not heard from the tenant since that date.

The landlords filed their own monetary claims as follows:

Item	**Amount**
Hydro Owing	$825.00
Storage	9,840.00
Storage	9,672.00
Storage	8,376.00
Loss of earnings	1,680.00
Loss of earnings	1,680.00
Cleaning, and moving items to storage	4,188.00
Loss of earnings	1,200.00
Loss of rental income	15,600.00
Estimate for repairs of rental unit	15,437.00
Recovery of Filing Fee	100.00
Total Monetary Order Requested	**$ 68,598.00**

Although the landlords' online application referenced a total monetary claim of $34,600.00, the landlords submitted a monetary order worksheet noting the above claims, totalling $68,598.00.

Section 58(2) of the RTA provide that the director can decline to resolve disputes for monetary claims that exceed the limit set out in the Small Claims Act. The limit is currently $35,000.00.

As per RTB Rule 2.8, An applicant who has a claim amounting to more than $35,000.00 may abandon the part of the claim that exceeds $35,000.00 so that the balance of the claim may be heard by the arbitrator.

The landlords confirmed during the hearing that they wished to proceed with the scheduled hearing, and the claims referenced in their application. The hearing proceeded as scheduled, with a consideration of the landlords' monetary claims not to exceed $35,000.00.

The landlords testified that the tenant owed $825.00 in utilities, which remain unpaid by the tenant. The tenant responded that they have not received any bills from the

landlords, but did consent for the landlords to retain the tenant's deposits in satisfaction of what is owed.

The landlords testified that the tenant had abandoned the rental unit, and failed to leave the rental unit in reasonably clean and undamaged condition. The landlords testified that they had to take time off in order to deal with the tenant and these issues, which included dealing with several no shows. The landlords testified that due to the tenant's actions, they had to clean the rental unit, and move the tenant's belongings to storage in order to re-rent the rental unit. The landlords submitted a copy of the inspection report as well as photos of the suite.

The landlords testified that due to the state of the rental unit, they had lost rental income.

The landlords confirmed that although they had submitted estimates for repairs, they have not undertaken the repairs.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the applicant must satisfy each component of the following test for loss established by **Section 7** of the Act, which states;

Liability for not complying with this Act or a tenancy agreement

> ***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.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.

4. Proof the claimant followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, each applicant bears the burden of establishing their claim on the balance of probabilities. The applicant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the applicant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the applicant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

I have listened to the recording of the hearing held on December 12, 2022. I note that approximately 17 minutes into the hearing, the Arbitrator discussed with the parties a potential date for when the tenant could go retrieve their belongings. The landlords had informed the Arbitrator that they worked shift work, and due to their schedule, the best date was December 17, 2022. I note that the Arbitrator then referred to the December 17 several times after, and the final agreement recorded by the Arbitrator was as noted earlier in this decision:

1. *The Tenant shall retrieve his personal possessions from the Landlord's property by no later than 4:00 p.m. on December 17, 2022. The parties agree that the Tenant shall attend the residence with movers and a moving vehicle sufficient to transport approximately 500 square feet of belongings.*

2. The parties agree to minimize any verbal interactions on December 17, 2022 with a goal to reducing any conflict.

3. Should the Tenant not attend the Landlord's property by 4:00 p.m. on December 17, 2022 as agreed, the Landlord shall be at liberty to dispose of the Tenant's belongings.

I note that the date recorded on the decision was December 17, 2022, although the words "by no later than" may have contributed to some confusion on the tenant's part. Although I recognize that the tenant had made the effort to retrieve their personal belongings before December 17, 2022, and provided evidence to show that they had attempted to contact and communicate with the landlords in order to do so, I am not satisfied that the losses claimed by the tenant were due to the landlords' contravention of the Act or settlement agreement. It is clear that the communication has been difficult between the parties, and may have contributed to the confusion about when the tenant could retrieve their belongings.

I find it reasonable that the landlords were not prepared for a moving truck to attend on December 16, 2022. Accordingly, I dismiss the tenant's claims for reimbursement of their moving and storage costs without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was unsuccessful with their application, I find that the tenant is not entitled to recover the $100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

I will now consider the landlords' monetary claims.

In consideration of the outstanding utility bill, I note that the landlords have not submitted any bills to support the amount claimed. Although the landlords provided photos of the meter, as well as their own calculations, I find that this evidence does not sufficiently show what payments are due, and what has been paid by the landlords towards the outstanding utilities. I note that during the hearing, the tenant confirmed that they had consented to the retention of their deposits totalling $700.00 to be applied to the outstanding utilities. Although it is disputed by the landlords about whether the tenant had paid any deposits, I find that the tenancy agreement submitted clearly shows that a $200.00 pet damage deposit, and a $500.00 was required for this tenancy. I find that the landlords should have $700.00 in their possession. Accordingly, I allow the landlords to retain the $700.00 to be applied to any outstanding utility bills, and I dismiss the remaining amount claimed without leave to reapply.

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.

In this case, although I accept that the tenant was hospitalized for some time, and was unable to attend at the rental unit for several months, this does not relieve the tenant of their obligations to clean the rental unit, or hire a cleaner to accomplish this task. I am satisfied that the rental unit was not returned to the landlords in reasonably clean condition. I note that the landlords had claimed $4,188.00 for cleaning and moving the tenant's item to storage. As noted above, the onus is on the applicant to support the amount claimed, and that they mitigated this loss. In this case, I find that the landlords did not provide sufficient evidence to support the actual value of the loss claimed for cleaning of the rental unit, either referenced in receipts, invoices, or specific estimates.

As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the landlords compensation in the amount of $300.00 in nominal damages for the failure of the tenant to leave the home in reasonably clean condition.

In consideration of the landlords' other claims, I note that the landlords had submitted two estimates for repair of the rental unit. The landlords had confirmed during the hearing that the referenced repairs have not been completed at the time of the hearing. I note that the amounts claimed are not insignificant. In light of the evidence before me, I am not satisfied that the landlords had sufficiently supported the actual value of the losses claimed for repairs. Accordingly, I dismiss these claims without leave to reapply.

In consideration of the landlords' monetary claims related to the storage of the tenant's belongings, I find that the tenant had provided evidence to show that they had made repeated attempts to communicate with the landlords in order to retrieve their personal belongings.

Residential Tenancy Policy Guideline #5 addresses a landlord's duty to minimize loss and states the following:

"Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss[1]. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation[2]. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is

located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed."

I note that the landlord had made a claim totalling $27,888 ($9,840.00, $9,672.00, and $8,376.00) for storage costs. In consideration of the evidence before me, not only am I not satisfied that the landlords had provided sufficient evidence to support the losses claimed in relation to the storage of the tenant's belongings other than the bin rental receipt of $236.25, I find that the landlords could have taken more reasonable steps to minimize or prevent the losses claimed. I find that the tenants' agents had attempted to reach out to the landlords without any success, which necessitated an application by the tenant for dispute resolution. In light of the disputed testimony before me, I am not satisfied that the landlords had made reasonable efforts to respond to the tenant's repeated attempts to retrieve their personal belongings. Although the landlords claim that the tenant failed to show up as arranged, I do not find this claim to be supported in evidence.

I am not satisfied that the landlords had made an effort to mitigate the tenant's exposure to the monetary losses claimed in this application related to the storage and retrieval of their personal belongings, nor am I satisfied that the landlords had sufficiently supported the value of the amount claimed totalling $27,888.00. I therefore dismiss these claims without leave to reapply, with the exception of the $236.25 paid for the bin rental.

Similarly, I am not satisfied that the landlords had sufficiently established their entitlement to reimbursement of lost earnings. I find that the tenant and their agents had made considerable efforts to connect and communicate with the landlords in order to retrieve the tenant's belongings. Although I recognize that the tenant had arranged for their movers to attend on December 16, 2022, as noted earlier in this decision, I find that the settlement agreement recorded by the Arbitrator may have contributed to the confusion. I find that the words "by no later than" may have been interpreted to mean any date earlier than December 17, 2022 by the tenant, and therefore I accept this to be a reasonable explanation for why the movers had attended on the wrong date. I had also noted that the tenant and their agents had made repeated attempts to communicate with the landlords in order to arrange the pickup of these belongings prior to December 17, 2022, but were unsuccessful in doing so. Although the landlords argued that these losses were related to "no shows", I am not satisfied that the evidence supports that the tenant bears all the responsibility and blame for these unfortunate

circumstances. Accordingly, I dismiss the landlords' claims for lost earnings without leave to reapply.

Lastly, the landlords filed a monetary claim of $15,600.00 for lost rental earnings. In this case, I am satisfied that due to the abandonment of the property, the landlords did suffer a loss related to their inability to re-rent the rental unit until the unit was cleaned and ready for occupation. Although I accept that there was a loss, I find that the landlords' evidence falls short in relation to what efforts were made to mitigate the amount of loss claimed, such as what efforts were made to communicate with the tenant or their agents, and what efforts were made to fill the vacancy for the rental unit as soon as possible. In this case, the tenant's agent noted that there were attempts made on December 22, 2021, February 1, 2022, February 2, 2022 and December 14, 2022 to arrange for pickup of the tenant's belongings. The tenant also filed an application on July 21, 2022. I find this detailed evidence shows that considerable effort was made on the tenant's part to mitigate losses. On the other hand, I find that the landlords' evidence falls short. The landlords also did not provide detailed evidence of what efforts were made to advertise the unit for rent, or provide the details of when the tenancy was filled, and for how much. As I am satisfied that there was some loss of rental income associated with the abandonment of the rental unit, I award the landlords the equivalent of two month's rent in satisfaction of this loss. I dismiss the remaining amounts without leave to reapply.

As the landlords' application had some merit, I allow the landlords to recover the filing fee.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I allow the landlords to retain the tenant's security and pet damage deposit in satisfaction of the outstanding utilities owed for this tenancy.

I issue a Monetary Order in the amount of $3,236.25 in the landlords' favour as set out in the table below.

Losses for Cleaning	$300.00
Storage Bin Rental	236.25
Loss of rental income (2 months)	2,600.00
Recovery of Filing Fee	100.00
Total Monetary Award	$3,236.25

The landlords are provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) 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.

I dismiss the remainder of the landlords' application 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: September 06, 2023

Residential Tenancy Branch