



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC, RR, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant seeking a refund of the security deposit and monetary compensation for repairs and loss of facilities. The tenant is also seeking to terminate the fixed term tenancy prior to the expiry date.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### **Preliminary Issue**

With respect to the tenant's claim for a refund of the security deposit, I find that section 38 of the Act requires that, within 15 days after the tenancy ends and the landlord receives the tenant's forwarding address in writing, the landlord must either: a) repay the security deposit to the tenant with interest or; b) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In the case before me, I find that the tenants are still residing at the dispute address and the tenancy has not yet ended.

Therefore, I find that the portion of the tenant's application seeking a refund of the security deposit is premature.

The hearing will proceed with respect to the tenant's claim for a rent abatement in compensation for devalued tenancy.

**Issue(s) to be Decided**

Is the tenant entitled to monetary compensation under section 67 of the Act for damages or loss through a rent abatement?

**Background and Evidence**

The tenancy began on April 1, 2013 as a fixed term expiring on March 31, 2014. Rent is \$1,600.00 and a security deposit of \$800.00 was paid.

The tenant testified that the landlord contravened the Act by not completing a move-in condition inspection report and the tenant feels that they were therefore deprived of the opportunity to point out deficiencies with the unit. The tenant testified that, as the issues were discovered, they had to repeatedly contact the landlord to get things done.

The tenant stated that the landlord had not complied with the Act because the rental unit was not turned over to them in a clean condition and the tenants spent 10 hours cleaning the unit. The tenant is seeking a credit of \$200.00 for doing the cleaning.

The tenant testified that they were also charged \$50.00 for reserving the elevator for their move-in, but, when they arrived they found that it was never reserved for their move-in date. The tenant is requesting a refund of the \$50.00 paid.

The landlord acknowledged that they did not complete a move-in condition inspection report. The landlord testified that the tenant had accepted the rental unit as is and the landlord was not aware that the tenant had any concerns about the cleanliness. However, the landlord gave the tenants a gift of some wine and believed that the tenants were satisfied.

The tenant testified that the unit was found to be in need of repairs to various appliances and fixtures. The tenant's complaints related to the microwave, refrigerator including a broken ice-maker and filthy filter, serious problems with the washer, stained carpets and a substance sprayed on the deck floor. The tenant also had issues with the condition of the shower stalls.

The tenant testified that the repairs to the washer took one and a half months, for which the tenant is claiming \$400.00 in compensation.

The landlord acknowledged that the washer required repairs, but stated that it was fixed within 3 weeks of being notified. The landlord pointed out that the problem with the refrigerator was not significant and that the filter has been replaced.

The tenant testified that they also did the carpet cleaning, but are of the opinion that the carpets definitely need to be replaced.

The landlord agreed to look into the condition of the shower stalls, carpets and patio and take the necessary steps.

The tenants also feel that they should be entitled to terminate the lease early, given all of the issues they have endured with the unit.

### **Analysis - Monetary Compensation**

Section 7 of the Act states that, if a landlord or tenant does not comply with the Act, or tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant has a burden of proof to establish that the other party did not comply with the agreement or Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7. The evidence must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the tenant to prove a violation of the Act and a corresponding loss.

I find that the landlord and tenant had contracted for a tenancy that included a functional rental unit that was clean, comfortable, liveable and in reasonably good repair.

I find that section 32 of the Act imposes responsibilities on a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to

the age, character and location of the rental unit to make it suitable for occupation by a tenant.

In this instance, I accept that the tenant was required to clean the rental unit at the start of their tenancy. I find that, although the landlord showed support and sympathy by giving the tenants some wine, the fact that the landlord failed to comply with the Act by turning over a reasonably clean unit, warrants monetary compensation reflecting the amount of labour spent by the tenant in cleaning the unit. I find that the tenant is entitled to be compensated \$200.00 for the cleaning.

I also accept that the tenant had some issues with the elevator that impeded their move-in. Although it is not clear how the problem came about, I find that the tenant is entitled to be reimbursed the \$50.00 cost of reserving the elevator.

In regard to the loss of use of the washer, I find that the landlord did not violate the Act as the landlord did repair the washer and restored this facility for the tenant's use. However, I find that the temporary loss of the washer was a violation of the contract that included use of the washer. At the very least, I have determined that the broken washer devalued the tenancy for a period of time and costs were incurred by the tenant as a result. I accept that the duration of the loss was approximately one month.

Accordingly, I hereby grant the tenant compensation in the amount of \$20.00 per week totaling \$80.00 for the deficient washing machine.

I find that the landlord agreed to look into the other complaints.

I find that no compensation is warranted for the other deficiencies and repairs. Some of these have already been rectified and the landlord has agreed to inspect the rental unit to assess the need for other repairs that may be required, including the showers, carpets and patio.

Given the above, I find that the tenant is entitled to a one-time retro-active rent abatement of \$380.00, comprised of \$200.00 for the cleaning, \$50.00 for reserving the elevator, \$80.00 for the deficient washing machine and the \$50.00 cost of filing the application.

In granting the retro-active rent abatement, I emphasize that this amount is NOT in addition to any unauthorized deductions from the rent that the tenant chose to make prior to seeking this order.

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the

Regulations or the tenancy agreement, and a tenant is not permitted to deduct portions of the rent without an order to do so.

### **Analysis – Ending Tenancy Early**

In regard to the tenant's request that they be permitted to end the tenancy early, I find that, the Act does permit a tenant to end a tenancy under certain circumstances.

Although section 45(1) of the Act states that a tenant may end a periodic tenancy by giving the landlord one month notice to end the tenancy, this does not apply to fixed term tenancies.

Section 45 (2) provides that a tenant may only 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.  
(*My emphasis*)

In addition to the above, I find that section 45(3) of the Act provides that, 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 falls after the date the landlord receives the notice.

To establish that a breach of a material term in the tenancy has occurred entails satisfying the arbitrator that the following three components exist:

- There must be a clear term contained in the tenancy agreement
- This term must fit the definition of being "*material*"
- There must be a genuine breach of the material term.

Determining the materiality of a term requires a focus upon the importance in the overall agreement and it falls on the person relying on the term to present evidence that it qualified as a material term to both of the parties signing the agreement at the time the tenancy was entered into.

A material term is a term that the parties had both agreed was so important that the most trivial breach of that term would give the other party the right to end the agreement and the question goes to the root of the contract.

In this regard, despite my finding that the landlord violated some sections of the Act and the terms of the tenancy agreement, I find that the landlord has not breached a material term of this tenancy.

I find that the landlord's failure to complete a move-in condition inspection report, failure to clean the rental unit, and delay in restoring or repairing functioning appliances, do not qualify as breaches of a *material term* of the tenancy.

Given the above, I find that the tenant's request to terminate the tenancy early is not supported under section 45(3) of the Act, breach of a material term by the landlord and the tenant cannot rely on this reason to justify terminating the agreement before the expiry date.

Given the above, the tenant's request for an order to permit the tenant to end this tenancy prior to the fixed term, must be dismissed.

That being said, section 44(1)(c) of the Act provides that a landlord and tenant are at liberty to agree to end their tenancy through a mutual agreement to end the tenancy. The mutual agreement to end the tenancy must be in writing, signed by both parties and be compliant with section 52 of the Act with respect to form and content.

I find that the tenant is entitled to a one-time retro-active rent abatement of \$380.00 for the cleaning, reserving the elevator and the deficient washing machine, plus the \$50.00 cost of the application.

This ordered lump-sum rent abatement of \$380.00 is NOT in addition to any other arbitrary deductions the tenant has already made, without authorization, from past rental payments that were owed to the landlord.

The tenant's request for an order to terminate the fixed term tenancy before its expiry date, is dismissed. The remainder of the tenant's application is also dismissed without leave to reapply.

The portion of the tenant's application seeking a refund of the tenant's security deposit was not heard as the claim was found to be premature.

### **Conclusion**

The tenant is partly successful in the application and is granted a single, retro-active rent abatement. The remainder of the tenant's application, including the request for an order to terminate the fixed term tenancy before its expiry date, is dismissed without leave. The tenant's claim for the security deposit refund has not been heard, as the tenancy has not ended yet.

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 1, 2013

---

Residential Tenancy Branch

