



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD MNDCT FFT MNRL-S MNDL-S

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 landlord requested:

- a monetary order for unpaid rent, monetary losses or money owed pursuant to section 67.

The tenants requested:

- a monetary order for money owed or monetary compensation pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

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

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”). In accordance with section 89 of the *Act*, I find that both the landlord and tenants were duly served with each other’s Applications. As the landlord confirmed receipt of the tenants’ evidentiary materials, I find the landlord duly served with the tenants’ evidentiary materials in accordance with section 88 of the *Act*. The tenants testified that they were served with the landlord’s evidentiary materials, with the exception of two photographs. The landlord testified that the tenants were served with these two photos. In light of the disputed testimony, I am excluding the two photographs

as I am unable to confirm that the tenants were served with these two photos. Both parties confirmed that they were ready to proceed with the hearing.

Issue(s) to be Decided

Are the tenants entitled to the return of all or a portion of their security deposit?

Are either of the parties entitled to the monetary orders applied for?

Background and Evidence

This month-to-month tenancy began on October 1, 2015, and ended on November 3, 2019. Monthly rent was set at \$850.00 at the end of the tenancy. The landlord collected, and still holds, a security deposit in the amount of \$400.00.

The tenants testified that monthly rent was set at \$800.00 at the beginning of the tenancy, and was increased to \$850.00 as of May 1, 2016 without proper notice under the *Act*. Although no written tenancy agreement exists, the tenants testified that the \$800.00 rent is supported by the fact that the landlord had collected a security deposit of half that amount. The landlord testified that the rent was set at \$850.00 since the beginning of the tenancy, although the tenants only paid \$800.00 for 5 months. The landlord is seeking \$50.00 for each of those 5 months.

The landlord provided the following list of losses for her monetary claim:

Item	Amount
Cleaning countertops and cupboards	\$90.00
2 Bushes Uprooted	258.00
2 Table Fans from shop	78.00
Antique Wooden Vanity	850.00
Space Heater from Shop	49.00
Wooden Chair destroyed by cat odour	75.00
Hole in Bedroom Door	40.00
Missing rent (\$50.00 x 5)	250.00
2 NSF cheques	70.00
October Rent	850.00
Trash to Dump (receipts included)	30.00
Uncertified Electrical Plug	100.00
Total Monetary Order Requested	\$2,740.00

Both parties confirmed that no move-in inspection was completed for this tenancy. The landlord authorized the new tenant to appear as agent for the move-out inspection, although the tenants testified that they were never provided a copy of the report. The tenants provided a handwritten note from the agent dated November 3, 2019 that everything was acceptable, and not to worry about the carpets. The landlord testified that the home was newly painted and refloored at the beginning of the tenancy. The landlord is seeking a monetary claim for the missing or damaged items as set out above.

The tenants testified that they had cleaned the home, and did not damage or take any of the items listed above.

The tenants are disputing the landlord's entire claim, stating that on August 15, 2019, the landlord had given them notice under section 49 of the *Act* to move out by October 15, 2019 as she was selling the home. Both parties confirmed that the tenants were never given an actual 2 Month Notice to End Tenancy for Landlord's Use, but the landlord did verbally inform the tenants that they were to move out.

The tenants moved out November 3, 2019, and are seeking compensation in the form of 12 month's rent for the landlord's failure to use the home as intended pursuant to section 49 of the *Act*. The tenants testified that they were not required to pay the last month's rent for October 2019 as per the 2 Month Notice. In addition to these claims, the tenants are seeking compensation for the work performed on the property by them. The tenants' monetary claim is set out below:

Item	Amount
12 Month's Rent Compensation for s. 49 Notice to End Tenancy	\$10,200.00
April 2016-32 hours – septic repair	1,280.00
June 2016- 8 hours – roof repair	320.00
July 2017 – 8 hours- roof repair	320.00
August 2017 – hours – back porch repair	320.00
September 2018 – 12 hours – kitchen repair	480.00
September 2018 – 40 hours – front porch repair	1,600.00
Return of damage deposit	400.00
Total Monetary Order Requested	\$14,920.00

The landlord disputes the tenants' entire claim, stating that she never authorized any of the above work, nor did she agree in writing that the tenants would be compensated for any of the work. The landlord is also disputing the claim under section 49 of the *Act* as the tenants were never formally served with a 2 Month Notice to End Tenancy for Landlord's Use.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss

Section 49 of the *Act* allows for the landlord to issue a Notice to end the tenancy for landlord's use, and states the following:

7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Section 52 of the *Act* requires that the above Notice complies with the *Act*, specifically, that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) state the grounds for ending the tenancy, and (e) be in the approved form.

Although the tenants' testimony is that the landlord had communicated to the tenants that the tenants must move out as the home was sold, I find that no Notices to End Tenancy for Landlord's Use were issued to the tenants that comply with section 52(e) of the *Act*. The tenants feel that they should be entitled to compensation pursuant to section 51 below, which requires that a notice be given under section 49 of the *Act*.

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I find that the tenants moved out, and not as a result of receiving a Notice to End Tenancy pursuant to Section 49 of the *Act*. The tenants were never issued a formal Notice to End Tenancy that complies with section 52 of the *Act*. The tenants are therefore not entitled to monetary compensation equivalent to one month's rent pursuant to section 51 of the *Act*, nor are they entitled to compensation under section 51(2) for the *Act*.

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 find that the tenants did not pay rent for October 2019, and as they were not in possession of an Order allowing them to withhold or deduct this rent, I allow the landlord's monetary claim for the October 2019 rent. I also dismiss the tenants' application for compensation in the equivalent of 12 month's rent without leave to reapply.

The landlord applied to recover unpaid rent in the amount of \$50.00 for 5 months. In light of the disputed testimony, and in light of the fact that neither party submitted a copy of any written tenancy agreement or a Notice of Rent Increase, I find that the landlord has failed to provide sufficient evidence to support that the tenants owe the \$250.00 claimed. Accordingly, I dismiss this portion of the landlord's monetary claim without leave to reapply.

Sections 23 and 35 of the *Act* which requires the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that "the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished", as noted in sections 24(2) and 36(2) of the *Act*.

I am not satisfied that the landlord fulfilled her obligation to support what damage or losses were caused by the tenants during this tenancy. Without a move-in inspection report, and in light of the disputed testimony, I find the landlord has failed to provide sufficient evidence to support her claims for cleaning, damage, or lost items. Accordingly, I am dismissing the landlord's entire claim for cleaning, damage, and lost items without leave to reapply.

The landlord applied for reimbursement of the fees associated with 2 NSF cheques. I am not satisfied that the landlord had provided sufficient evidence to support that the tenants had provided payment to the landlord that resulted in these non sufficient funds fees. Accordingly, I dismiss this portion of the landlord's claim without leave to reapply.

The tenants submitted a monetary claim for damage to the items removed by the landlord. The tenants called a witness who was present during the move. I find that the landlord had moved the tenants' personal belongings without their permission. In assessing the tenants' monetary claim, I first note that the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. Based on the evidence before me, I accept that the landlord had contravened the *Act*. However, I am not satisfied that the tenants had provided sufficient evidence to support that the damage was due to the landlord's actions.

The tenants applied for compensation for the work they performed on the property during this tenancy. I find that the landlord had never provided written authorization to compensate the tenants for this work, nor were the tenants in possession of any Orders by an Arbitrator. Accordingly, I dismiss the tenants' monetary claims for the work performed, 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. Accordingly, I dismiss the tenants' application to recover the filing fee for their application.

The landlord continues to hold the tenant's security deposit of \$400.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim for unpaid rent for October 2019.

Conclusion

I issue a Monetary Order in the landlord's favour under the following terms which allows the landlord to recover the unpaid rent for October 2018.

Item	Amount
Unpaid Rent for October 2018	\$850.00
Less Security Deposit Held by Landlord	-400.00
Total Monetary Order	\$450.00

The landlord is 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.

The remainder of the 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: March 24, 2020

Residential Tenancy Branch