Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;

- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;

- Authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

Issue(s) to be Decided

Is the landlord entitled to the relief requested?

Background and Evidence

The parties agreed the monthly tenancy began on July 1, 2018. Monthly rent was $895.00 payable on the first. At the beginning of the tenancy, the tenant provided a security deposit of $437.50 which is retained by the landlord without the tenant's authorization. The tenant vacated the unit without notice on September 27, 2020 and

claimed the landlord breached a material term of the tenancy in not providing a properly functioning toilet.

The landlord testified the unit was approximately 600 square feet. It is an apartment in the basement of the landlord's home, and she lives upstairs.

The landlord claimed the tenant vacated improperly without notice and leaving the unit requiring considerable cleaning. The landlord claimed one month's rent and the cost of cleaning as follows:

ITEM	AMOUNT
One month's rent	$895.00
Cleaning	$462.00
Dumping fee	$15.00
Reimbursement filing fee	$100.00
Landlord's Claim	**$1,472.00**

The landlord requested authorization to apply the security deposit to the award.

The parties agreed as follows. The toilet in the unit overflowed and was discovered by the tenant when she awoke the morning of September 23, 2021. The tenant notified the landlord. The landlord's plumber came to the unit the following day, September 24, 2021. The toilet overflowed a second time that evening after the tenant returned home from work. The landlord's plumber came to the unit on September 25, 2020 but was unable to fix the toilet. That evening (September 25, 2021), the tenant informed the landlord that the unit was not liveable. The landlord offered to pay for accommodation for the tenant to a maximum of $120.00 a night and to pay for travel to the hotel. Throughout, the parties communicated primarily by text, copies of their text exchanges being submitted as evidence.

The tenant did not accept the offer to stay in a hotel and vacated the unit without notice on Sunday September 27, 2020, leaving a letter with the landlord which stated as follows:

> *I am writing this letter to inform you that I will be moving out effective immediately. The reason, as I am sure you are aware, for this decision is due to the ongoing problem with the plumbing issues. There have been numerous events leading up to my decision to leave but this is the final straw.*

I contacted you about the sewage leak in my suite on the morning of Wednesday September 23rd, 2020. On that day I had to call in sick from work to clean up the mess in my suite and bag up my belongings to ensure they were not damaged. You were unable to get a plumber until Thursday September 24th.

When I came home from work on Thursday, I had a shower and when I got out, I noticed there was another flood in the suite. You advised me the plumber was coming Friday morning to fix this and you informed me that I could not use the washing machine, shower, toilet, sinks etc until he came.

You also said you would not be home Friday morning and would leave him a key to get into my suite. When I came home Friday afternoon around 6:00pm, I was horrified at what I walked into. There was plumbing equipment left in my suite, and the pipes were overflowing with sewage in my kitchen and onto the carpet in my bedroom and living room.

At this point I contacted you to ask what was going as I had heard nothing all day from anyone. You told me you would contact the plumber and get him to call me back with an update. Your plumber ``[G.]`` called me and let me know that you were out of town for the weekend and that there were roots growing in the sewage pipes, and that this would be an ongoing problem. He also advised me he would try and clear out the sewage water that night and may have to contact the city if he were unable to.

At this point I had not heard from you and was left feeling neglected and abandoned. It was unsafe and unhealthy for me to stay in these living conditions. You did not come up with any viable solutions for this situation for me at this time. You asked me if I could stay with a friend and that you would cover the Uber costs. Later, after I said this was unacceptable, you said you could budget about $120 per night and to send you options that work in terms of location. I do not drive and the only hotel in [the city] is at least $180 a night including taxes.

I am fed up with the way I am treated by you and I see no way to move forwards after this situation. Therefore, I have made the decision to move out. I will be contacting the tenancy board on Monday September 28th, 2020 and we can deal with any disputes through them.

During the hearing, the tenant added some concerns to those expressed in the letter. She stated that the unit “smelled like an outhouse”, that the overflow included raw

sewage, and that she had cleaned up an earlier overflow because she thought she had to and she could not afford another apartment.

The tenant submitted pictures of the overflow of water in the maintenance room adjacent to her kitchen, an area of wet carpet in the living room/bedroom, and a section of water-stained baseboard.

The landlord denied that the tenant was entitled to vacate without notice. She stated that she did everything reasonably possible to get the problem fixed. She denied that the unit smelled bad. She accused the tenant of manipulating the situation so she could move out without notice. She asserted that her offer of accommodation and payment of travel to the hotel was adequate; the tenant should have taken the offer and moved back in when the unit was ready.

The landlord further started that the tenant left the unit requiring a “move out clean”, that the appliances were dirty, and the fridge was full of food. The landlord submitted pictures of the fridge with food inside, abandoned meat in a garbage bag, and plates, etc, left behind.

The tenant acknowledged that she did not clean the unit, dispose of the garbage, or completely remove her belongings. She explained that she had a friend helping her move as she did not have a car and did not have time to clean.

The landlord stated that the restoration was completed on October 10, 2020. Underlay was replaced and baseboard cleaned/painted. The unit was ready to rent on October 10, 2020 and the landlord advertised the unit beginning October 15, 2020. The unit was vacant for the month of October 2020 and the landlord requested reimbursement for rent for that month.

The landlord submitted a receipt for the cleaners who billed for 8 hours of work at $55.00 an hour. She stated she did not obtain cleaning quotes but accept a recommendation of a cleaner from the plumber. The landlord acknowledged that she initially quoted $120.00 as a fee for the cleaning but that she underestimated the work involved.

Analysis

While I have turned my mind to the documentary evidence and the testimony introduced in the 60-minute hearing, not all details of the submissions and arguments are

reproduced here. The relevant, admissible and important aspects of the claims and my findings are set out below.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In assessing the weight of the testimony and evidence, I found the tenant credible, well-prepared and sincere. As the tenant stated, she believed the unit was unfit to live in and only moved out because of the ongoing toilet overflow problem which she assessed was not being fairly or adequately addressed. I find her description of her living situation, the condition of the unit because of the toilet overflow, and her reaction, to be reasonable in the circumstances.

In assessing the weight of the landlord's testimony and evidence, I observed that she appeared indifferent about the effect of her actions and the delay in fixing the issue. She dismissed the tenant's claims of discomfort and distress as unreasonable and exaggerated given the "minor" nature of the issue. I found the landlord throughout was primarily concerned about the cost of the plumbing repairs and how to save expenses; she did not appreciate the impact of the situation on the tenant.

As a result of my assessment of the credibility of the parties, I gave greater weight to the tenant's account of the extent of the damage and the negative effect on her; where the evidence of the parties' conflicts, I prefer the tenant's version of events which I find credible and reasonable.

Ending a Tenancy

Section 44(1) of the Act lists fourteen categories under which a tenancy may be ended, and references section 45 of the Act. Section 45 of the Act deals with a tenant's notice to end a tenancy, and reads, in its entirety, as follows:

> *(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*
>
> *(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.*

(2) A tenant may 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.

*(**3) 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 is after the date the landlord receives the notice.***

(4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].

Breach of a material term

As noted in *RTB Policy Guideline* #8 – *Unconscionable and Material Terms,* a *material term* is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the Agreement.

To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement. It falls to the person relying on the term, in this case the tenant, to present evidence and argument supporting the proposition that the term was a material term.

The question of whether a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. The same term may be material in one agreement and not material in another. Applications are decided on a case-by-case basis. Simply because the parties have stated in the agreement that one or more terms are material, is not decisive. The Arbitrator will look at the true intention of the parties in determining whether the clause is material.

RTB Policy Guideline #8 reads in part as follows:

To end a tenancy agreement for breach of a material term the party alleging a breach…must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy…*

In considering the facts of this case, the testimony and the evidence, I find the tenant has met the burden of proof under section 44(3) and under section 52 with respect to the contents of the notice. I find that there was a material breach of the implied requirement that the landlord provides a proper functioning toilet in the unit and make reasonable, timely repairs.

I find that there were multiple problems as credibly articulated by the tenant, such as water staining on flooring, smell of sewage, attendance of plumbers, and delays. I find that the tenant requested the landlord in writing to remedy the situation, that the tenant stated their intention to leave by telling the landlord the unit was not livable, and that the landlord failed to address the problems, even failing to acknowledge problems existed. I find the loss of a reliable toilet, the overflow of sewage twice within a short time, and the slow repair, taken together constitute a breach of a material term which made it impossible for the tenancy to continue.

I find the tenant acted reasonably at all times; she notified the landlord of the issues and gave the landlord ample time to correct the problem. When all efforts to reach a solution with the landlord failed, the tenant provided a written letter of explanation and vacated the unit.

In summary, I find the overflowing of the toilet and inadequate repair as described by the tenant and supported by the documentary evidence to amount to breach of a material term.

As a result of this finding, I find the landlord has no claim for damages or compensation from the early ending of tenancy without notice. I dismiss the landlord’s application in in this regard without leave to reapply.

Cleaning expenses

Under section 37(2) of the *Act*, the tenant must leave a rental unit *reasonably clean*.

I find that the landlord incurred the cleaning expenses claimed as supported by submitted receipts.

However, I find the total cleaning expense to be out of keeping with a 600 square foot unit as described by the tenant whose testimony I accept. I find, based on the evidence, that some of this expense related to cleaning of the toilet overflow and the restoration of the unit. I find the amount claimed to be excessive and unreasonable in the circumstances. Nevertheless, I find the tenant failed to make any attempt to clean the unit or empty the refrigerator.

I considered *Policy Guideline 16: Compensation for Damage or Loss which* states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- *"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

I find this is an appropriate situation for the award of a nominal amount.

Considering the testimony, the evidence and this Policy Guideline, I therefore award the landlord a nominal amount for the cleaning of $200.00.

Filing fee

As the landlord has been partially successful in her application, I award her reimbursement of a part of the filing fee in the amount of $25.00. I authorize the landlord to apply the security deposit to the award.

Summary of Award

I award the landlord the following:

ITEM	AMOUNT
Cleaning	$200.00

Filing fee	$25.00
(Less security deposit)	($437.50)
Balance of security deposit to be returned to tenant	**($212.50)**

Conclusion

The tenant is granted a Monetary Order for $212.50 for the return of the remainder of the security deposit. Except as indicated above, the landlord's claims are dismissed without leave to reapply.

The Monetary Order must be served on the landlord. The Order may be enforced in the courts of the Province of British Columbia.

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: January 22, 2021

Residential Tenancy Branch