



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNRT, MNDCT

Introduction

On November 15, 2020, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking a Monetary Order for the cost of emergency repairs pursuant to Section 33 of the *Act*.

Both the Tenant and the Landlord attended the hearing. All parties in attendance provided a solemn affirmation.

The Tenant advised that a Notice of Hearing and evidence package was served to the Landlord by registered mail on November 16, 2020. As well, she served her Amendment to the Landlord by registered mail on December 2, 2020. She stated that she did not check to see if the Landlord could view her digital evidence in accordance with Rule 3.10.5 of the Rules of Procedure. The Landlord confirmed that he received these packages and that he was able to view the digital evidence. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Notice of Hearing, Amendment, and evidence packages. As such, I have accepted this evidence and will consider it when rendering this Decision.

The Landlord advised that he served his evidence by registered mail on February 19, 2021 and he did not check to see if the Tenant could view his digital evidence in accordance with Rule 3.10.5 of the Rules of Procedure (the registered mail tracking number is noted on the first page of this Decision). The Tenant advised that she did not receive this package; however, the tracking history indicated that a notice card was left for pickup on February 22, 2021. Based on the evidence before me, I am satisfied on a balance of probabilities that this evidence package was sufficiently served to the Tenant by registered mail on February 19, 2021 and that it was deemed to have been received

five days later. As such, I have accepted this evidence and will consider it when rendering this Decision. However, as the Landlord did not check to see if the Tenant could view his digital evidence in accordance with Rule 3.10.5, I have excluded this evidence and will not consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to monetary compensation?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on March 1, 2019 and ended when she gave up vacant possession of the rental unit on September 17, 2020. She provided the Landlord with her 10-day notice to move early on September 8, 2020, after being served a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"). The Tenant's notice was effective for September 20, 2020. Rent was established at \$2,000.00 per month and was due on the first day of each month. A security deposit was not paid. A copy of the signed tenancy agreement was submitted as documentary evidence. All parties also confirmed that the Tenant was the only person listed as a Tenant on the tenancy agreement. As such, any other parties were removed as an Applicant on this Application.

The Tenant advised that the Landlord served her with a Two Month Notice to End Tenancy for Landlord's Use of Property on August 9, 2020 and then served her with another one on August 28, 2020. The reason the Landlord checked off on the second Notice was because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse.)" The effective end date of the tenancy on the second Notice was noted as October 31, 2020.

She stated that after receiving the Notice, she gave her 10-day written notice to end her tenancy early pursuant to Section 50 of the *Act*. She served this notice to the Landlord by hand on September 8, 2020, with an effective date of September 20, 2020. She did not pay her rent for September 2020 and returned the keys on September 20, 2020. The Tenant is seeking compensation in the amount of **\$1,950.00** as she did not receive one month's rent compensation that she is entitled to after being served the Notice, pursuant to Section 51(1) of the *Act*. The reason she is asking for this amount is that the rent was reduced by \$50.00 per month to compensate her for a hydro issue.

The Landlord advised that he served the first Two Month Notice to End Tenancy for Landlord's Use of Property on August 9, 2020 but he "messed up the date" so he served the second Two Month Notice to End Tenancy for Landlord's Use of Property on August 28, 2020. All parties agreed that this second Notice was the subject of this dispute. He stated that he asked the Tenant for the rent on September 3, 2020 but the Tenant refused to pay, so he served her with a 10 Day Notice to End Tenancy for Unpaid Rent on September 7, 2020. He confirmed that rent was reduced to \$1,950.00 per month in August of 2019. He also advised that the Tenant did not pay any rent for August 2020 for some reason.

The Tenant confirmed that she did not pay August 2020 rent as she had a verbal agreement with the Landlord not to pay it.

The Landlord advised that the Tenant could withhold August 2020 rent as the compensation due to the Notice; however, the Tenant would be required to pay September 2020 rent.

The Tenant then agreed with the Landlord's testimony.

Despite the Tenant seeking compensation in the amount of \$392.32 on her Application, during the hearing she stated that she was actually seeking compensation in the amount of **\$180.44**, broken down as \$36.09 for replacement of a fridge filter, \$14.50 for a garden hose, \$69.85 for repair of the lawnmower, and \$60.00 for two runs to the dump.

She stated that she replaced the fridge filter as it was necessary because it had not been changed in a significant amount of time. She believes she talked to the Landlord about this; however, other than a receipt for the cost of the filter, she did not submit any other documentary evidence to support this position.

Regarding the garden hose, she stated that the Landlord left a garden hose for her to use but it burst. She does not believe she asked the Landlord to fix it, but she provided a receipt as documentary evidence to support the cost of the hose she purchased.

With respect to the lawnmower, she stated that it required a tune up and the blades needed sharpening. She did not bring this issue up with the Landlord, but she submitted a receipt for this service.

Finally, regarding the dump runs, she stated that she had an agreement with the Landlord to take away refuse that was left by the previous tenant. She provided a receipt to support this cost.

The Landlord advised that he knew the fridge filter needed replacement, that he never received the bill from the Tenant, and that he did not know how much it would cost. He informed the Tenant to give him the receipt and he would pay her for it. He stated that he left a garden hose for the Tenant to use and he does not know what happened to it. He confirmed that the Tenant replaced the hose and stated that the Tenant could have taken it when she left.

Regarding the lawnmower repair, he stated that he had no idea that it was in need of maintenance as it had been serviced a year prior. He stated that the Tenant did not provide a receipt for this.

With respect to the dump runs, he advised that the Tenant and the previous tenant were mutual friends and that the Tenant wanted to move in earlier. He stated that he did not have a verbal agreement to dispose of these items, and he referenced screenshots of text messages from the Tenant confirming his position that he should not be responsible for this cost as the Tenant elected to dispose of these items. He advised that the Tenant only submitted one receipt to support her claim.

The Tenant's final claim for compensation was for **\$925.00** for hydro expenses. She stated that since she moved in, there have been high hydro costs from April to May 2019 and June to July 2020. Her first hydro bill was \$700.00 and she was more accustomed to paying \$100.00. From June to August 2019, she claimed to have paid \$2,847.91 for utilities and she was provided multiple opportunities to outline her calculations during the hearing. She stated that she paid \$500.00 for utilities in April 2019.

The Landlord advised that the Tenant was responsible for the utilities as per the tenancy agreement. He stated that she submitted receipts for the hydro, but she did not provide any bills. He testified that the electrical use when the Landlord lived on the property was actually lower than when the Tenant lived solely on the property. He confirmed that he actually reduced the Tenant's rent by \$50.00 per month in August 2019 to compensate her for hydro.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Tenant's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

Regarding the Tenant's claim for one month's compensation owed to her when she was served the Notice, I find it important to note that Section 51 of the *Act* reads in part as follows:

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.

The undisputed evidence is that the Tenant was entitled to one month's compensation after being served this Notice, and the *Act* allows for the Tenant to withhold the last month's rent as compensation. As the last month based on this Notice was October

2020, the Tenant was permitted to withhold that month's rent. The undisputed evidence is that the Tenant gave her 10 day's notice to end her tenancy early, effective for September 20, 2020, that she did not pay any rent for September 2020, and that she also did not pay any rent for August 2020. While not permitted under the *Act* to do so, as the Tenant did not pay August 2020 rent, she has already received an amount of compensation that is equivalent to the amount that would be applicable pursuant to the Notice. Effectively, the Tenant has already received the compensation due to her after being served the Notice. As such, I dismiss this claim in its entirety. In addition, as the Tenant occupied the rental unit in September 2020, she is responsible for paying for the prorated portion of days that she lived there. However, the Landlord must make his own Application to recover these costs.

Regarding the Tenant's claims for compensation in the amount of \$180.44, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

With respect to her claims for compensation for the fridge filter, as the Landlord acknowledged that this needed to be changed, I grant the Tenant a monetary award in the amount of **\$36.09** to satisfy this claim.

Regarding the Tenant's claim for the garden hose, I do not find that she has provided sufficient evidence to support what the cause of the damage to the hose was. As such, I dismiss this claim.

With respect to the lawnmower repair, there is no evidence that the Tenant even brought this issue to the Landlord's attention. In addition, I do not find that she has provided sufficient evidence to substantiate that the lawnmower was in need of repairs, nor has she submitted any evidence that whatever issue needed repairing was not due to her own negligence. As such, I dismiss this claim in its entirety.

Finally, regarding the Tenant's claims for compensation for the dump runs, I do not find that there is any consistent evidence of a verbal agreement from the Landlord to pay for this. As there is insufficient evidence submitted to corroborate the Tenant's position, I dismiss this claim without leave to reapply.

With respect to the Tenant's final claim for compensation in the amount of \$925.00 for hydro expenses, I find it important to reiterate that the burden of proof is on the Applicant to provide sufficient evidence to corroborate and support the legitimacy of a

claim. While the Tenant has submitted various hydro receipts and bills, the Tenant was given multiple opportunities to explain how she calculated that she was owed \$925.00 as overpayments in hydro. However, the Tenant was unable to explain how this amount was arrived at. As the undisputed evidence is that the tenancy agreement required her to pay for hydro, and as the undisputed evidence is that the Landlord reduced her rent in August 2019 for some hydro adjustments, I am not satisfied that the Tenant has submitted sufficient evidence to justify her claim. As such, I dismiss this in its entirety.

Pursuant to Section 67 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Item	Amount
Fridge filter	\$36.09
Total Monetary Award	\$36.09

Conclusion

I provide the Tenant with a Monetary Order in the amount of **\$36.09** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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.

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 21, 2021

Residential Tenancy Branch