



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNRT, MNETC, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both parties also confirmed the landlord served the tenant with his submitted documentary evidence in person on July 15, 2021. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 71 of the Act.

At the outset, the landlord argued that the Limitations Act prevents the tenant from filing an application for compensation as the claims occurred in 2018 which is beyond 2 years and as such should be dismissed. The landlord did not provide any specifics regarding this argument. A general review of the Limitations Act shows that the Act was changed

in 2013 to move from a general 30 year ultimate limitation period to a 15 year ultimate limitation period. Despite this the Residential Tenancy Act, Section 60 (1) states in part, If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned. On this basis, the landlord's request to dismiss the tenant's application is denied.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation, for the cost of emergency repairs and recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks a monetary claim of \$28,888.00 which consists of:

\$3,700.00	Compensation, Loss of Use
\$2,000.00	Compensation, Costs for emergency repairs
\$23,088.00	Compensation, Sec. 51. Stated purpose not accomplished/fail to take steps
\$100.00	

The tenant seeks compensation of \$3,700.00 for the loss of use of: kitchen; bathroom; and basement. The tenant claims that she lost the use of the kitchen for a period of 1 ½ months; basement for 2 weeks; and bathroom for 1 week due to renovation/repair work to the rental property. The tenant stated that her calculations were based upon the monthly rent but was not able to provide how she calculated the breakdown for this claim.

The landlord argued that the tenant's claim for loss of use is contrary to the agreed tenancy agreement. The landlord clarified that there is no signed tenancy agreement, however the landlord claims that as part of the tenancy agreement the tenant was offered and accepted to rent the property at a lower rent if the tenants would take it upon themselves to make all necessary repairs themselves during the tenancy. The landlord stated that as part of this agreement the tenants implicitly agreed to a loss of use of any areas from which they would suffer a loss of use if any repairs were to be

made. The landlord stated that the tenants would routinely be reimbursed for any expenses or a reduction in rent would be made equal to the expenses.

The tenant disputed the landlord's claim that no such agreement was made. The landlord confirmed that no details of the agreement are in written form.

The tenant seeks the cost of emergency repairs of \$2,000.00 for leaking water pipes in the basement but was unable to provide any details of the monetary claim or its calculation. The tenant claims that the pipes leaked in the basement in 2018 and that the tenant made emergency repairs to fix this. The tenant stated that she is unable to provide any invoices/receipts for any of the emergency repairs.

The landlord disputes the tenant's claims arguing that whenever the tenant has had repair expenses, the landlord has always reimbursed the tenants or given a credit to the monthly rent to compensate the tenant. The landlord has referred to copies of receipts previously provided by the tenant from 2017 and 2018 for which the tenant was compensated as noted on the receipts/Bank Deposit slips.

The tenant also seeks compensation of \$23,088.00 under section 51 of the Act as the landlord having served a notice to end tenancy for landlord's use of property dated February 25, 2020 to be effective on April 30, 2020. Both parties confirmed the landlord issued and served this notice with the reason indicated for landlord's use of property and a selection for the child of the landlord. Both parties confirmed it was meant for the landlord's son to occupy the rental unit. Both parties confirmed that the landlord's son did not occupy the rental unit. The tenant provided undisputed affirmed evidence that the landlord has new tenants occupying the rental property. The tenant submitted a video interview of the new tenant who confirmed that the landlord or his son do not live on the rental property. The tenant also provided evidence that the landlord had advertised the rental property in June of 2020.

The landlord confirmed the tenant's evidence but argued that an exception should be made for the landlord and be excused from paying the tenant compensation under section 51(3) of the Act. The landlord provided undisputed affirmed evidence that the rental property was meant for the landlord's son as he was being released from jail on parole. The landlord stated that based upon a Parole Board of Canada Decision dated October 9, 2019 the landlord's son was granted Day Parole on October 9, 2019 and that subsequently the landlord's son would have been granted Full Parole 6 months later. The landlord stated as such, the landlord issued and served the tenant with the notice to end tenancy dated February 25, 2020 for the end of tenancy on April 30, 2020. Full

Parole was not granted. The landlord as a result waited until June 30, 2020 to advertise the rental property for a new tenant. However, the landlord stated that Full Parole was granted on July 30, 2020 to the landlord's son 9 months later.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

On the tenant's claim for compensation of \$3,700.00 for the loss of use of the kitchen; bathroom and bedroom, I find that the tenant has failed to establish a claim. Despite arguing that a loss of use occurred for each of these areas, the tenant has failed to provide sufficient evidence on the how she equates the loss to the monthly rent of \$1,850.00. The landlord has disputed this claim providing undisputed affirmed testimony that as part of a lowered rent tenancy agreement the tenant had agreed to forgo any losses of use based upon renovation/repair work made by the tenant. This portion of the tenant's application is dismissed.

On the tenant's claim for \$2,000.00 in costs for emergency repairs, I find that the tenant has failed to establish a claim. Despite the tenant's claim that there were leaking pipes in the basement the tenant has failed to provide sufficient details on the costs associated to this claim. The landlord has also argued that at no time has the tenant submitted a request for emergency repairs or given the landlord an accounting of these costs. The landlord provided evidence that expenses for approved repairs were routinely reimbursed or credited from the tenant's monthly rent. On this basis, this portion of the tenant's claim is dismissed.

On the tenant's claim for compensation of \$23,088.00, both parties have confirmed that the landlord served the tenant a notice for landlord's use of property. In this case that the rental unit would be occupied by the landlord's son. The landlord confirmed that the landlord's son did not occupy the rental unit and that it was subsequently re-rented. The landlord in this case seeks to be excused under section 51(3) of the *Act*. The

landlord claimed that his son was expected to be released on parole as per a Day Parole Decision granted on October 9, 2020 with the belief that Full Parole would be given 6 months later. The landlord issued a notice to end tenancy dated February 25, 2020 for the end of tenancy on April 30, 2020. Full Parole was not granted to the landlord's son and the landlord waited until June 30, 2020 to advertise the rental property for a new tenant. However, the landlord also provided evidence that Full Parole was granted on July 30, 2020 to the landlord's son 9 months later. I find on this basis that based on these facts the landlord had extenuating circumstances that prevented him from accomplishing the stated purpose of the notice and the tenant's monetary claim is dismissed.

### Conclusion

The tenant's application is 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: August 10, 2021

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Residential Tenancy Branch