Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNRT, MNSD

Introduction

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

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67;
- a Monetary Order for the cost of emergency repairs, pursuant to section 33; and
- a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord's translator attended and affirmed to translate to the best of the translator's ability from the English language into the Mandarin language and from the Mandarin language into the English language.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision.

Preliminary Issue- Service

Both parties agree that the tenant served the landlord with this application for dispute resolution and the tenant's evidence via registered mail. I find that the landlord was served with the above documents in accordance with section 89 of the *Act.*

The landlord testified that the tenant was served with the landlord's evidence via email on July 29, 2021, six days before this hearing. The tenant testified that he received the landlord's evidence five or six days before this hearing. I asked the tenant if he had an opportunity to review the landlord's evidence, the tenant testified "not completely".

Section 3.15 of the Residential Tenancy Branch Rules of Procedure (the "*Rules"*) states that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

Section 3.11 the *Rules* state that if the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

In determining whether the delay of a party serving her evidence package on the other party qualifies as unreasonable delay I must determine if the acceptance of the evidence would unreasonably prejudice a party or result in a breach of the principles of natural justice and the right to a fair hearing. The principals of natural justice regarding the submission of evidence are based on two factors:

1. a party has the right to be informed of the case against them; and
2. a party has the right to reply to the claims being made against them.

As the tenant testified that he did "not completely" review the landlord's late evidence, I exclude those portions of the landlord's evidence that the tenant did not have in the tenant's possession prior to the service of the landlord's evidence. Both parties agreed that the landlord served three notices to end tenancy on the tenant between November and December 2020. Only one of the notices to end tenancy served on the tenant were entered into evidence by the tenant. All three were entered into evidence by the landlord. I accept for evidentiary consideration the three notices to end tenancy entered by the landlord as both parties had copies of the notices to end tenancy months prior to this hearing. I find that the acceptance of the notices to end tenancy for consideration does not prejudice the tenant as the tenant had copies more than seven days before the hearing and should reasonably have known that they are relevant to this proceeding which centres on one of the three notices.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to a Monetary Order for the cost of emergency repairs, pursuant to section 33 of the *Act*?

3. Is the tenant entitled to a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on April 15, 2019 and ended on January 11, 2021. Monthly rent in the amount of $3,300.00 was payable on the fifteenth day of each month. A security deposit of $1,650.00 was paid by the tenant to the landlord.

The tenant testified that he emailed the landlord with his forwarding address approximately one month after he moved out. The tenant did not enter into evidence the email serving the landlord or any other proof of service documents. The tenant testified that he left his forwarding address in the landlord's mailbox approximately one month after he moved out. No proof of service documents were entered into evidence. The landlord testified that she did not receive the tenant's forwarding address via email or in her mailbox. Both parties agree that the landlord has not returned any portion of the tenant's security deposit.

The landlord testified that she listed the subject rental property for sale in September of 2020 but the subject rental property did not receive offers as high as she wanted, so she decided to allow her son, who needed a place to live, to move into the subject rental property. The landlord testified that she posted a Two Month Notice to End Tenancy for Landlord's Use of Property on the tenant's door on November 21, 2021 (the "First Two Month Notice"). The tenant testified that he received the First Two Month Notice on November 21, 2021. The First Two Month Notice states that the subject rental property will be occupied by the child of the landlord or landlord's spouse. The First Two Month Notice states that the tenant must move out by January 31, 2021.

Both parties agree that the tenant did not pay rent for the period of December 15, 2020 to January 14, 2021 on December 15, 2020, when it was due. The landlord testified that by December 18, 2020 the tenant had only made a partial payment towards rent for the above period. The landlord testified that a 10 Day Notice to End Tenancy for Unpaid

Rent (the ’10 Day Notice”) was posted on the tenant’s door on December 18, 2020. The tenant testified that he received the 10 Day Notice on December 18, 2020. Both parties agree that the tenant did not pay the outstanding rent for the December 15, 2020 to January 14, 2021 period within five days of receiving the 10 Day Notice and did not file an application with the Residential Tenancy Branch to dispute the 10 Day Notice. The 10 Day Notice states that the tenant must move out by December 31, 2020.

The tenant testified that he did not pay full rent for the period of December 15, 2020 to January 14, 2021 because the landlord refused to reimburse him for an emergency repair. Both parties agree that the tenant has the landlord’s phone number in case of emergencies, but they communicate via text because the landlord does not speak English and text messages can be translated more easily.

The tenant testified that in October of 2020 the heat in the subject rental property stopped working. The tenant testified that he texted the landlord but she did not respond for three days. These text messages were not entered into evidence. The tenant testified that when the landlord did respond she instructed him to purchase space heaters. These text messages were not entered into evidence. The tenant testified that it would cost more to purchase space heaters for the entire house than to fix the heat in the house. The tenant testified that since the landlord would not repair the heat, he hired a professional. The tenant testified that the repairs took three days to complete and that he took photos of the progress and sent them to the landlord each day and the landlord did not ask him to stop. The tenant entered into evidence text messages from the tenant to the landlord showing repair work. The tenant testified that it cost $2,150.00 to repair the heat and that when the landlord learned of the cost she said it was too much and refused to pay. Text messages reflecting the above were not entered into evidence.

The tenant entered into evidence the business card of the repair person. The business card has handwriting on it that the tenant testified was from the repair person. The handwriting sets out repairs made and at the bottom states the cost to be $2,150.00. The tenant testified that he did not get a receipt for the work done because the repair person said that a receipt would cost more because taxes would have to be recorded. The tenant testified that the business card was given to the landlord. The tenant is seeking the cost of the emergency repair from the landlord in the amount of $2,150.00.

The landlord testified that when the tenant first complained that the heat was not working, she hired a professional to repair the heat. The landlord testified that after the initial repair the tenant complained that the system was still not heating enough. The landlord testified that she informed the tenant that she would have the repair person

return but the tenant hired his own professional without her permission. The landlord testified that when the tenant gave her a business card and no receipt, she refused to pay.

The landlord testified that in December of 2020 the housing market started to heat up and she received an attractive offer for the subject rental property which she decided to accept. The landlord testified that she received a "Buyers Notice to Seller for Vacant Possession" from the purchaser. The tenant entered the above document into evidence. It states that the landlord and the purchasers have entered into a Contract for Purchase and Sale dated December 5, 2020 in respect of the subject rental property, all conditions of which the purchase and sale of the subject rental property have been satisfied or waived, the property is rented to tenant(s) and the buyer or one or more of the spouse, children, and parent of the buyer(s) or, in the case of a family corporation (as defined in the *Residential Tenancy Act),* voting shareholders of the Buyer(s)) intend in good faith to occupy the subject rental property.

The Buyers Notice to Seller for Vacant Possession goes on to state that in accordance with section 49 of the *Residential Tenancy Act,* the Buyer(s) hereby request that the Seller(s), as landlord, give notice to the tenant of the subject rental property pursuant to the *Residential Tenancy Act* terminating the tenancy and requiring the tenant(s) to vacate the subject rental property by 1:00 p.m. on March 15, 2021.

The landlord testified that since the subject rental property sold and her son would no longer be moving in, the landlord posted a second Two Month Notice to End Tenancy for Landlord's Use of Property on the tenant's door on December 30, 2020 (the "Second Two Month Notice"). The Second Two Month Notice states that the reason for ending the tenancy is that: "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit." The tenant testified that he received the Second Two Month Notice in the first week of January 2021.

The tenant testified that he is seeking 12 months' compensation because the landlord served him with the First Two Month Notice because her son was going to move in, but her son did not move in and the subject rental property was sold. The tenant testified that he is seeking one months' rent compensation as he was entitled to that amount because he was served with the First Two Month Notice, and this was not provided by the landlord. The tenant testified that he is seeking the return of his security deposit in the amount of $1,650.00.

The landlord testified that the tenancy ended by way of the 10 Day Notice and not the Two Month notices, so the tenant is not entitled to one months' free rent on 12 months' compensation.

Analysis

Section 33(5) of the *Act* states:

> (5)A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant
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> (a)claims reimbursement for those amounts from the landlord, and
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> (b)gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Based on the testimony of both parties I find that the tenant did not obtain a receipt for the heating repairs and did not provide a receipt for the amount claimed to the landlord. I find that the handwriting on the business card is not a receipt and the landlord is therefore not required to reimburse the tenant for the heating repairs. As the tenant did not comply with section 33(5) of the *Act*, and has not proved the loss suffered, the tenant was not entitled to deduct any amount from rent owing to the landlord. The tenant's claim for the cost of emergency repairs is therefore dismissed without leave to reapply.

Below is a table of the three notices to end tenancy:

Type of Notice to End Tenancy	**Date Served**	**Effective Date (day notice to end tenancy states tenant required to move out)**	**Corrected Effective Date (date tenant required to move out pursuant to the *Act.)***
First Two Month Notice	November 21, 2021	January 31, 2021	February 14, 2021
10 Day Notice	December 18, 2021	December 31, 2021	N/A
Second Two Month Notice	December 30, 2020	March 15, 2021	N/A

Based on the testimony of both parties, I find that the First Two Month Notice, the 10 Day Notice and the Second Two Month Notice were all served on the tenant in accordance with section 88 of the *Act.* Upon review of the First Two Month Notice, the 10 Day Notice and the Second Two Month Notice, I find that all the notices comply with section 52 of the *Act.*

Section 53(2) of the *Act* states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Section 49(2)(a) of the *Act* states:

> (2)Subject to section 51 *[tenant's compensation: section 49 notice]*, a landlord may end a tenancy
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> (a)for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
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> (i)not earlier than 2 months after the date the tenant receives the notice,
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> (ii)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, and
>
> (iii)if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy,

I find that the effective date of the First Two Month Notice does not comply with section 49(2)(a) of the *Act* and pursuant to section 53(2) of the *Act*, automatically corrects to the earliest date which does comply with section 49(2)(a) of the *Act* which is February 14, 2021. I find that the effective dates of the other notices to end tenancy comply with the *Act.*

I find that the earliest effective date of the notices to end tenancy is that of the 10 Day Notice.

Section 46 of the *Act* states:

> **46** (1)A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

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

(3)A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4)Within 5 days after receiving a notice under this section, the tenant may

(a)pay the overdue rent, in which case the notice has no effect, or

(b)dispute the notice by making an application for dispute resolution.

(5)If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), 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 to which the notice relates by that date.

(6)If

(a)a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b)the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Based on the testimony of both parties, I find that the tenant did not pay all outstanding rent within five days of receiving the 10 Day Notice and did not dispute the 10 Day Notice with the Residential Tenancy Branch. I therefore find that the tenant was conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice, pursuant to section 46(5) of the *Act,* that being December 31, 2021. I find that this tenancy ended on December 31, 2021 and that the tenant overheld the subject rental property by 11 days, until January 11, 2021.

Section 51(1) and section 51(2) of the *Act* states:

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) paid rent before giving a notice under section 50, the landlord must refund the amount paid.
(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 the landlord or purchaser, as applicable, does not establish that

(a)the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
(b)the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been 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 since this tenancy ended on December 31, 2021, before the corrected effective date of the First Two Month Notice and the effective date of the Second Two Month Notice, the First and Second Two Month Notices are null and void. Since the First and Second Two Month Notices are null and void, I find that section 49 of the *Act,* the section that pertains to Two Month Notices, and section 51 of the *Act,* the section that pertains to compensation arising out of section 49 non-compliance, are not activated. Consequently, I find that the tenant is not entitled to any remedies under section 51 of the *Act* including one months' free rent (section 51(1) of the *Act*) and 12 months compensation (section 51(2) of the *Act*). The tenant's claim for one months' free rent and 12 months' compensation is therefore dismissed without leave to reapply.

The tenant testified that the landlord was served with his forwarding address; however, no proof of service documents were provided to substantiate the tenant's testimony and the landlord testified that she did not receive the tenant's forwarding address.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

I find that the tenant has not proved that the landlord was served with his forwarding address.

Section 38 of the *Act* states:

> **38** (1)Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a)the date the tenancy ends, and
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> (b)the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.
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> (2)Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.
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> (3)A landlord may retain from a security deposit or a pet damage deposit an amount that
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> (a)the director has previously ordered the tenant to pay to the landlord, and
>
> (b)at the end of the tenancy remains unpaid.
>
> (4)A landlord may retain an amount from a security deposit or a pet damage deposit if,
>
> (a)at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
>
> (b)after the end of the tenancy, the director orders that the landlord may retain the amount.
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> (5)The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24

(2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6)If a landlord does not comply with subsection (1), the landlord

(a)may not make a claim against the security deposit or any pet damage deposit, and

(b)must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7)If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8)For the purposes of subsection (1) (c), the landlord must repay a deposit

(a)in the same way as a document may be served under section 88 (c), (d) or (f) *[service of documents]*,

(b)by giving the deposit personally to the tenant, or

(c)by using any form of electronic

(i)payment to the tenant, or

(ii)transfer of funds to the tenant.

A forwarding address only provided by the tenant on the Application for Dispute Resolution form does not meet the requirement of a separate written notice. The tenant's application for the return of the security deposit is therefore dismissed with leave to reapply. If the tenant makes a future application for the return of the security deposit, the tenant must prove that the landlord has been served with the tenant's forwarding address in a manner set out in section 88 of the *Act.*

Conclusion

The tenant's application for

- a Monetary Order for the cost of emergency repairs, pursuant to section 33; and
- a Monetary Order for compensation from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51

are dismissed without leave to reapply.

The tenant's application for a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 is dismissed with 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 05, 2021

Residential Tenancy Branch