



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT MNETC MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on February 22, 2022. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement, pursuant to section 67
- a monetary order to be paid back for the cost of emergency repairs that were made during the tenancy
- 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

The Tenant attended the hearing and provided affirmed testimony. However, the Landlord did not. The Tenant stated that he tried to send the Notice of Dispute Resolution Proceeding to the Landlord at the address listed on the 2 Month Notice to End Tenancy for Landlord's Use (the 2 Month Notice) by registered mail on August 28, 2021. However, this package was returned. Subsequently, the Tenant stated that he hired a process server to find and serve the Landlord. After 3 unsuccessful attempts, the Tenant's process server was finally able to serve the Notice of Dispute Resolution Proceeding and evidence, in person, on February 4, 2022. An affidavit of service was provided into evidence. I find the Tenant sufficiently served the Landlord with the documentation the same day it was personally served to her.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under the Act?
- Is the Tenant entitled to compensation in order to repay him for emergency repairs he completed during the tenancy?
- Is the Tenant entitled to compensation pursuant to section 51 of the Act, based off the 2 Month Notice that was issued?

Background and Evidence

The Tenant stated that the tenancy started on March 1, 2020, and monthly rent was \$2,000.00 due on the first of the month. The Tenant stated that he paid a security deposit of \$1,000.00 and a pet deposit of \$250.00. A copy of the tenancy agreement was provided into evidence.

The Tenant applied for the following items:

- 1) \$1,000.00 – repayment for the cost of emergency repairs completed during the tenancy

The Tenant stated that while he was living in the rental unit, the Landlord hired a contractor to do a small bathroom remodel to relocate laundry, move cabinets, some lighting and minor plumbing. The Tenant stated that part way through the renovation, the contractor walked off the job, leaving the bathroom partly completed, and the laundry not functional. The Tenant stated that the Landlord informed him that she could not find any other contractors to finish the job because of COVID. The Tenant stated that he was given the chance to finish the repairs himself, or wait until COVID was over. The Tenant stated that he chose to perform the work himself, rather than not have the use of his washroom or laundry for an indefinite period of time.

The Tenant stated that it took him approximately 4 hours of labour to complete the repairs, which included finishing the electrical wiring for the light, and laundry machine, and finishing the plumbing for the sink, all of which was left unfinished and exposed after the contractor left. During the hearing, the Tenant was asked how he calculated

\$1,000.00 for this item and he stated he is seeking \$100.00 per hour for 4 hours of his labour, plus some material cost. The Tenant did not elaborate on what his material costs were, or how he calculated that he is owed another \$600.00 on top of the \$400.00 for his labour.

The Tenant also loosely referred to an issue with the locks, but did not elaborate on this matter. The Tenant provided a couple of emails speaking to the fact that he informed the Landlord about his dissatisfaction with the repairs, and the Tenant also informed the Landlord he would be completing the repairs himself, and deducting this from rent. The Tenant also provided emails showing the parties had a disagreement about who would be responsible for the repairs, and it appears the Landlord was of the mind that the Tenant would be responsible for any labour he did, as it was voluntary, and she was only going to pay via her contractor, once they could resume work following the COVID restrictions.

2) \$24,000.00 – 12 Month's Compensation Pursuant to section 51 of the Act
(relating to the 2 Month Notice)

The Tenant provided copies of emails into evidence, some from December 28, 2020, and some from January 23, 2021. The first set of emails shows that the parties discussed ending the tenancy. The Landlord spoke to potentially wanting to end the tenancy, and the Tenant appeared open to ending the tenancy, at the end of his fixed term lease. The Tenant even went so far as to offer his formal Notice to move, effective March 1, 2021, despite not getting any 2 Month Notice. Then, in the second email exchange, the parties started to disagree regarding how and when the tenancy would end. The Tenant stated he was no longer in agreement with the initial terms discussed. Despite the Tenant stating he was not in agreement with his initial offer to move, the Tenant moved out at the beginning of March, in accordance with his initial Notice he provided on December 28, 2020, stating he was moving at the end of his fixed term lease.

After the January 23, 2021, email exchange, the Landlord issued the 2 Month Notice, on February 9, 2021. The effective date of that Notice was listed as May 1, 2021, it was signed by the Landlord, it listed the address of the rental unit, but it did not list any grounds for ending the tenancy. A copy of this 2 Month Notice was provided into evidence, but on the second page of the Notice, where the Landlord is supposed to select a ground for ending the tenancy, it is left blank. No grounds were selected, and there is no evidence to show the Landlord attached any letter alongside the Notice. However, the Tenant stated he moved out in accordance with his email exchange from

December 28, 2020, and his initial commitment/Notice, rather than attempt to stay until the effective date of the Notice, in May 2021.

The Tenant stated that after he moved out, at the beginning of March 2021, he saw that the Landlord reposted the rental suite for rent, on Facebook. The Tenant provided copies of the rental ad he saw, for this rental unit, at an increased price. The Tenant also stated that he was told that eventually the Landlord sold the house in August sometime, so he is almost positive the Landlord never moved in. The Tenant did not have any further evidence showing the house sold, or that it was re-rented to others.

3) \$24,000.00 – Loss of Quiet Enjoyment

The Tenant stated that he lived in the rental unit for just over one year, and he never felt he had use and enjoyment of his rental unit, free from interference by the Landlord. The Tenant stated that this rental unit consisted of the upper floor of a house. The Tenant stated that the Landlord lived in the downstairs suite for the first few months of the tenancy, until approximately May 2020, at which point the Landlord did some renovations in the suite she previously occupied, and she eventually re-rented the suite to someone else around December 2020. However, the Tenant was not clear on the dates, and hesitated as to when the Landlord moved, when the renovations downstairs started/ended, and when the Tenants downstairs moved in. The Tenant stated that he is seeking all of his rent back for the entire year of the tenancy, from March 1, 2020, until March 1, 2021, totalling \$24,000.00.

The Tenant stated this is based on the fact that the Landlord started a bathroom renovation in his suite, but failed to finish it, blaming it on COVID. The Tenant stated this left him feeling like he had no other choice but to complete the renovation himself.

The Tenant also stated that when the Landlord did renovations downstairs in the suite, it was often loud and sometimes worked past midnight. The Tenant stated this impacted his healing time, although he did not elaborate on this. The Tenant did not explain further when the noise disruptions occurred, how long they lasted, and how it impacted his quiet enjoyment, specifically. The Tenant only spoke generally to this item in the hearing.

The Tenant also stated that he was “harassed” by the Landlord regarding his dog. The Tenant generally referred to a time when the Landlord/contractor of the Landlord, at one point, let his dog out of the rental unit, which led to negative interactions with city officials, bylaw, and lost time at work. The Tenant did not explain when this occurred, or

how he knew it was the Landlord who let his dog out of the rental unit. The Tenant stated that the Landlord falsely accused his dog of making the property unsafe.

The Tenant also stated that the Landlord took his storage away, following a roof leak, and never returned it to him. However, the Tenant was unclear about when this occurred, and how it impacted his tenancy.

The Tenant also stated that the Landlord initially gave him unrestricted parking out front the house, but the Landlord eventually insisted he share the parking with the lower rental unit, effectively restricting his use of those spots.

The Tenant also briefly and loosely referred to issues with the internet and utilities, but did not elaborate and explain how these issues impacted the tenancy, or for how long. A copy of the tenancy agreement shows that internet, electricity, water, and gas are not included in rent.

Analysis

The Tenant applied for the following items:

- 1) \$1,000.00 – repayment for the cost of emergency repairs completed during the tenancy

I note that, for this item, the Tenant has the onus to sufficiently demonstrate all 4 parts of the following test:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I have reviewed the testimony and evidence on this matter. First, I turn to Section 33(1) of the *Act*, which defines "emergency repairs" as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purpose of repairing:

- Major leaks in pipes or the roof,

- Damaged or blocked water or sewer pipes or plumbing fixtures,
- The primary heating system,
- Damaged or defective locks that give access to a rental unit, or
- The electrical systems.

I am satisfied that there were issues with the bathroom that meet the above noted definitions, with respect to emergency repairs. Notably, there was exposed electrical connections where the bathroom lighting was disconnected, and the bathroom plumbing was damaged and disconnected. However, I note section 33(3) of the Act states the following:

33 (3)A tenant may have emergency repairs made only when all of the following conditions are met:

- (a)emergency repairs are needed;*
- (b)the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;*
- (c)following those attempts, the tenant has given the landlord reasonable time to make the repairs.*

I note that emergency repairs are defined in the Act under section 33, and there is a process for the Tenant to follow to make emergency repairs, prior to deducting any amounts from rent or being able to receive compensation for emergency repairs they paid to complete. I find there is insufficient evidence from the Tenant to prove he followed the process. There is no evidence he followed section 33(3)(b) and 33(3)(c) of the Act. The Tenant must provide evidence he phoned the Landlord, at least twice, and allowed a reasonable chance for the repairs to be made following these calls. I do not find there is sufficient evidence the Tenant complied with the requirements of section 33 of the Act, such that he was entitled to complete the repairs, and seek reimbursement for the work done. I dismiss this item, in full.

2) \$24,000.00 – 12 Month's Compensation Pursuant to section 51 of the Act
(relating to the 2 Month Notice)

With respect to the Tenant's request to obtain 12 months' worth of rent as compensation based on the 2 Month Notice, pursuant to section 51 of the Act, I note the following portion of the Policy Guideline #50 – Compensation for Ending a Tenancy:

*ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S
USE OR FOR RENOVATIONS AND REPAIRS*

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or*
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).*

A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:

- accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.*

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f). If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

As noted above, the onus is on the Landlord to demonstrate that they accomplished the stated purpose for ending the tenancy, as laid out on the 2 Month Notice. Although the Landlord was not present at the hearing, I find there are issues with the 2 Month Notice, which lead to Tenant being ineligible to receive 12 month's compensation, pursuant to section 51(2) of the Act.

I have reviewed the evidence and testimony on this matter, including the 2 Month Notice. I note that section 49 of the Act allows the Landlord to issue a 2 Month Notice for a variety of reasons, listed under section 49(5) and 49(6). However, when attempting to end a tenancy in this manner, and issuing a 2 Month Notice for any of these

purposes, section 49(7) states the 2 Month Notice issued by the Landlord must comply with the form and content requirements of section 52 of the Act. It states as follows:

(7)A notice under this section must comply with section 52 [form and content of notice to end tenancy] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

Section 52 of the Act requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I note the 2 Month Notice received by the Tenant on February 9, 2021, does not state any grounds for ending the tenancy. No grounds were selected on the second page of the form, which is where all the different grounds are laid out. As such, I find the 2 Month Notice is invalid, and unenforceable, and I am unable to determine if the Landlord fulfilled or followed through with grounds (for the purposes of section 51(2) compensation) that were never expressed on the 2 Month Notice itself.

Given the 2 Month Notice was incomplete and invalid, the Tenant was not required to move out as a result of this 2 Month Notice. The Tenant could have disputed the 2 Month Notice, and attempted to continue the tenancy. However, he did not do so. He also appears to have given his own Notice to the Landlord that he was going to move out at the end of his 1 year lease, as of March 1, 2021. This was 2 months before the effective date of the 2 Month Notice.

Ultimately, in order for compensation to be due and payable under section 51(2) of the Act, there must be a valid 2 Month Notice issued under section 49 of the Act. I find there is no compensation due, based off the February 9, 2021, 2 Month Notice. This portion of the Tenant's application is dismissed, without leave.

3) \$24,000.00 – Loss of Quiet Enjoyment

Next, I turn to the Tenant's claim for loss of quiet enjoyment, and the reimbursement of all of his rent paid over a 1 year period.

In this instance, the burden of proof is on the Tenant to prove all components of the following 4 part test:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Section 28 of the Act, states that a Tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

I have reviewed the testimony and evidence on this matter. I note that the Tenant is seeking monetary compensation for loss of quiet enjoyment for the entirety of his rent paid over a one year period. I note that for this matter, the onus is on the Tenant to sufficiently substantiate his claim, and meet the 4 part test outlined above.

During the hearing, I found the Tenant's presentation of his loss of quiet enjoyment lacked sufficiently clarity and detail. The Tenant only generally referred to a series of issues (incomplete upstairs bathroom renovation, noise from downstairs renovation, roof leak/lost storage, parking issue, "harassment" and dog issues) during the hearing,

but was very unclear about when the alleged incidents occurred, for how long they lasted, and how they impacted his tenancy.

During the hearing, when asked, the Tenant could not recall the timing and duration of most of the incidents, such that I could ascertain to what degree the issues would have impacted him. For many of the items laid out under this portion of the claim, for loss of quiet enjoyment, the Tenant had difficulty detailing which months certain events occurred, let alone which weeks/days.

Ultimately, I found the Tenant's presentation on this matter, unclear, and lacking in clarity and detail. It is not sufficiently clear what actual losses the Tenant suffered relating to the value of the tenancy. I am not satisfied that Tenant was unreasonably disturbed, or that his rights under section 28 of the Act were breached. It is also difficult to quantify any alleged impacts, without a better explanation as to when and how long the different factors occurred. I do not find the Tenant has sufficiently proven his claim. I dismiss this item, in full.

Since the Tenant was not successful with his application, I decline to award him recovery of the filing fee.

Conclusion

The Tenant's application is dismissed, in full, 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: February 24, 2022

Residential Tenancy Branch