



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: MNDL, FFL

For the Tenant: MNDCT, MNSDS-DR, MNETC, FFT (x2)

Introduction

The Landlords (hereinafter the “Landlord”) applied for monetary compensation from the former Tenants (hereinafter the “Tenant”) on May 28, 2021, for damages to the rental unit during the time of the tenancy. On this initial Application, the Landlord applied for reimbursement of the Application filing fee. The Landlord amended this Application on October 22, 2021.

The Tenant made their initial application on June 10, 2021 for the return of the security deposit they paid at the start of the tenancy, and the Application filing fee. They amended this on July 7, 2021 to add a claim for monetary compensation.

The Tenant’s filed a second Application on October 25, 2021 for compensation relating to the end of the tenancy, and the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on November 26, 2021. I adjourned the matter and the follow-up hearing proceeded on January 18, 2022. Both parties attended these conference call hearings. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearings.

Given the crossed Applications and amendments, I reviewed all documentary evidence disclosure with the parties at the outset of the hearing on November 26, 2021. Each party confirmed they received the documents prepared by the other party in advance, all via registered mail. After the initial November 26 hearing, I adjourned the matter and parties were not allowed to submit or exchange any further documentation.

Issues to be Decided

Is the Landlord entitled to compensation for damages to the rental unit, pursuant to s. 67 of the *Act*?

Is the Tenant entitled to compensation for their monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the Tenant entitled to the return of the security deposit, pursuant to s. 38 of the *Act*?

Is the Tenant entitled to compensation related to the Two-Month Notice, pursuant to s. 51 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fees, pursuant to s. 72 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement for the tenancy that started on May 1, 2017. The Landlord signed the agreement on May 1, 2017; the Tenant signed the agreement on May 16, 2017. The initial one-year fixed term reverted to a month-to-month after April 30, 2018. The rent amount was set at \$900 monthly, payable on the 1st of each month. The Tenant paid a full \$450 security deposit on May 1, 2017.

The Tenant submits there was no move-in inspection at the start of the tenancy. The Landlord's own written statement refers to the "viewing" in April; from this, the Tenant maintains there was no formal condition inspection meeting, and no completed report. In their written submission, the Landlord described the unit as newly renovated with new floors in the living room and kitchen.

The tenancy ended May 16, 2021. This was the result of the Landlord issuing a Two-Month Notice to End Tenancy for Landlord's Use of the Rental Unit. The Tenant disputed this through formal dispute resolution; and the Arbitrator granted the Landlord an Order of Possession for June 30, 2021.

The Tenant advised the Landlord of their earlier move-out 10 days prior to May 16, 2021. They gave a letter to the Landlord dated May 3 to the Landlord advising of this date, and their forwarding address. The Landlord submitted they received this letter in their mailbox on May 6. The Tenant advised the Landlord of their right to one-month of rent return (\$900) because of the Two-Month Notice, as well as rent remaining for May (\$435).

The Tenant maintains there was no final move-out inspection meeting. Conversely, the Landlord states they scheduled that meeting for May 30, and then June 4; however, the Tenant did not attend. In the Tenant's version, they attended on May 16 to return the key to the Landlord; however, the Landlord was not there, and a family member instructed the Tenant to leave the key on some back steps. They provided a letter setting out their forwarding address to the Landlord.

i. Landlord compensation for rental unit damage

On October 2, 2019 there was a fire in the rental unit. This occurred while the Tenant was cooking. The Landlord included photos to show damage to the kitchen walls, cabinets, ceilings, and damage to the oven, fridge, and exhaust. The Landlord provided several photos of the unit from June 4, 2021.

The Landlord submits:

- there was "extensive water damage on the kitchen cabinet doors and drawers" and "The baseboard behind the oven and the fridge were missing." This was the result of the kitchen fire.
- Additionally, there was damage in the washroom, specifically the vanity cabinet and doors. There was also "severe water damage" and a broken baseboard behind the toilet.
- The master bedroom baseboard was damaged, along with carpet damage and holes in the wall. The second bedroom had carpet damage, wall damage, a "vandalized ceiling".
- The living room baseboard heater was broken The door was stained with markers and the smoke and fire detector in that room were missing.
- The Tenant painted the entire unit without the Landlord's approval. The paint-over of smoke-stained and marker-stained areas was not sufficient.
- The Landlord described a "certain bad smell" coming from the rental unit. A contractor who visited stated to the Landlord it was a "specific smell of rodents infestations".

For alleged damages throughout the unit, the Landlord claims as follows:

#	Item(s)	\$ claim
1	kitchen cabinets, counters, bathroom tile, 2 carpets	24,554.02
2	kitchen cabinets/washroom vanity– estimate for replacement	8,518.00
3	painting through whole unit - estimate	1,758.00
4	baseboard heater replacement – estimate	481.60
5	tile board – kitchen wall behind oven and fridge, burned in fire	112.00
6	carpet cleaning for 2 rooms – estimate	213.24
7	pest removal	375.00
Total		36,011.86

Evidence for each line item above consists of the following:

- 1 A contractor visited the rental unit on August 13, 2021. A 2-page estimate for all work involved is dated August 24, 2021. This lists preparatory work, materials totalling \$16,394.50, installation at \$5,305, and finishing at \$1,059.98. Work and materials include the kitchen cabinets, tiles in the washroom, countertops, and carpet in 2 bedrooms. Photos show precise arrows showing damage areas. This is due to fire and water damage in the kitchen. There are also photos of the washroom cabinet/vanity, damaged.
- 2 An email printed on November 28, 2020 gives material and installation costs. Kitchen cabinets are \$3,431, with installation at \$2,574. The countertop is "\$1,000 - \$1,200 approximately" and a sink-hook up cost is listed as \$279. The Landlord's estimate value of \$8,518 is not shown on this document and the Landlord did not provide the calculation.
- 3 An estimate for painting dated December 18, 2020, approximately 6 months before the end of the tenancy. The price listed is \$1,299 plus extras. The Landlord's estimate value of \$1,758 is not on this document and the Landlord did not break down the calculation. In the hearing, the Landlord described the painting completed by the Tenant at the end of the tenancy as only a single coat of paint, not fully covering what needed to be covered, and revealing of the existing colour underneath. A smoke stain from the fire incident is still visible. Additionally, the Tenant used incorrect or no primer, and glossy paint instead of matte.
- 4 There is no reference document for the baseboard heater replacement; therefore, there is no indication of this \$ value. One photo shows an old baseboard heater in the washroom.
- 5 There is no reference document for the amount of the tile board replacement in kitchen. The Landlord provided photos showing damage resulting from the fire.

- 6 The carpet cleaning firm provided this estimate dated July 23, 2021. This is a base charge of \$175, noting carpet damage in doorway of 1 room. The estimate notes “diaper found in bedroom”. Photos alleged areas of stains/damage.
- 7 The pest removal firm contacted the Landlord on November 3, 2021 with details about a “setup for rodents.” This was based on the Landlord’s own description of the problem, based on the smell. The firm suggested a rodent control program which involves three visits to control and monitor a possible problem. The Landlord presented photos of excess organic waste in the kitchen positing this is the source of a rodent problem.

In the hearing, the Landlord described the painting completed by the Tenant as only a single coat of paint, not fully covering what needed to be covered, and revealing of the existing colour underneath. They acknowledged there was no move-in inspection meeting and reiterated that they invited the Tenant twice for a move-out meeting but the Tenant did not respond to say they could not do it.

In response to the Landlord’s submissions and evidence on these points, the Tenant submits that anything the Landlord is asking for is “mostly from reasonable wear and tear.” The provided room-by-room photos and analysis of the details of the Landlord’s claim. Notable points in relation to issues raised by the Landlord are:

- Cabinets in kitchen and bathroom feature merely “chippings” and were made of particle board. The cabinets were likely installed when the home was built and were susceptible to the moisture in the house from insufficient heating. This chipping had already started when the Tenant entered in 2017.
- The toilet had defective parts, and the Landlord would not respond to the Tenant’s requests for it to be repaired. In 2020 the Landlord only resealed the toilet unit without replacing the parts.
- The Tenant had repainted all of the walls in the rental unit. The burnt walls or black smoke observed in the unit by the Landlord simply cannot be.
- The carpets were in a state beyond wear and tear, being “probably more than or about 12 years old when we moved in May 2017.” The carpet was not replaced since the building of the home. At the start of the tenancy, the carpet had “visible signs of wear and tear.”
- By October 2017 the baseboard heaters malfunctioned, and the Landlord provided a portable heater. The Tenant provided the Landlord’s letter from March 2021 that to them proves the only source of heat within the unit since the start of the tenancy was the portable heater. The neighbour in the adjacent suite, similar to the Tenant, could not use the baseboard heaters and the Landlord gave them a portable heater as well.

- The Landlord provided a statement in a different hearing that they had been living in the rental unit since 2005, and over the years four different families had lived in the rental unit. The Tenant submits the house was already about 12-13 years old when their tenancy started in 2017. The only new feature in the unit were the laminate floors, and the unit was newly painted when the tenancy started.
- Any trouble with rodents was attributed to the Landlord's management of garbage disposal and adequate facilities for that. The Tenant provided the communication they had with the Landlord on that subject.
- The fire on October 2, 2019 was an accident. After this, the Tenant replaced the oven and fridge and repaired the cosmetic damage to the walls and fridge.
- On the Landlord's claimed about for \$36,011.86, they submitted one estimate for cabinets/countertops; however, they submitted a second estimate for the same materials from a different source. "They are claiming compensation for 2x the cabinets and countertops."

The Tenant submits there was neither a move-in nor move-out inspection. All the damages the Landlord is claiming are from normal wear and tear. In the hearing, the Tenant stated it was not their duty to paint the unit after 5 years; however, they did so in good faith. They also hired a professional cleaner, and they shampooed the carpet three times.

The Tenant also noted the Landlord made their Application for compensation for damages to the rental unit on May 28, 2021. This was before the tenancy had ended. This was before a scheduled move-out inspection, which is fundamentally unfair. In particular, the items for tiles in the bathroom and the tiles behind the oven represent upgrades, with either no damage in place, or no such item in place at the start of the tenancy.

The Tenant also provided over 150 photos to illustrate the various points they made in their submission. Notable in these photos is a hired cleaner in the kitchen and carpet shampooing on May 8, 2021. There are photos from 2017 and 2018, time-and date-stamped, showing worn cabinetry already in place at that time which is near the start of the tenancy. One photo adjacent to that of the Landlord for comparison is to illustrate the Tenant's point that the Landlord deliberately removed material from the wall behind the toilet to make the damage look worse. The use of the portable heater is evident in photos from 2017. A series of 13 photos show an increasing rodent problem due to the inefficient garbage area.

ii. Tenant application for security deposit

The Tenant maintains there was neither a move-in completed inspection, nor a move-out completed inspection. This precludes the right of the Landlord to any claim against the

security deposit, as per s. 24 and s. 36 of the *Act*, where the Landlord failed to meet start/end of tenancy report requirements.

When the Tenant moved out on May 16 the Landlord was not present to accept the key and the Tenant's forwarding address information. After the move out, the Landlord advised by letter dated May 26 that a move-out inspection would occur on May 30; however, the Tenant did not receive this letter until June 1 after the scheduled meeting had passed. This was 14-days past the end of the tenancy; this is neither on or one day after the end-of-tenancy date, nor a mutually-agreed-upon date.

After this, on June 3 they received another notice from the Landlord for a set date of June 4. This was a working day and thus they could not attend. The Landlord then scheduled a move-out inspection meeting for June, independent from the Tenant.

The Tenant submits the Landlord did not comply with the requirement for 2 meetings, and thus the completed report prepared by the Landlord cannot be considered. The Tenant only received a copy of the Condition Inspection Report as part of the Landlord's evidence for this hearing, some five months after the end of the tenancy.

The Tenant informed the Landlord of their intention to move on May 3. This document included the Tenant's forwarding address which was a postal box. They provided another letter to the Landlord on May 16 along with the keys; this separate letter again included that forwarding address.

The Landlord filed their original Application in this matter on May 28, 2021. This preceded the end of the tenancy. The Tenant submitted that the Landlord did not communicate to them on the status of the deposit; this is beyond 15 days and so the Tenant claims they are entitled to double the amount of the security deposit, this is \$900.

iii. Tenant application for monetary loss

The Tenant submitted that they paid the Landlord the full May 2021 rent on May 2, 2021, sending proof of this in the form of a receipt. They made the request for the return of the $\frac{1}{2}$ monthly rent for this to the Landlord on May 16, 2021 in a letter they handed in with the keys on that final day. On their Application, they claim \$435 for this amount, which is the monthly rent of \$900 divided by 31 days total for May, equal to \$29.03 per day. Multiplying this by 14 days, is \$435.48.

In response to this, the Landlord submitted they sent a cheque to the Tenant via registered mail for this exact amount on July 12, 2021. The Landlord submitted an image of that cheque dated July 11, 2021. They sent this via registered mail to the forwarding address the Tenant provided to them.

In their submission, they claimed the Landlord held this amount from them “without cause”. They claimed double this amount for this reason.

iv. Tenant application for compensation related to the Two-Month Notice

a. one-month rent compensation

In their submission dated July 6, 2021, the Tenant claims a one-month rent amount, in line with s. 51 of the *Act*. They submit they are entitled to this because the Landlord issued the Two-Month Notice. Though the Tenant ended early after they received the Two-Month Notice, this does not preclude them from receiving this, as per s. 50(3) of the *Act*.

The Tenant recounted that the arbitrator in a prior hearing between the parties informed the Landlord of this one-month compensation requirement.

They submit the Landlord held this amount from them without cause, and therefore claimed double this amount.

In response to this, the Landlord described the prior hearing wherein they committed to providing the Tenant free rent for April 2021. This was in line with the original end-of-tenancy date for May 1. The Tenant paid the April rent in full.

The Landlord submitted there was no provision in the prior hearing about compensation owed to the Tenant should they choose to end the tenancy early. They believe a payment in this situation would constitute a further punishment to them, given that they have complied with “the RTB sections, and the dates agreed to and imposed by the arbitrator of RTB.”

b. 12 months’ rent compensation

In their added piece from October 25, 2021, the Tenant claims \$10,800. This is 12 months’ rent amount because the Landlord ostensibly ended the tenancy with a Two-Month Notice for their family member’s use of the rental unit. The Tenant alleges the Landlord’s family member

did not move in, and the Landlord “kept the rental unit vacant for six months.” This piece of the Tenant’s claim was the sole subject of the reconvened hearing on January 18, 2022.

The Tenant relies on their former neighbour and former fellow tenant in the rental unit, as set out in their written submission signed on November 4, 2021. This was the adjacent unit to the Tenant’s rental unit. This neighbour appeared as a witness in the reconvened hearing on January 18, 2022.

A signed statement from this neighbour, signed September 30, 2021, sets out their observation that the rental unit remained empty after the Tenant vacated. The state of the rental unit, being clean and well-maintained by the Tenant to the end of their tenancy, could not prevent the Landlord’s family member from moving in. The neighbour did not observe or hear activity within the rental unit and did not casually meet the Landlord’s family members when leaving or staying around the area. There is a single staircase for the Tenant’s unit and that of the neighbour; therefore, “it was impossible to miss people coming in and out from both units.” Finally, the neighbour observed the Landlord showing the rental unit to other possible renters.

The Tenant relies on s. 51(2) as legal justification for 12 times the amount of monthly rent.

In the reconvened hearing, the Tenant also noted the neighbour observed that Landlord’s own family member living in the Landlord’s own rental unit upstairs. These were “everyday observations”. The neighbour contacted the Tenant in July to state that no one had moved into the rental unit; this remained the case even until the neighbour moved out in October.

The Landlord provided a written response to this claim on October 29, 2021. This set out the family member’s legal address (as per their driver’s license) as that of the rental unit. Additionally, they have video dated July 10 and July 11 showing their family member inside the rental unit, as well as “several photos.” An affirmed affidavit dated November 5 from that family member states they lived there since July 1, 2021. Photos (reviewed in the reconvened hearing) show miscellaneous personal effects of that family member throughout the rental unit, dated from July 1 and October 29.

In the hearing, the Landlord questioned the relationship between the Tenant and their former neighbour who appeared as a witness. Their own family attended the hearing and stated plainly that they live in the rental unit, keeping odd hours because of their shift work. Additionally, that family member’s partner attended the hearing and made the same points.

In the hearing, the Tenant submitted these photos were “staged”, with only a handwritten time stamp. Further, there are no images showing the Landlord’s family member actually in the rental unit; all pictures show empty living spaces, not looking lived in.

The Tenant also queried why the Landlord took 46 days to move in after the unit became vacant, when the Landlord justified their need for the unit by saying they were waiting since 2019. Therefore, there was no urgency to their move, and it did not happen until months later.

Analysis

i. Landlord compensation for rental unit damage

The *Act* s. 37 sets out the obligation a tenant has at the end of the tenancy. They must “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.”

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss an applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Overall, I find the veracity of the Landlord’s claim is questionable. The Landlord made repeat claims for the items in the kitchen and bathroom. That crossover has significantly increased the amount of their claim, making the claimed amount unclear. I find overall that shows the Landlord did not undertake to minimize their damage or loss. This also affects the credibility of their account in attributing damage in the rental unit to the Tenant. This is not a situation where the Landlord is entitled to proffer amounts for my consideration; rather, they must positively prove damage or loss, and establish a clear amount of compensation.

I find the record shows there was no move-in inspection of the rental unit. This makes all assessment of damage they are attributing to the Tenant impossible to assess. The Tenant has provided sufficient evidence that outweighs that of the Landlord on all aspects of the claim.

Given the crossover and lack of clarity on the largest of their two pieces – the amounts \$24,554.02 and \$8,518 – I dismiss these pieces of the Landlord's claim completely. For the items therein, I am not satisfied that a damage or loss exists; moreover, the value of the damage or loss is not established in that these are estimate items that vary. The item listed as \$8,518 is not calculated as such in the Landlord's evidence. Given that the bathroom tile was not established as undamaged at the start of the tenancy, I am not satisfied that damage resulted from the Tenant.

Further, I give more weight to the Tenant's evidence showing that the cabinets in the bathroom and kitchen, and the kitchen countertops, were not in a pristine or reasonable state of repair nearer to the start of the tenancy. That is plain in the photos they provided showing the date and time stamps of 2017 and 2018.

I am not satisfied of the need for painting throughout the whole unit. The Tenant gave ample detail on their efforts to paint the unit before their move out. I am satisfied the Tenant left the unit reasonably clean and undamaged except for reasonable wear and tear when it comes to painting throughout. Additionally, there is no evidence the unit was freshly painted at the start of the tenancy. Typically, the useful life of interior painting is 4 years, as set out in the *Residential Tenancy Policy Guideline #40*. I find the paint in place throughout the unit is beyond 4 years, and in any event the unit requires repainting, though not as the result of damage or negligence by the Tenant.

Similarly, given the age of the carpeting throughout the rental unit – i.e., not unblemished, or undamaged at the start of the tenancy – I am not satisfied that damage to the carpet was due to the Tenant's negligence. I attribute anything shown in photos to reasonable wear and tear, with consideration to the fact that the carpet was only new quite some time prior even to the Landlord acquiring ownership of this rental unit. The guideline for the useful life of carpets is ten years, making the carpet inside past due for replacement in any event. There is thus no award for carpet replacement.

The Tenant established that there was an issue with baseboard heating in the rental unit throughout the duration of the tenancy. They provided a timeline and ample detail on their requests to the Landlord, and the Landlord's responses. There is evidence the Landlord provided a space heater, without resolving the baseboard heating issue. As well, the Landlord

did not provide a source document from which they took their estimated amount for heater replacement. I make no award for baseboard heaters.

The Landlord did not show the area in question had “tile board” prior to the kitchen fire. There is no record of the Landlord making the effort to address a replacement for that prior to the end of the tenancy, around the time of the kitchen fire and the process of cleaning up after that incident. I find this is most likely an upgrade to the kitchen area, something beyond restoration of the kitchen area to its original state. This is partly based on an assessment of the Landlord’s credibility on the other pieces of their claim for damages.

The Landlord did not establish the need for carpet cleaning in two rooms. By contrast, I find the Tenant credible on their evidence that had the carpets cleaned before their move-out date. I make no award for this amount to the Landlord.

The Landlord did not positively prove the existence of a pest problem; therefore, I am not satisfied that damage or loss exists. Their need to consult with a pest removal firm was based on a contractor visiting and detecting some odour. This is not proof on a balance of probabilities. The Tenant in their account has shown it more likely than not that the garbage situation was an ongoing concern, and in theory this is more plausible as the source of pests which in any event was not proven to exist in the rental unit. I make no award for pest removal or control.

With these findings, I make no award to the Landlord for what they alleged were Tenant damages to the rental unit. I find the Tenant has shown they prepared and cleaned the rental unit leaving it in an undamaged and reasonably clean state at the end of the tenancy.

ii. Tenant application for security deposit

The *Act* s. 38(1) provides that a Landlord must either repay a security deposit or apply for dispute resolution to make a claim against that deposit. This must occur within 15 days after the later of the end of the tenancy or the Tenant giving a forwarding address.

Following this, s.38(6) sets out the consequences where the Landlord does not comply with s. 38(1). These are: the Landlord may not make a claim against the deposit; and the Landlord must pay double the amount of the deposit.

I find the Landlord completed their initial Application for compensation, withholding the security deposit for those purposes, on May 28, 2021. This is within 15 days that they received the

Tenant's forwarding address, on May 6. The Landlord thus complied with s. 38(1) and the Tenant is not entitled to double the security deposit amount.

Above I found the Landlord was not eligible for any monetary award for damage to the rental unit. There is no further holding of the security deposit by the Landlord, and I order its return, in full, to the Tenant. I have granted this \$450 in a monetary order to the Tenant. The Tenant raised points of the lack of inspection meetings as impacting the Landlord's ability to claim against the deposit; however, I have dismissed the Landlord's claim in its entirety. The lack of inspections does not impact my finding on the return of the security deposit to the Tenant.

iii. Tenant application for monetary loss

The *Act* s. 50(2) provides that where a tenant pays rent prior to giving the landlord final notice to end the tenancy, and they have already paid that month's rent, "the landlord must refund any rent paid for a period after the effective date of the notice."

I find the Landlord paid this pro-rated amount of \$435.48 to the Tenant on July 11, 2021. The Landlord complied with s. 50(2); therefore, I dismiss this piece of the Tenant's claim for this reason.

There is no legal basis for the Landlord having to pay double of this amount. The Tenant's assertion on this point in their July 6, 2021 letter is legally incorrect.

iv. Tenant application for compensation related to the Two-Month Notice

a. one-month rent compensation

In their written submission of July 6, 2021, the Tenant presented they were entitled to one-month of compensation in line with s. 51(1) of the *Act*.

The Tenant ended early, as permitted by s. 50. Further, s. 50(3) especially provides that a notice from the tenant to end early "does not affect the tenant's right to compensation under s. 51".

I grant the Tenant the amount of one-month's rent in line with s. 51(1). The Landlord's response about the shifting end-of-tenancy date is irrelevant where s. 50(3) is very specific about the Tenant's right to one full month's rent in line with the Two-Month Notice. I grant the Tenant \$900 compensation for this piece of their claim.

There is no legal basis for the Landlord having to pay double of this amount. The Tenant's assertion on this point in their July 6, 2021 letter is legally incorrect.

b. 12 months' rent compensation

In this piece of the Tenant's claim, the onus is on the Landlord to prove that they accomplished the purpose for ending the tenancy and that they used the rental unit for its stated purpose for at least 6 months.

Under s. 49, a landlord may end a tenancy if they or a close family member intends in good faith to occupy the rental unit. There is compensation where a landlord issues a Two-Month Notice. This is covered in s. 51:

- (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant . . . an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord . . . 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 . . . 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.
- (3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying . . . if, in the director's opinion, extenuating circumstances prevented the landlord . . . from
 - (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
 - (b) using the rental unit . . . for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

On my review of all the evidence presented, I find the Landlord accomplished the stated purpose for ending the tenancy. The evidence shows they used the rental unit for the reason indicated. I find this was within a reasonable period after the effective end date of the tenancy, given that the effective Order of Possession date granted by the Arbitrator on April 7 was for June 30, 2021. The Tenant on their own moved the tenancy end-date forward, and it would be manifestly unfair, given the family member's life situation, to move instantly into the rental unit on their own. The notice from the Tenant was relatively short – only 10 days – in the grand scheme of the entire duration of the tenancy. I find in these circumstances the family member's move into the rental unit for July 1 is "within a reasonable period." There were extenuating circumstances present.

I am not satisfied the family member simply stayed with the family, as stated by the Tenant's neighbour. The rental unit was within the family's possession, and they did not use it for other

purpose, such as renting it out to others. The neighbour's account that they witnessed the Landlord showing the unit to prospective other renters is not detailed on dates, times, or other circumstances. As well, the fact that the Landlord presented pictures that show furniture within the unit defeats the neighbour's assertion that they saw or heard nothing being moved into the rental unit.

I attached more weight to the Landlord's photos that they presented. Though the Tenant called into question whether the photos were staged for the purposes of proving occupancy by the family member, furniture and other belongings in the rental unit – in whatever state they may be – prove the Landlord followed through on the stated purpose for ending the tenancy. This was the earliest stages of the family member occupying the unit; it is unreasonable to expect a state of disarray as more illustrative of actual occupancy.

On this piece of the Tenant's claim, I find the Landlord has overcome the burden of proof. That is to say, the Landlord's evidence is stronger in showing they used the rental unit for the stated purpose. I conclude that s. 51(2) does not apply in this situation, and there is no 12-month rent compensation to the Tenant here. I dismiss this piece of the Tenant's claim, without leave to reapply.

Application filing fees

The Landlord was not successful in their claim for compensation because of alleged damages to the rental unit. I make no award for the filing fee for that Application.

The Tenant was successful in their claim for the return of the security deposit and other money owed. I award that particular Application filing fee to them.

The Tenant was not successful in their claim for the 12 months' rent compensation. I make no award for the filing fee for that particular Application.

Conclusion

Pursuant to s. 38, 51 and 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$1,450. I provide the Tenant with this Order in the above terms, and they must serve it to the Landlord as soon as possible. Should the Landlord fail to comply with this Order, the Tenant may file the Order in the Small Claims Division of the Provincial Court where it may be 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 s. 9.1(1) of the *Act*.

February 3, 2022

Residential Tenancy Branch