



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL, FFL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlords attended ("the landlord"). The tenant attended. Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

At the start of the hearing, I informed the parties that recording of the hearing is prohibited under the Rules of Procedure. Each party confirmed they were not recording the hearing.

Each party confirmed their email addresses to which the Decision will be sent.

No issues were raised regarding service.

Reference to Evidence

The parties submitted considerable evidence in an 80-minute hearing. Only key, relevant and admissible evidence is referenced in the Decision.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for damages or compensation?

Is the landlord entitled to reimbursement of the filing fee?

Background and Evidence

This is an application by a landlord for compensation for damages allegedly caused by the tenant. The landlord submitted considerable evidence and testimony in the hearing. The tenant submitted no documentary evidence but responded to the landlord's claims in extensive testimony.

The parties agreed as follows. The tenant lived in the rental unit for over 10 years with the landlord's father. The landlord purchased the unit in 2019 and the tenant rented the unit for \$400.00 monthly following the death of the original owner. The tenant moved out on March 2, 2020. There was no tenancy agreement and no security deposit. No condition inspection was conducted on moving in or moving out.

The parties agreed this is the third hearing between them. The two previous hearings are referenced on the first page and occurred in 2020 and 2021. In the 2020 hearing, the landlord was ordered to pay the tenant damages of \$7,245.00. In the 2021 hearing, the landlord's claim was dismissed, and they were granted leave to apply for damages.

In the 2020 Decision, the Arbitrator stated:

I accept the uncontested and affirmed testimony of the Tenant and the Witnesses that the Landlord changed the locks to the rental unit on March 2, 2020, without the Tenant's agreement and without providing the Tenant with a new key. As there is no evidence or testimony before me that the Landlord had a right under the Act to

change the locks without providing the Tenant with a key, I therefore find that the Landlord breached sections 31(1) and 31(1.1) of the Act, when they locked the Tenant out, unlawfully ending the tenancy in the process.

Based on the affirmed and uncontested testimony of the Tenant, the Advocate and the Witnesses in the hearing, and the documentary evidence before me for consideration, I am satisfied that the Tenant was unlawfully locked out of the rental unit by the Landlord on March 2, 2020, and therefore suffered a loss in the amount of \$400.00, the amount of rent paid to the Landlord for March.

I am also satisfied that the Landlord damaged or failed to return possessions belonging to the Tenant when they were unlawfully locked out of the rental unit in the amount of at least \$4,345.00. I accept the Tenant's uncontested and affirmed testimony and written statements that they sought police intervention for the lockout but were ultimately unable to regain entry to the rental unit, other than to briefly gather a small amount of their possessions in the presence of police. As a result, I find that the Tenant attempted to mitigate the loss resulting from the Landlord's breach of the Act to the best of their abilities.

Based on the above, I therefore find that the Tenant is entitled to reimbursement of \$400.00 in rent paid to the Landlord for March of 2020, and compensation in the amount of \$4,345.00 for damaged and unreturned property. I also order the Landlord to immediately return any property belonging to the Tenant, which remains in their possession.

Further to this, I am satisfied that the Landlord caused the Tenant intangible, irreparable and immeasurable amounts of emotional harm, damage and loss as a result of the lockout and the destruction and retention of their possessions, which cannot adequately be compensated for by simply returning their rent for March or providing compensation for their lost and damaged possessions. As a result, and pursuant to Policy Guideline #16, I find that the Tenant is therefore entitled to the \$2,500.00 in

aggravated damages sought, which in my mind, is a very reasonable amount of compensation considering the severity of the Landlord's breaches of the Act and the harm done to the Tenant as a result.

The Arbitrator granted the tenant a Monetary Order in the Amount of \$7,245.00.

During the hearing, the landlord submitted considerable testimony regarding the damages they alleged the tenant caused and for which they requested compensation. The landlord submitted pictures but did not submit a Monetary Order Worksheet.

In summary, the landlord claimed the tenant damaged two doors which required replacement, ruined the surface of the stove, damaged the carpet requiring it to be replaced, left possessions the removal of which caused the landlord to incur dump fees and caused damages resulting in miscellaneous repair expenses and labour. They submitted receipts or quotes as indicated in the table below. The landlord's claim is:

ITEM	AMOUNT
Replacement doors – receipt submitted	\$489.56
Stove top replacement - quote submitted	\$465.22
Carpet replacement – quote submitted	\$1,034.11
Dump fees- receipt submitted	\$211.30
Labour 40.00 hourly x 42 hours – no supporting documentation	\$1,680.00
Miscellaneous repair supplies – no receipt submitted	\$1,088.19
Filing fee	\$100.00
TOTAL	\$5,068.38

The tenant denied most facts alleged by the landlord. The tenant denied that she is responsible for any of the damage claimed. She testified that the house was old, in poor condition, and all building materials and contents were beyond their useful life. The tenant stated the landlord left her possessions out in the rain and therefore she

did not take them; she is not responsible for the dump fees. She denied responsibility for damage to the stove or any other part of the unit.

The tenant asserted that the landlord is primarily driven by revenge and retaliation in seeking these damages which the landlord denied.

Analysis

Only relevant, admissible evidence is considered. Only key facts and findings are referenced.

Standard of Proof

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures* state 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.

It is up to the party to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

In this case, it is up to the landlord to prove their claims.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Four-part Test

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the other party failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the claiming party proven the amount or value of their damage or loss?
4. Has the claiming party done whatever is reasonable to minimize the damage or loss?

Failure to prove one of the above points means the claim fails.

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

. . .

67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Credibility

In considering the application, I weighed the credibility of the parties. I considered the two competing versions of events. Each party vehemently blamed the other.

While the landlord's testimony was supported by some documents, I find they failed to dispel the tenant's assertions about the repairs and maintenance being caused by normal ageing and decay of the unit for which the tenant is not culpable.

I have also considered the tenant's assertion that the landlord is primarily driven by revenge and retaliation in seeking these damages. I accept the Arbitrator's findings in the previous Decision as echoed in the testimony in this hearing as follows: the landlord unlawfully locked the tenant out of the unit; the landlord damaged or failed to return possessions belonging to the tenant when they were unlawfully locked out of the rental unit in the amount of at least \$4,345.00; and the landlord caused the tenant intangible, irreparable and immeasurable amounts of emotional harm, damage and loss as a result of the lockout and the destruction and retention of their possessions,

which resulted in an award of aggravated damages.

While the landlord may be motivated in this application by a genuine desire for compensation, I also find the landlord is interested in retaliation against the tenant for the award in the previous Decision. I therefore give little credence to the landlord's testimony. Where the versions of events differ, I give greater weight to the tenant's evidence.

Findings

I find the landlord has failed to meet the burden of proof with respect to the first part of the 4-part test. That is, I find I am not satisfied that the tenant breached the Act or the tenancy agreement.

I have considered the evidence. The tenant's testimony is that the house needed renovation and many building components were at the end of their useful life. This seems to me to be a reasonable observation supported by the evidence that the building was old and needed work. As well, I accept the tenant's testimony that contents and components were well used and of uncertain age.

I find a common-sense view is that the rental house was an older home with many aging components in need of normal replacement or repair. These conditions led to normal deterioration such as flooring needing replacement. Other items, such as the damaged doors, cannot be established with any degree of certainty to have been damaged by the tenant. I find the tenant is likely not responsible for any of the damage claimed by the landlord.

I accept the landlord replaced two interior doors and the surface of the stove was damaged. However, I find the landlord has not met the burden of proof that the tenant is responsible for the damage.

As a previous Arbitrator has found that the landlord illegally locked out the tenant, I find the tenant's explanation plausible that she was not able to collect all her personal possessions. It is not reasonable in these circumstances to ask the tenant to pay for the cost of removal. I find the landlord has failed to meet the burden of proof for compensation for dump trips to dispose of her belongings.

As a result of the above, I am unable to find that the landlord has met the burden of

proof that any damage discovered after the move-out was caused by the tenant or was her responsibility.

I find the landlord has failed to meet the burden of proof that they expended time and incurred expenses to repair damages for which the tenant is responsible.

In conclusion, I find the landlord has failed to meet the burden of proof with respect to any aspect of their claim.

I accordingly dismiss the landlord's claim in its entirety without leave to reapply.

Conclusion

The landlord's claim 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: June 24, 2022

Residential Tenancy Branch