Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNRT, MNDCT, FFT

Introduction

The former Tenants (hereinafter, the "Tenant") filed an Application for Dispute Resolution on May 21, 2021 seeking the following:

- return of the security and/or pet damage deposit
- compensation for emergency repairs they made during the tenancy
- compensation for monetary loss or other money owed
- reimbursement of the Application filing fee.

This hearing reconvened after an initial Arbitrator decision of January 5, 2022. The Landlord applied for a review consideration, and another arbitrator granted a rehearing based on the Landlord's submission that they were unaware of the initial hearing. I met with the parties on March 1, 2022 and again on July 14, 2022 for the new hearing, pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*"), of the Tenant's Application.

Preliminary Matter – Disclosure of submissions and evidence

I reviewed disclosure of evidence at my first hearing with the parties on March 1, 2022. The Landlord confirmed they received the Notice of the Tenant's Application and their evidence. At that time the Tenant had not received the Landlord's written submissions and evidence and the Landlord noted their surprise in the hearing at that time.

In the Interim Decision after that hearing, I made a specific order to the parties to ensure full disclosure was complete by the time the matter reconvened. I verified each participant's correct postal address for the other's benefit.

At the reconvened hearing on July 14, 2022, the Landlord noted the Tenant had provided more material up to the day before the hearing. The Landlord noted the *Residential Tenancy Branch Rules of Procedure* prescription of 14 days for an Applicant's (here, the Tenant) material. The Tenant confirmed they sent "newer videos" to the Landlord in addition to the earlier material that was the subject of the disclosure discussion in the prior hearing. As described by the Tenant, these videos show the Landlord evading service as well as their sending of a later package. The Tenant stated this was "in response to what the Landlord said recently" in regard to service.

On my review of the record, the Tenant submitted evidence to the Residential Tenancy Branch on July 11 and July 12, very near the time of the hearing. The Tenant's material includes a document entitled "Important Information" dated July 10, 2022 and photos.

I will not consider the Tenant's more recent evidence submitted to the branch and to the Respondent days before the reconvened hearing. In the Interim decision of March 17, 2022, I stated: "The adjournment does not afford the Tenant the chance to make further submissions or amend their Application." This was an explicit instruction I made to the Tenant after giving instructions to the Landlord regarding service of their evidence and providing proof thereof.

For the purposes of this matter, and in the interests of having the Tenant's Application resolved, I am moving forward based on my finding that the Tenant completed service of the Application package to the Landlord (as the Landlord confirmed in the July hearing), and the Landlord provided their written response and evidence to the Tenant (as the Tenant confirmed in the July hearing).

Preliminary Matter – Landlord's separate Application for compensation

In the Interim Decision of March 17, 2022, I acknowledged the Landlord's own separate dispute application, completed on January 24, 2022. This was some months after this present Tenant application filed in 2021. As stated in the Interim Decision, I am considering only the Tenant's Application and the Landlord's responses to the individual pieces of the Tenant's claim. The Landlord's own Application will still proceed to hearing as scheduled. I find the Landlord accepted this in paragraph B.12 of their written response in this present hearing.

Issues to be Decided

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

Is the Tenant entitled to compensation for repairs they made on an emergency basis during the tenancy, pursuant to s. 67 of the *Act*?

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

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

Background and Evidence

Both parties provided a copy of the tenancy agreement and Addendum in their evidence. This shows the initial fixed-term tenancy starting on October 6, 2016, ending on October 5, 2017. Over the course of the tenancy which ended in 2021 the rent amount increased from $1,995 to $2,046.87 as the Tenant indicated on their Application. For each month the rent was payable on the 6th day of each month. Prior to the start of the tenancy the Tenant paid a security deposit amount of $997.50.

In the hearing, the Landlord submitted that it was incorrect to state that the tenancy continued on a month-to-month basis after an initial fixed term. Rather, in their summary the tenancy continued on continuing six-month terms, consecutively “less one day” each term, and this occurred 8 times before the tenancy ended. The Landlord submitted these successive terms continued by estoppel.

In their evidence the Tenant submitted a handwritten notice from the Landlord dated November 7, 2020. This sets out the Landlord’s attempt to end the tenancy for what the Landlord alleged was the Tenant’s failure to allow access to the Landlord’s plumber, the Tenant “making unauthorized plumbing repairs”, painting within the rental unit, and “other breaches”.

The Landlord’s evidence includes their earlier email to the Tenant of March 1, 2021 showing their response to the Tenant’s request to end the tenancy by mutual agreement, delivered to the Landlord via email on February 20, 2021. The Landlord

submits this was a situation where the Tenant was "overholding" by not providing proper notification to end the tenancy, then abandoning the rental unit, thereby foregoing the opportunity for a final condition inspection meeting in the rental unit.

The Tenant and Landlord both submitted a copy of the Tenant's letter dated March 6, 2021 where they advised the Landlord of their intention to end the tenancy effective April 6, 2021. This letter does not include a forwarding address for the Tenant.

A. Security deposit return

The Tenant submits that their end-of-tenancy notice should have prompted the Landlord to provide a fulsome end-of-tenancy process including a proper condition inspection meeting that did not occur. The Tenant did not receive a report from the Landlord on the final state of the rental unit; in their mind, this meant the Landlord did not unilaterally complete an inspection and an associated report. Because of this, the Tenant seeks double the amount of the security deposit.

The Tenant sent evidence in the form of their text message to the Landlord dated April 27, 2021 wherein they requested the return of the security deposit "for the 2nd time." They gave their forwarding address in that message. To this, the Landlord responded "Not [refundable] but credites [*sic*] against [the Tenant's] rent to Sept 30 and damages as previously advised."

This short response from the Landlord reflects the Landlord's position that the Tenant did not correctly notify of the end of tenancy, thereby renewing another six-month term through to the end of September. This makes the Landlord, by their own submission, not in breach of either the *Act* s. 24 or s. 38.

In sum, the Tenant's position is that the tenancy ended on April 5, 2021 as per their notice to the Landlord. The Landlord's position is that the Tenant did not properly advise of the tenancy end; therefore, another 6-month term was automatically renewed (*i.e.*, by estoppel), taking the tenancy to the end of September 2021.

B. Water leak and associated restoration

The Tenant submitted a copy of the September 29, 2020 decision of an Arbitrator that ordered the Landlord to complete emergency repairs by hiring a plumber for one of the bathrooms in the rental unit by October 9, 2020. They submit the Landlord did not make this repair on time; rather, there was a delay until November 20 and January 6,

2021. This leak and the delay in repairs caused financial loss to them in that they had to stay in a hotel in the interim period prior to repairs, had limited use of the rental unit, and loss of quiet enjoyment.

As stated in their Application, a neighbour below them reported the water leak on July 13, 2020 and strata management in the building turned off water to the rental unit. The Tenant moved to a hotel on July 17, 2020, being without use of all pieces (i.e., sink, toilet, and only shower) in the bathroom, with the source of the leak being unknown and rendering the whole bathroom unusable. Their own insurer was involved and a restoration firm set up dehumidifiers to eliminate existing moisture. They left the unit and stayed in a hotel to give the Landlord the opportunity to fully deal with the situation. They submit the Landlord did nothing during the 33 days they were away from the rental unit. They also submit the Landlord then blamed the Tenant for the start of the leak, and tried to end the tenancy via their assistant with a handwritten note on November 7. The Tenant at one point notified the police of the Landlord's "threat and pressure", specifically the "very unstable and abusive behaviour".

The Tenant provided a plumber service report that details that plumber's visit on November 20, 2020. This plumber replaced the cabinet sink and a new faucet. As set out in the Tenant's note to their insurer of March 21, 2021, the Landlord bought the new vanity "approximately 10 days before [the Tenant's] return from the hotel which was on Aug 20th", then only had that vanity installed on November 20, 2020., with the shower and broken heater then later fixed on January 6, 2021.

The Tenant also provided a message from the Landlord dated September 29, 2020 wherein the Landlord notified the Tenant of the end of tenancy date of October 29, 2020. This was for "repainting without [the Landlord's] prior written approval contrary to cl 16 of the Addendum". The Tenant presented another message from the Landlord to the Landlord's plumber dated October 15. In this message the Landlord noted they were ending the tenancy effective October 25, and with the instruction that the plumber commence work "after [the Tenant] [has] vacated."

As set out in their May 20, 2021 Monetary Order Worksheet, the Tenant's claimed amounts for monetary loss or other money owed, stemming from the Landlord's breaches, are:

#	Items	$ claim
1	full one-month rent amount	2,046.87
2	food not covered by insurance	1,738.36

3	insurance deductible	500.00
4	127 days bathroom vanity was unusable	1,905.00
5	"multiple breaches of rights"	1,000.00
6	prior hearing Application fee	100.00
	Total	**7,290.23**

The evidence related to each line item is as follows:

1. The Tenant was away from the rental unit for 33 straight days, from July 17, 2020 to August 20, 2020. They stayed in a hotel room during this time. The Tenant presented a final summary (in an email) from their insurer dated September 28, 2020, showing that the full amount of hotel costs that were reimbursed were for 36 nights (July 17, to August 20, 2020) to $7,756.

   The Tenant in their evidence submitted a copy of a rental cheque from a firm named "FIRST OF JULY RENOVATION" to the Landlord dated "2020-07-[image cut off]." This shows the full amount of rent paid, at $2,046.87. There is also an image of a bank statement showing this cheque "cleared" on July 7, 2020.

   The Landlord presented that their own insurer stated a hotel was unnecessary. They rely on communication from their own insurer dated September 23, 2020 in which a Field Adjuster states: "Unit does not look uninhabitable to me."

2. The Tenant provided a message to them from their insurer dated September 28, 2020. This advised that the total "food loss" was $2,730.97. Minus their policy deductible of $500, the amount payable was $2,230.97. The insurer noted this brought the total sum insured on the Tenant's policy (to $9,150), so the net payable to the Tenant for food was $992.71. In this message the insurer notified the Tenant that "we have finalized your file".

   On this point, the Landlord submits the hotel stay for the Tenant was unnecessary because the second bathroom in the rental unit had a sink and a toilet. This meant the rental unit was not uninhabitable, and it would be fundamentally unfair to charge the Landlord for a hotel stay with food. The Landlord succinctly stated in their own written submission: "Landlords do not provide food!"

3. The Tenant provided a copy of their note to the Landlord, undated, explaining events from this time period. They noted "we have had to pay our renters

insurance deductible of $500 to provide us with accommodation etc while this issue is being dealt with and this has triggered our insurance premium to increase." At this time they inquired to the Landlord whether the Landlord had their own insurer who "[would] be dealing with this."

The Landlord's response to this piece of the Tenant's claim is the same throughout: the leak was caused by the Tenant's own negligence in continuing to operate the shower and substantially contribute to and/or cause the problem requiring restoration. They point to their own insurer's assessment that a "mild leak" could not cause the equivalent of flooding in the bathroom.

4. On their Monetary Order worksheet, signed and dated May 20, 2021, the Tenant listed the amount of $1,905 for "127 days the bathroom vanity was unusable." They presented the date the leak was made known to them was July 13, 2020. The Tenant submitted the Landlord purchased a new vanity that was delivered on August 20, 2020. In the interim after this, the prior Arbitrator directed the Landlord to complete the repair by October 6, 2020 and "return it to proper working order."

   The Tenant submitted their copy of a message from the Landlord to a plumber dated October 15, 2020. This shows the Landlord instructing that person to "please repair the plumbing for your convenience after [the Tenant] have vacated." In the hearing, the Tenant mentioned that this was an indication that the Landlord was shirking their duty to repair even after the Arbitrator directed them to do so by a certain date.

   The Tenant submits the Landlord undertook the repair to the bathroom in two parts, on November 20, 2020 and January 6, 2021. The vanity remained sitting outside the rental unit uninstalled during the interim. They reiterated this point in the hearing, querying why the Landlord was not able to complete repairs.

   In response to this, the Landlord cited the difficulty they had retaining a plumber during these times of public health restrictions. In their written summary response to the Tenant's monetary order worksheet, they stated: "Delays due to covid and Plumbers unavailability and Tenant's refusal of access, illness and breach of good faith and cooperation."

   The Landlord in response also looked to the same message from their own insurer dated September 23, 2020. This provides that the 2001-replaced "vanity

was fine, old and worn, but not water-damaged". The Landlord also pointed to the availability of the second "half-bathroom" in the rental unit that was full-time available to the Tenant for their use. The Landlord queried: "What is such figure [*i.e.*, the $1,905 claimed here] based on, as is required?"

5. The Tenant cited the stress and mental anguish brought on by the Landlord not making repairs in a timely fashion even after they were ordered to do so in a previous dispute resolution. This carried over into other breaches of their rights as a Tenant, such as the Landlord entering repeatedly without authorization or notice to the Tenant, "microaggressions", and attempting to end the tenancy without valid legal means to do so.

   The Tenant provided a video labelled "trespassing". They described this as the Landlord "forcefully trying to enter the unit without a mask which resulted in a 911 call."

   The Tenant provided a record of their communication to a designated police officer who investigated when the Tenant called the police because of the Landlord's attempt to end the tenancy on November 7, the day after some other interaction with the Landlord. In this note the Tenant set out their suspicion that the Landlord would again in the future attempt to end the tenancy and/or "show up at [their] door and . . . want to come inside." To this, the officer responded on November 13 that they would contact the Landlord and advise the Landlord to "recommend [the Landlord] liaise directly with the Residential Tenancy Branch to get advice and assistance."

   In their evidence the Tenant also provided the Landlord's note dated November 7, 2020 that formally advised the Tenant that the tenancy would end, citing the Tenant's refusal to allow the Landlord's entry, making unauthorized repairs, painting within the unit, and "other breaches". The Landlord cited this notice was "supplemental to and independent from the email Notice of Termination 29-09-20", valid through the Addendum in the tenancy agreement.

   The Landlord's message from September 29, 2020 is in the Tenant's evidence, wherein the Landlord gave them "1 months' notice" via email and without the proper form as required by the *Act*.

The Tenant also provided a number of text messages they had with the Landlord, disputing individual issues concerning repairs within the rental unit, and the Landlord's attempt at ending the tenancy.

In the Landlord's evidence appears the Tenant's own account of the Landlord's "microaggression and racism". This was noted by the Tenant in the Landlord's behaviour toward them. The Landlord also referred to the Tenant by their nationality in paperwork they used at the beginning to establish the tenancy. To this, the Landlord replied, in their written account, that the Tenant's nationality was indicated freely by them on the tenancy application, and this in no way was derogatory. The microaggression noted by the Tenant was in the Landlord's (or their agent's) manner in speaking to the Tenant.

The Landlord's responses to the charges of the Tenant under this portion of their claim for compensation is that the Tenant refused the Landlord's own plumber entry into the unit to complete the work. This was partly the reason for communicating to the Tenant that the tenancy would be ending.

The Landlord also maintains they were refused entry into the rental unit twice when their design was to complete the necessary work. Moreover, the Landlord was told by the Tenant they would complete that work themself. As stated: "There was no deliberate delay by the Landlord or [their plumber] and therefore there should be no compensation to the Tenant, but conversely they delayed by their twice refusal of access."

On the allegation of a forced entry into the rental unit, the Landlord stated "[the Landlord] not once, of course, during the [tenancy] entered the Apartment with [the Landlord's] keys or forcibly." They maintain they only entered with "the direct invitation or arrangement of the Tenant to collect Rent and to inspect the flood damage." They cited the Tenant's own refusal to accept documents in relation to the Tenant's dispute resolution process, with the Tenant calling the police at that time.

The Landlord also questioned this claimed amount from the Tenant, being without a "stated quantifiable basis for the claim amount [*i.e.*, $1,000]."

6. Each party referred to the earlier dispute resolution hearing wherein the Arbitrator ordered the Landlord to complete repairs and provide a report to the Tenant. As set out in the copy of the decision provided by the Tenant, that Arbitrator

awarded the Tenant the Application filing fee of $100: “I direct [the Tenant] may deduct from future rent on a one-time basis only.” There is no record of rent payments over the ensuing months showing a deduction from October 2020 through to the end of the tenancy in May 2021.

In their summary written response to the Tenant’s Monetary Order Worksheet, the Landlord stated, “Not applied for in [this present hearing] but allowed despite no notice and application generally unsuccessful if so on rehearing.”

C. *Compensation for kitchen sink replacement -- $420*

On their Application, the Tenant noted “due to lack of maintenance and excessive wear & tear 2nd water leak was caused in the kitchen sink”. They cited the Landlord’s unwillingness to repair the initial water leak in the bathroom and then attempts to end the tenancy as reasons for proceeding on their own to call a plumber and have the kitchen sink repaired.

For this, the Tenant provided a copy of the invoice dated March 9, 2021. This shows the amount of $420 for installation of a “new sink basket and full new drain pipe and P-trap with dishwasher drain connector.” The Tenant also included two images of the “rusty and broken kitchen sink drain”.

In response, the Landlord cites a different previous Arbitrator decision of November 21, 2021 wherein this piece of the claim was dismissed “as not claimed”.

D. *Application filing fee -- $100*

For this present Application, the Tenant claims reimbursement of the Application filing fee.

Analysis

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, a 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 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.

A. Security Deposit Return

For the purposes of making a final determination on the security deposit, I find the tenancy ended on May 5, 2021.

The Landlord relies on the language of the tenancy agreement, and the third item in the Addendum, to state that the tenancy continued by estoppel for the remainder of the fixed 6-month term that began when the Tenant did not correctly inform the Landlord of the end of tenancy.

I do not find another six-month fixed term began by estoppel. I find the tenancy agreement on the singular point of renewal to be vague and unenforceable.

The *Act* s. 13(2) establishes that a tenancy agreement must include agreed terms:

(ii) If the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;

(iii) If the tenancy is a fixed term tenancy, the date on which the term ends

The agreement itself in section 2 Length of Tenancy sets out the initial fixed term for one year, specifying an end date. The agreement in subsection (i) then sets a term of "6 months to 6 months basis" (with the number "6" written in), and also specifies "other periodic tenancy" as being "6 monthly". I find subsection (i) refers to a periodic term; additionally, section (c) *also* refers to a periodic tenancy. Comparing this to what the *Act* sets out in s. 13(2)(ii) and (iii), the tenancy agreement itself in this section is indicating *only* a periodic tenancy from that point on, with each successive term equating to a periodic tenancy, with 6 months' duration being the "other periodic basis"

that the Landlord intended to accomplish. Otherwise, a fixed term must be defined with a precise end-date so as to avoid ambiguity.

The Appendix Item 3 refers to the tenancy continuing with the successive terms of "6 months less than 1 day", this "in the absence of due notice". I find this is also terminology that is vague and thus non-binding to this tenancy, with the legal principle of *contra proferentem* applicable here. The language as shown in the evidence here is describing an initial period of 6 months, and specifically provides dates. After this, I find there are no set timelines that could indicate the tenancy continued on a fixed-term basis of any kind as required by s.13(2)(iii). The time period specified with "less than 1 day" is rife with uncertainty, minus exact dates going forward.

I also look more basically to s. 44(3) of the *Act*, which specifies:

> If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

In sum, I find after the initial fixed-term period expired, the tenancy agreement such as it existed going forward was on a periodic basis. This is because a timeline of "6 months less than 1 day" is too ambiguous and non-definite to be considered "fixed" in length.

With this finding, I conclude the Tenant's basis for ending the periodic tenancy in a legally valid matter falls under the *Act* s. 45(1):

> A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
>
> (a) Is not earlier than one month after the date the landlord receives the notice, and
> (b) Is 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.

Applying this to the present situation in this tenancy, I find the Tenant gave their notice to the Landlord in writing on March 6, 2021. Applying s. 45(1), I find the earliest legally valid date possible is May 5, 2021, within the timeframe including *at least one month notice*, and being the day before the day rent is payable (*i.e.*, the 6th) as specified in the agreement. I make this finding that May 5 is deemed to be the earliest date that complies with s. 45(1), by application of s. 53(2) of the *Act*, where "the effective date is deemed to be the earliest date that complies with [s. 45(1)]."

As for the dispensation of the security deposit of $997.50, the *Act* s. 38(1) states:

> 1) . . .within 15 days after the later of
> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,
> the landlord must do one of the following:
> (c) repay. . . any security deposit . . .to the tenant
> (d) make an application for dispute resolution claiming against the security deposit

Further, s. 38(6) provides that

> 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 . . .

I note the March 6, 2021 letter to the Landlord did not contain a forwarding address. This is required to decide on the dispensation of the security deposit under s. 38. I find as fact the Tenant gave their forwarding address to the Landlord on April 27, 2021, prior to the tenancy end-date of May 5, 2021. The tenancy end-date is thus the later of these two dates and applies to the current scenario.

I find the Landlord neither repaid the security deposit to the Tenant; nor did they make an application for dispute resolution against the deposit within 15-days of May 5, 2021. The Landlord responded to the April 27 message to say that they were using the deposit as credit against what they submit are outstanding rent amounts owing from the Tenant. This was without any indication that they were pursuing an application against the deposit. I find the evidence shows this reply from the Landlord to be their summary response on their interpretation of the parties' legal rights and obligations.

I find the Landlord did not comply with s. 38(1); therefore, pursuant to s. 38(6) of the *Act*, I award the Tenant double the amount of the security deposit. This amount is $1,995.

B. Water leak and associated restoration

On specific line items of the Tenant's claim, I find as follows:

1. Presumably the Tenant is claiming for the full monthly rent amount they paid for July 2020. They enclosed the rent cheque and an image from their bank account showing the completed transaction. On July 17 they moved to a hotel for 33 days (counted incorrectly as *36* nights by their insurer) through to August 20,

2020. The Tenant did not provide an explanation on this amount claimed, with no rationale for why they feel this compensation to them is in order. On my evaluation of the evidence, I find the Tenant did not provide the quantifiable basis for this piece of their claim, and there is a lack of full particulars to this piece of their claim. Their stay away from the rental unit *exceeded* one calendar month, and I don't understand why they did not claim for an amount greater than one month's rent or if they applied a per diem basis.

I find the Tenant did not give up occupancy of the rental unit altogether. They did not provide a record of the approval or recommendation from their insurer that a hotel stay was in order. My understanding is that dehumidifiers were running to remove any moisture from affected areas within the rental unit. This may have affected the Tenant's ability to be comfortable within the rental unit for some amount of time; however, the Tenant did not provide that the fans operated 24/7 for the entire duration of their stay elsewhere, nor for the entirety of one calendar month of rent. The interruption to quiet living caused by fans running, or other work involved, was a diminishment in their capacity to stay in the rental unit; however, I do not conclude that their ability to stay in the rental unit ceased altogether.

I appreciate the fans operating were likely the biggest detriment to the Tenant's ability to remain in the rental unit comfortably. Yet with regard to the four points listed above which are involved in any consideration of compensation, as set out in the *Act*, I find the Tenant did not provide a sufficient basis in rationale for the entirety of one month's rent. I give more weight to the Landlord's evidence that shows their own insurer's assessment that the unit was not unlivable. This is documented dialogue from the insurer to the Landlord and I find the Tenant did not provide evidence in the form of their own insurance agency giving instruction or approval for the need to live elsewhere. I am not satisfied that the lack of a separate vanity in one of two bathrooms would require the Tenant to live elsewhere.

In sum, the Tenant's stay elsewhere was fully covered by their insurer. They did not fully vacate the rental unit during this time, and I am not satisfied that the value of the tenancy was fully diminished during the timeframe of one full month. I do not concede the Tenant's argument (though nowhere articulated as such) that the rental unit was completely unlivable warranting one full free month of rent. I grant no award for this piece of the Tenant's claim.

2. The Tenant did not establish the actual value for food amounts they paid. I find it likely they would have provided that detail to their insurer; however, I find there is insufficient evidence of the value of the loss for this hearing, where the Tenant did not submit receipts or other proof for food expenses to them. I also cannot verify any amounts in terms of dates. What satisfied the insurer to establish actual value was not replicated by the Tenant here, and I do not accept that what the insurer set out for the Tenant in terms of actual dollar amounts in their message of September 28, 2020 was accurate, minus any evidence to show actual amounts.

   Additionally, I find the amount in question makes no accounting for the Tenant mitigating this amount. Presumably this is an amount associated with not preparing their own meals in their own domicile; however, there is no accounting for this, if only to offset the expenses for food that the Tenant would normally incur in any event. I am not at liberty to assume that the Tenant accounted for this, minus explicit details; nor am I to assume that the Tenant consumed either take-out menu items or restaurant meals.

   For these reasons, I make no award for food expenses above those already covered by the Tenant's own insurance as shown in their evidence.

3. Similar to the above point, the Tenant did not submit evidence in the form of a policy on the actual amount of their deductible. The only proof that they actually paid that amount is in the form of a message/summary from the insurer dated September 28, 2020, and the only indication is that this was offset against an amount granted to them for food. I find this does not meet the burden of proof to show the value of a loss to them.

4. The Tenant provided an amount of $1,905 for 127 days the bathroom was unusable. I find as fact the bathroom was not unusable, with my rationale set out above, and with evidence stating that from the Landlord's own insurer. I grant no award to the Tenant for this amount for this reason.

   Additionally, the Tenant did not present rationale for what this amount represents. I am not clear on whether it represents a reduction in rent for this 127-day timeframe, being a certain percentage of the rent, or a per diem amount, which by my calculation would loosely calculate to approximately $15 per day. With no representation of what this amount represents (*i.e.,* no calculation) from the Tenant in place, it would be fundamentally unfair to the Landlord if I awarded

this amount arbitrarily, particularly where the Landlord has presented cogent evidence that the bathroom was still usable. Minus stronger (or any) evidence to the contrary, I grant no award to the Tenant for this piece of their claim. They did not establish the value thereof, and in my evaluation this amount exists only as a number, compounding on to a portion of their claim for a full rent return during approximately one-quarter of this 127-day timeframe.

5. Above, I have ruled on the interruption of the lack of a second bathroom vanity overall on the Tenant's ability to use the rental unit to the fullest extent possible. While interruption occurred, the Tenant has not articulated what each claimed value *represents* in terms of a diminished value to the tenancy. Their claim overlapped with portions already covered by insurance.

   This portion of the Tenant's claim reflects their stress and what they termed "mental anguish" in terms of their interactions with the Landlord and the way the Landlord was handling the matter of repair, along with other aspects of the tenancy.

   For an award of this nature, the Tenant must demonstrate palpable and measurable effects of stress, and especially "mental anguish" as indicated on their Monetary Order Worksheet. I find the Tenant did not so articulate this portion of their claim in these terms. The terms they provided are open-ended and can cover any number of symptoms; however, the Tenant did not present symptoms that indicate a measurable effect on health and well-being.

   The Tenant presented no evidence of *repeated* attempts at entry by the Landlord. If that is a matter of the Landlord attending to the rental unit and knocking on the door, then I find that is not illegal entry. In one instance the Tenant responded by calling the police which, beyond any evidence of forced entry, I find rather extreme.

   The Tenant used the term "microaggressions" and stated they had knowledge of what this term means. In their evidence or descriptions there was no listing of repeated behaviour by the Landlord as compared against a definition of this sort of behaviour. If it involves tense or escalating communication with the Landlord – and the Tenant did not even specify whether that occurred by email or text message or in person – then I cannot find "microaggression" was affecting the Tenant to the extent it was causing ill effects on their mental or physical health.

On other items, I find the Tenant did not set out what other fundamental rights were infringed by the Landlord. Throughout the hearing process the Tenant was focused on the conduct of the Landlord exclusively, and this was to the detriment of their submissions that lacked any description of claimed amounts throughout.

In sum, the Tenant did not present precisely *how* they suffered stress or mental anguish. There was no presentation of ill-health effects to them. For this reason, I make no award to the Tenant for this piece of their claim.

6. The Tenant did not present proof that they made no deduction from a subsequent rent payment as the prior Arbitrator directed them to in the decision of September 29, 2020. The Tenant had at least six months in which to make that deduction; I find they did not. There was no explanation from the Tenant on why they did not make that deduction as directed. They have foregone the opportunity to recover this Application fee via the Arbitrator's prior award. I find that was not an effort at mitigating damages or money owed to them.

C. *Compensation for kitchen sink replacement -- $420*

The tenancy agreement itself provides that the Tenant must make a request to the Landlord for a repair of any item within the rental unit. The agreement also specifies that for emergency repairs the Tenant must attempt contact to the Landlord at least twice, and only after those attempts failed is the Tenant authorized to undertake repairs and then claim reimbursement. These are matters of urgency and reflect the *Act* s. 33.

The Addendum to the tenancy agreement, item 16, specifies that

> The Tenants shall not make any alteration, addition, painting, improvement or change in or to the Apartment, interior or exterior, or to the Landlord's equipment or install any unusual appliance except with the prior written approval of the Landlord.

Given the language set out in the tenancy agreement, and more specifically in the Addendum, I find the Tenant was obligated to make a written request to the Landlord for a repair to the kitchen sink. The Tenant at that time was aware of the Residential Tenancy Branch process for dispute resolution and there is no explanation why they did not pursue the matter with the Branch to rectify the situation. Prior to this, however,

there should have been a written request from the Tenant to the Landlord and the Tenant did not produce evidence of that in this instance.

I do not regard this matter as an emergency repair and there likewise was no evidence of the Tenant attempting to call the Landlord for that. They proceeded on this repair on their own without authorization or even the Landlord's own knowledge. This constitutes a breach of the tenancy agreement by the Tenant, and not the Landlord. The Tenant did not show evidence of a breach by the Landlord here; therefore, I make no award for the kitchen sink repair.

D. Application filing fee -- $100

The Tenant was for the most part unsuccessful in this Application; therefore, I make no award for reimbursement of the filing fee they paid on this Application.

Conclusion

Aside from the doubling of the security deposit, I dismiss all other pieces of the Tenant's Application for compensation, without leave to reapply.

Pursuant to s. 38 of the *Act*, I grant the Tenant a Monetary Order in the amount of $1,995.00. I provide the Tenant with this Monetary Order as per the reasons above, 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 this Order in the Small Claims Division of the Provincial Court where it will 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*.

Dated: August 12, 2022

Residential Tenancy Branch