



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, DRI-ARI-C, RR, AAT, FFT

Introduction

This hearing dealt with the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent dated March 31, 2022 (the "10 Day Notice") pursuant to section 46;
- a Monetary Order of \$5,600.00 for the Tenants' monetary loss or money owed by the Landlord pursuant to section 67;
- cancellation of an additional rent increase for capital expenditures pursuant to section 43;
- an order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order for the Landlord to allow access to the rental unit for the Tenant and the Tenant's guests pursuant to section 30; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord and the Tenants attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, and to make submissions. The Landlord was assisted during the hearing by RB.

The parties did not raise any issues with respect to service of dispute resolution documents. The Landlord confirmed receipt of the Tenants' notice of dispute resolution proceeding package and documentary evidence. The Landlord did not submit any documentary evidence and relied on oral testimony for this application.

Preliminary Matter – Tenancy Has Ended

The parties agreed that the tenancy has already ended and that the Tenants have vacated the rental unit. Based on the parties' testimonies, I find that the tenancy ended

on April 27, 2022 when the Tenants vacated the rental unit. The Tenants confirmed that the remaining claims sought by the Tenants on this application are their claims for monetary compensation, a retroactive rent reduction, and recovery of the filing fee.

I note that under section 55(1.1) of the Act, a landlord is entitled to an order requiring payment of unpaid rent if, on a tenant's application to dispute the notice to end tenancy, the notice is found to comply with section 52 of the Act and the tenant's application to dispute the notice is dismissed. In this case, the 10 Day Notice submitted into evidence is an incomplete copy (it is missing the second page which specifies the amount of arrears owed), so I am unable to determine whether it complies with section 52 of the Act. Accordingly, I leave the issue of unpaid rent for determination in Landlord's application identified on the cover page of this decision.

Issues to be Decided

1. Are the Tenants entitled to a Monetary Order for monetary loss or money owed by the Landlord?
2. Are the Tenants entitled to a past rent reduction?
3. Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The parties agreed that this tenancy commenced approximately 10 years ago and that rent was \$800.00 per month. The Landlord testified that the Tenants paid rent "any time", never consistently, though the Landlord had no doubt that the Tenants would pay. The Tenants paid a security deposit of \$300.00. There is no written tenancy agreement.

The Tenants testified that starting in October 2021, the rental unit was not "livable" due to the presence of rodent pests. The Tenants testified they heard scratches in the wall and set mouse traps. The Tenants' evidence includes a written statement which mentions that the Tenants saw a large rat on October 15, 2021 and mice caught in the traps.

The Tenants testified they left the rental unit on October 18, 2021. The Tenants stated they had paid rent in full for October 2021.

The Tenants' evidence is that they left their belongings at the rental unit since they were told by the Landlord she would deal with the rodent issue and let the Tenants know once the rental unit was ready for their return.

The Tenants testified they assisted the Landlord with meeting contractors at the rental unit for estimates.

The Tenants testified that on November 19, 2021, the Landlord received quotes for interior and exterior pest control. The Tenants testified the Landlord informed them she could not afford the pest control and would renovate the rental unit instead. The Tenants denied that they had asked the Landlord to renovate the rental unit.

The Tenants' evidence indicates that they went to the rental unit on November 24, 2021 to let the Landlord's contractor in to begin renovating. The Tenants' evidence is that the Landlord's contractor removed all the cabinets and cabinets in the kitchen and sink.

The Tenants submitted photographs showing rodent droppings and mould in the kitchen and bathroom areas of the rental unit after the cabinets had been removed.

The Tenants testified that on November 28, 2021, the Landlord's contractor attended at the rental unit but did not bring some of the materials needed for the work. The Tenants testified that the Landlord told the Tenants to buy the materials from Rona and that she will reimburse them.

The Tenants testified that as a result of the rodent problem and Landlord's renovations, they incurred the following expenses:

Item	Amount
November 18, 2021 Canadian Tire Mouse Traps	\$26.86
November 18, 2021 Canadian Tire Mouse Traps	\$12.30
November 20, 2021 Canadian Tire Mouse Traps	\$11.19
November 28, 2021 Rona Spray Foam	\$11.69
November 28, 2021 Rona Drywall	\$43.87
Total	\$105.91

The Tenants testified that the Landlord refused to reimburse them for the above expenses. The Tenants acknowledged that they did not give the receipts to the Landlord at the time they incurred the expenses.

The Tenants testified they received a verbal one month to end tenancy from the Landlord in December 2021. The Tenants testified they were going out of town on December 14, 2021 and would not be able to move their belongings out in time.

The Tenants' evidence suggests that the renovations in the rental unit continued until March 2022. The Tenants testified they discussed with the Landlord about returning to the rental unit, but were told that their rent would be increased to \$1,300.00 per month and the Tenants would have to supply their own stove.

The Tenants testified that they realized things were not working out with the Landlord. The Tenants testified they tried to enter the rental unit in April 2021 to remove their belongings but found themselves locked out of the rental unit. The parties' evidence indicates that there was a confrontation at the rental unit on April 1, 2022 during which both sides called the police.

The Tenants' evidence indicates that they were eventually let into the rental unit to remove their belongings. The Tenants testified they had been told the Landlord's contractors would not renovate the living room, so they had left items there. The Tenants testified that they found their belongings "completely trashed" and covered in drywall or dust. The Tenants testified that the workers had put garbage on their furniture. The Tenants testified they cleaned and removed some items, including a TV stand a wine rack, but had to leave the rest of the furniture.

The Tenants claim that the damaged furniture, their age, and their original price were as follows:

Item	Age	Original Price
Couches x 2	10 years	\$1,200.00
Coffee Table x 1 and End Tables x2	4 years	\$220.00
Microwave	6 years	\$150.00
Carpet	10 years	\$150.00
Total		\$1,720.00

The Tenants submitted photographs of the above furniture at the rental unit, said to have been taken in April 2021 after the renovations. The photographs show that the couch has a tear through which white stuffing can be seen. The furniture items appear to be covered in drywall or dust. The Tenants testified they didn't want to take the furniture items in those conditions. The Tenants testified that the Landlord had refused to clean the furniture items and said she would throw them away.

The Tenants' evidence indicates that they received the 10 Day Notice in person on April 1, 2022. Only the first page of the 10 Day Notice has been submitted into evidence.

The Tenants testified they returned the keys to the Landlord on May 1, 2022. The Tenants confirmed they had not paid any rent to the Landlord after October 2021. The Tenants testified that they did not agree with the Landlord to pay half the rent, as the rental unit was not livable.

The Tenants testified they had to find alternative accommodations since October 2021. The Tenants testified that one of them paid \$500.00 for rent and the other stayed with a partner who was paying \$2,100.00 per month.

In response, the Landlord testified that after the Tenants told her about the mice problem in October 2021, she asked the Tenants to contact pest control when they are free. The Landlord testified she did not have a spare key for the rental unit and the Tenants would not let her in.

The Landlord testified the Tenants tried to pressure her into renovating the rental unit after they left. The Landlord testified she explained she did not have money as a single working person in her 70s with a disabled child.

The Landlord testified the Tenants went out of town for three weeks and did not give her the key to do repairs.

The Landlord testified she never threw away the Tenant's furniture items. The Landlord acknowledged that there was some dust on the Tenant's furniture. The Landlord testified that she had the Tenants' sofa shampooed and stored the Tenant's furniture in her garage. The Landlord testified that the Tenants left the furniture items behind because they did not want to take them. The Landlord stated that the items are still available for pick up any time.

The Landlord testified she told the Tenants they had promised to pay half the rent since their belongings were still at the rental unit. The Landlord stated the Tenants then denied that they would pay half the rent.

The Landlord testified the old stove left outside the rental unit was in a fine condition, but the Tenants wanted a new stove.

The Landlord's evidence was that she never received the receipts from the Tenants at the time of purchase. The Landlord testified she paid \$120.00 to repair holes in the rental unit.

The Landlord testified that the Tenants vacated the rental unit on April 27, 2022 and returned the keys on May 4, 2022.

Analysis

1. Are the Tenants entitled to a Monetary Order for monetary loss or money owed by the Landlord?

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], 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.

Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss ("Policy Guideline 16") states as follows:

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, the Tenants seek compensation for (a) expenses related to mouse traps, drywall, and spray foam; (b) damaged furniture, and (c) rent paid for alternative accommodations and other losses.

a. Mouse Traps, Drywall, and Spray Foam Expenses

I note the Tenants did not submit receipts from Canadian Tire or Rona, although the Tenants submitted statements showing the dates and amounts for these expenses. I accept the Tenants' testimony on a balance of probabilities that they incurred these expenses due to the rodent issue in the rental unit and the repairs that were being undertaken by the Landlord's contractor.

Section 32(1) of the Act states:

Landlord and tenant obligations to repair and maintain

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I am satisfied that the mouse trap, drywall, and spray foam expenses claimed by the Tenants are those which should be borne by the Landlord based on the Landlord's obligation to repair and maintain the rental unit under section 32(1) of the Act.

Pursuant to section 67 of the Act, I order that the Landlord pay the Tenants \$105.91 on account of the expenses claimed for mouse traps, drywall, and spray foam.

b. Damaged Furniture

Based on the evidence before me, I find that the Tenants' furniture items were left covered in dust or drywall was a result of the renovation and were dirtied. I find that the couch was damaged with a tear in the middle. I find that garbage items were left on top of the Tenants' furniture.

However, I am not satisfied that the Tenants have established, on a balance of probabilities, the value of the loss with respect to these furniture items or that the Tenants had acted reasonably to minimize their loss.

Policy Guideline 16 states that "[a] party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence."

In this case, I find the Tenants have not established the value for the furniture items claimed. The Tenants did not submit any receipts to establish the original purchase price of the items. In any event, I find that the furniture items would have depreciated significantly in value as they range from 4 to 10 years old.

Furthermore, I am not satisfied that the Tenants have acted reasonably to mitigate their damage or loss with respect to the furniture items.

Residential Tenancy Policy Guideline 5. Duty to Minimize Loss states:

B. REASONABLE EFFORTS TO MINIMIZE LOSSES

A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:

- remove and dry the possessions as soon as possible;

- promptly report the damage and leak to the landlord and request repairs to avoid further damage;
- file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.

Compensation will not be awarded for damage or loss that could have been reasonably avoided.

Based on the evidence before me, I find that the Tenants had the opportunity to remove the furniture items from the rental unit for cleaning and repairs, but chose not to do so. I find that by intentionally leaving the furniture items behind after the renovations were completed, the Tenants have not acted reasonably to mitigate their loss and therefore cannot claim the value of the furniture items as compensation. In my view, the Tenants could have had the furniture professionally cleaned and the couch rip repaired. I also accept the Landlord's testimony that she has cleaned the furniture items and stored them in the garage for the Tenants to pick up.

Policy Guideline 16 states that "nominal damages" may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

As stated above, I have found that the Tenants' couch was damaged with a tear and the furniture items were dirtied as a result of the renovation performed by the Landlord's contractor. I do not find that the Landlord's actions warrant the replacement of the Tenants' furniture. I find that the Tenants are entitled to nominal damages for the couch tear and the dirtied furniture items. I fix the Tenants' nominal damages award at \$50.00.

Pursuant to 67 of the Act, I order the Landlord pay the Tenants \$50.00 in nominal damages on account of the Tenants' furniture claim.

c. Rent for Alternative Accommodations and Other Losses

In this case, the Tenants acknowledged that they did not pay rent to the Landlord after October 2021. During the hearing, the Tenants took the position that they did not have to pay rent to the Landlord because the rental unit was not "livable". At the same time, the Tenants claim compensation for rent they incurred elsewhere from October 2021 to April 2022.

In my view, unless the Tenants were required to pay higher rent elsewhere due to a breach by the Landlord and were claiming the difference in rent, the Tenants would only be entitled to a reduction in rent payable to the Landlord rather than compensation for alternative accommodations on top of not having to pay rent to the Landlord.

I find the Tenants' claim under this part to be more properly characterized as a claim for a reduction of rent payable to the Landlord from October 2021 to April 2022, which I will deal with in the section below.

I note the Tenants also submitted a Canada Post receipt which appears to be their registered mail cost for serving this application. This is not a recoverable expense under the Act. The Tenants also submitted a Home Depot receipt that was not explained in their Application or during the hearing. Accordingly, I decline to award the Tenants monetary compensation for these items.

2. Are the Tenants entitled to a past rent reduction?

Section 65(1)(f) of the Act states:

Director's orders: breach of Act, regulations or tenancy agreement

65(1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

[...]

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement; [...]

In this case, I find that the rental unit was not in a state of decoration and repair that was suitable for occupation between November 2021 and March 2022, primarily due to the ongoing renovations in the kitchen and bathroom. I make this finding based on the photographs taken by the Tenants in November 2021. Furthermore, I accept the Tenants' undisputed testimony that the renovations in the rental unit completed at around the end of March 2022. I note the Tenants' evidence is that they left the rental unit in late October 2021, but I find there is insufficient evidence about the state of the rental unit at that time.

I find that between November 2021 and March 2022, the state of the rental unit did not comply with the requirements under section 32(1) of the Act. Accordingly, I find that there was a reduction in the value of the tenancy warranting a past rent reduction under section 65(1)(f) of the Act.

I further find that in April 2022, the Landlord restricted the Tenants from freely accessing the rental unit by locking the rental unit from inside. I find that the Landlord's restriction of the Tenants' access breached the parties' verbal tenancy agreement, greatly devalued the tenancy, and warrants a more substantial reduction of rent.

Based on the foregoing, I conclude that rent payable by the Tenants to the Landlord should be reduced by \$500.00 per month from November 2021 to March 2022 and by \$750.00 in April 2022.

In reaching this conclusion, I have taken into consideration the amount of rent the Tenants testified they paid elsewhere, although I note the Tenants did not submit any supporting documents to establish the amounts of rent that they paid. I have also considered the fact that the Tenants left their belongings at the rental unit and would have saved on storage fees during this period.

As stated above, I have found that the Tenants did not pay any rent to the Landlord for November 2021 to April 2022. Accordingly, I do not find that the Tenants are entitled to recover any amount of the rent payable for the months affected by the rent reductions awarded. Rather, the reductions should inform the amount of rent that the Landlord is entitled to collect for these months. I am aware that the parties are scheduled to appear at another hearing on August 29, 2022 related to the Landlord's application (the file number for which is indicated on the cover page of this decision), for a now unnecessary Order of Possession and a Monetary Order for unpaid rent. I will preside over that application, and the above-mentioned rent reduction will be accounted for when calculating the amount of the Landlord's Monetary Order, if such an Order is made.

3. Are the Tenants entitled to recover the filing fee?

The Tenants have been partially successful on this application. Pursuant to section 72(1) of the Act, I award the Tenants recovery of their filing fee.

The total amount awarded to the Tenants on this application is as follows:

Item	Amount
November 18, 2021 Canadian Tire Mouse Traps	\$26.86
November 18, 2021 Canadian Tire Mouse Traps	\$12.30
November 20, 2021 Canadian Tire Mouse Traps	\$11.19
November 28, 2021 Rona Spray Foam	\$11.69
November 28, 2021 Rona Drywall	\$43.87
Nominal Damages for Furniture Claim	\$50.00
Filing Fee	\$100.00
Total	\$255.91

Conclusion

The Tenants are granted a retroactive rent reduction of \$500.00 per month from November 2021 to March 2022 and \$750.00 for April 2022.

Pursuant to sections 67 and 72 of the Act, I grant the Tenants a Monetary Order in the amount of **\$255.91**. The Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The balance of the Tenants' claims on this application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 24, 2022

Residential Tenancy Branch