



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes: CNR, MNDCT, PSF, RP, RR, OLC, FFT, MNR-DR, OPR-DR, FFL

Introduction

The tenant and landlord filed cross-applications seeking compensation against each other under the *Residential Tenancy Act* (the “Act”). The tenant’s application also sought additional relief which, because the tenancy has ended, are now moot. Both parties seek to recover the cost of the filing fee under section 72 of the Act.

Attending the hearing were the tenant and three representatives for the numbered company landlord. The parties were affirmed, and no service issues were raised.

Issue

Is either the tenant or the landlord entitled to compensation?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began April 1, 2020 and ended on July 16, 2022 when the tenant vacated the rental unit. Monthly rent was \$4,200.00, due on the first day of the month. There was a \$2,100.00 security deposit which the landlord currently holds in trust pending the outcome of these applications. A copy of the written tenancy agreement was submitted into evidence by both parties.

The landlord seeks \$14,300.00 in compensation for unpaid rent. This comprises partial arrears from May 2022 of \$1,700.00, and full arrears for the months of June and July 2022. The landlord’s position is that the full month’s rent for July is owing because the tenant never gave notice to end the tenancy.

It is noted that the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on May 9, 2022. The tenant filed an application to dispute the Notice. However, as the tenant vacated the rental unit before this hearing—where the validity of Notice would have been considered—the Notice is for all intents now moot.

The tenant seeks compensation in the amount of \$10,550.00 for, as stated in their application

[. . .] wages for no show repairmen appointments & wasted time, Organizing septic tank pump & clean up of septic overflow, displacement due to septic overflow, damage deposit refund, return of one months rent due to lot being built on, there may be more, by them time we get to the hearing.

A further \$5,850.00 in compensation "for lost services, loss of use, rental reduction due to repairs that can't be fixed, length of time repairs took to be completed, if they were completed, living with non completed repairs." In total, the tenant's application sought compensation in the amount of \$16,400.00.

A Monetary Order Worksheet submitted into evidence itemizes the claim. The relevant portion is reproduced below:

#1	was waiving until served w/notice	septic clean up & arrange	\$ 500
#2	e-transferred	Damage deposit	\$ 2,100
#3	RTA kwik to build	1 month free if I stay till building	\$ 4,200
#4	was waiving until served w/notice	5 people no toilets or water 24hrs due to septic	\$ 750.00
#5	1/2 Rate of wages for time wasted no shows	was waiving	\$ 3.75.20
#6	was waiving until served w/notice	Loss of use / enjoyment for bathrooms 1 month	\$ 500
#7	was waiving until served w/notice	Loss of services / enjoyment per month per service	\$ 7,974.80
#8	dishwasher 2.5 month		\$
#9	Kitchen lights 5 months + doors 5 months + patio door 4 months +		\$
#10	Floors 5 months + Holes incl one fixed w/duct tape		\$
Total monetary order claim			\$16,400 + 100.00 Filing Fee

Attach additional page(s) if necessary.

The tenant testified that "everything was fine" when the tenancy started, though there were a few minor issues, such as the pilot light not working. It was not until January 2022 when the problems began.

The primary problem had to do with the septic system. The toilets were not fully flushing. There ended up being a major backup of water on the main floor. The tenant contacted the landlord. The water had to be shut off and the family was without working toilets. This was particularly inconvenient given that there were four children living with the tenant. The tenant testified that she cleaned everything up but did not keep any receipts. Fortunately, the landlord paid for the emergency plumber and the pump. Unfortunately, the landlord did not compensate her in any way for all of the cleaning she had to undertake.

Additional issues arose. The list of problems was in the range of 10-11 in January 2022. By the end of the tenancy this list had swelled to 22. The property itself was destined for either renovations or demolishing, the tenant added. The "house was slowly falling apart." Nevertheless, all of the issues in the property were matters that could have been fixed but were not.

During this time, the tenant requested a lower rent, to reflect the various issues. The landlord was not interested. This was frustrating for the tenant, who argued that one would have certain expectations around property maintenance when the rent is \$4,200.00. The tenant described the landlord's efforts at fixing issues akin to "fixing it with duct tape and still asking for \$4,200." If the landlord expected to be paid full rent, then they ought to have maintained the house. Last, the tenant gave evidence that between April and June 2022 there were five walkthroughs by tradespersons without work being undertaken. This cost the tenant lost wages.

The landlord's various representatives testified that while they covered the cost of the septic issues, the tenant "never mentioned" anything about cleaning costs. "I wish she had told me," the landlord remarked.

Regarding the rent, the landlord testified that they offered to lower it by \$700.00 but the tenant was unhappy with this. After January 2022 the tenant would pay "a little bit [of rent] here and there." They ultimately issued the Notice.

As for the multiple issues raised by the tenant, the landlord's representative testified that they spent a lot of time resolving and trying to resolve these as soon as possible. Last, the tenant had, indeed, requested lower rent but the parties never came to any agreement, and thus the rent remained at the full \$4,200.00.

Analysis

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.

Landlord's Claim

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement unless the tenant has a right under the Act to deduct all or a portion of the rent. The tenancy agreement requires that rent in the amount of \$4,200.00 be paid on the first day of the month.

In this case, there is no evidence before me to find that the tenant had any right under the Act to not pay—that is, “deduct”—the rent. While there are copies of email communication between the parties about lowering the rent, nothing conclusive resulted. As such, it is my finding that the rent remained at \$4,200.00 throughout the tenancy. Further, the evidence before me leads me to find that the landlord is entitled to compensation for unpaid rent in the amount of \$14,300.00. As the tenant failed to give written notice ending the tenancy in a manner that complies with section 45(1) of the Act. (It is noted that the tenancy was a periodic, or month-to-month, tenancy at the time the tenant vacated the property.)

As the landlord was successful in its application, they are entitled to recover the cost of the application filing of \$100.00 pursuant to section 72 of the Act. In total, the landlord is awarded \$14,400.00.

Tenant's Claim

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, a party claiming compensation must do whatever is reasonable to minimize their loss.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

It is a given that the landlord was required to provide a working plumbing system along with toilets. Section 32(1) of the Act requires that a landlord provide and maintain residential property that “makes it suitable for occupation by a tenant.” Having an overflowing septic tank backing up toilets is not, I find, making the rental unit suitable for occupation.

While the tenant did not provide an accurate accounting of her time spent cleaning up the property, the landlord did not dispute the tenant’s account of events, nor did they address the amount claimed. I have no difficulty accepting that the tenant would have spent considerable time cleaning up after the septic incident, and therefore find that the tenant’s claim for \$500.00 in compensation to be reasonable.

The tenant’s claim for \$4,200.00 for “1 mnth free if I stay till building” is, with respect, incomprehensible and I am unable to determine what this claim represents or for what breach of the Act committed by the landlord might in fact be. The tenant did not provide any testimony or argument as to why this amount ought to be awarded. As such, this claim is dismissed.

The claims of \$750.00 for “5 people no toilets or water 24hrs due to septic” and \$500.00 for “lost of use/enjoyment for bathrooms 1 month” are based on the landlord’s breach of section 32(1) of the Act. Regarding the \$750.00 amount, the tenant did not explain or otherwise provide a cogent argument as to how this rather large figure was calculated. This represents almost 18% of the rent for a very short period of time. I am not persuaded that the amount has been proven, and it is therefore dismissed.

However, the \$500.00 claimed for the loss of use and enjoyment of the bathrooms for one month is, I find, a completely reasonable amount. It represents not even 12% of the rent, and it goes without saying that bathrooms are an essential part of a family home. As such, taking into consideration all of the oral and documentary evidence before me, it is my finding that the tenant has proven they are entitled to this amount. What is more, the landlord did not dispute or otherwise say anything about the tenant’s claim.

As for the claim for lost wages, the tenant has not persuaded me that they are entitled to claim for wages “for time wasted” during no shows by people contracted by either party. There is no requirement that a tenant must be in the rental unit during attendances by the landlord or anyone else for that matter. What is more, there is no documentary evidence such as an accounting for the alleged time wasted. As such, I dismiss this aspect of the tenant’s claim.

Regarding the claim for \$7,974.80 for various loss of services, the tenant did not explain or otherwise provide a cogent argument as to how this rather specifically large figure was calculated. It is incumbent upon a claimant to prove a dollar amount based on something, and in this case, I have nothing. Certainly, it is not lost on me that the tenant and her family suffered inconveniences during the latter part of the tenancy, but I am not persuaded by the tenant's evidence, either oral or documentary, that they are entitled to this amount. As such, this aspect of the tenant's claim must be dismissed.

Last, the tenant has claimed \$2,100.00 for the return of the security deposit. However, I am ordering the landlord to retain this deposit under section 38(4)(a) of the Act.

In total, the tenant is awarded \$1,000.00. As her application was only partly successful, she is entitled to half of the filing fee in the amount of \$50.00, for a total of \$1,050.00. As calculated below, the tenant's award shall be offset from the landlord's award.

Summary

Amount awarded to landlord:	\$14,400.00
Less security deposit:	- 2,100.00
<u>Less tenant's award:</u>	<u>- 1,050.00</u>
<u>Final award to landlord:</u>	<u>\$11,250.00</u>

Conclusion

The tenant's application is granted, in part, and the remainder dismissed without leave to reapply.

The landlord's application is granted. A copy of a monetary order in the amount of \$11,250.00 is issued with this decision to the landlord.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: September 25, 2022

Residential Tenancy Branch