Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNETC, FFT
MNDL, MNDCL, FFL

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the "*Act*"):

- an order pursuant to s. 51 for compensation equivalent to 12 times the rent payable under the tenancy agreement; and
- return of his filing fee pursuant to s. 72.

The Landlord files his own application seeking the following relief under the *Act*:

- an order pursuant to s. 67 for compensation for damages to the rental unit caused by the Tenant;
- an order pursuant to s. 67 for compensation for loss or other money owed; and
- return of his filing fee pursuant to s. 72.

P.B. appeared as the Tenant. S.S. appeared as the Landlord and was joined by his spouse, S.S..

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Issues to be Decided

1) Is the Tenant entitled to compensation equivalent to 12 times the rent payable under the tenancy agreement?
2) Is the Landlord entitled to compensation for damage to the rental unit caused by the Tenant?
3) Is the Landlord entitled to compensation for loss or other money owed?
4) Is either party entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on September 1, 2013.
- The Landlord obtained vacant possession of the rental unit on February 15, 2022.
- Rent of $2,460.00 was paid on the first day of each month.
- The Tenant paid a security deposit of $1,150.00 and a pet damage deposit of $400.00 to the Landlord.

A copy of the tenancy agreement was put into evidence by the parties.

I am advised by the parties that the Landlord served a Two-Month Notice to End Tenancy, signed on January 10, 2022 (the “Two-Month Notice”), on the Tenant on the basis that the Landlord’s parents or the parents of his spouse were to move into the rental unit. A copy of the Two-Month Notice was provided to me by the Tenant.

The Landlord testified that his father-in-law and mother-in-law had intended to move into the rental unit but that this did not occur and that they moved elsewhere. I am advised by the Landlord that he moved into the rental unit on April 15, 2022. The Landlord indicates that he previously lived within the same city but moved into the rental unit as his other house was smaller such that the rental unit better accommodated his family.

The Tenant directed me to a series of screenshots in his evidence from Craigslist advertisement, which he says show the rental unit. The advertisement lists rent for the

unit as $4,000.00 and that it was available beginning on March 1, 2022. Though not mentioned by the Landlord at the hearing, his written submissions indicate that the advertisement was not created or posted by him and speculates that it is scam.

The Landlord also testified that the Tenant had damaged the rental unit, though was generally vague in his submissions. The Landlord's evidence does not have a monetary order worksheet, though the written submissions indicate the Landlord seeks the following:

- Removal of closet/room from the garage: $4,378.19
- Repairs, painting interior/closet doors: $2,974.44
- Damage to backyard: $4,200.00
- Damage to window covering/blinds: $1,424.95
- Removal of roof from deck: $3,675.00
- Removal of compost and garbage: $1,904.00
- Toilet Damage: $767.75
- Electrical outlet replacement: $28.75
- Faucet/showerhead replacement: $236.25

The Landlord claims $19,589.33 in damages to the rental unit. The Landlord's evidence includes various receipts with respect to the amounts claimed. The Landlord's evidence includes evidence of the alleged deficiencies.

The Landlord's application also claims $881.52, which is described as 4.5% interest on cost paid out of pocket by the Landlord. The Landlord made no submissions at the hearing with respect to his claim for interest as stated in his application.

The Landlord testified that the Tenant had installed a roof over the deck, a swimming pool, and put a room in the garage without his consent. I was advised at the hearing that the Landlord has not paid the cost for doing any of this work as he cannot currently afford to do so. I am advised by the Landlord that the amounts listed in his claim are estimates and have been provided an estimate invoice with respect to the garage room removal.

The Landlord testified that the toilet was broken, saying it looked like someone had taken a hammer to it. The Landlord's evidence includes a photograph of a cracked toilet boil. The Landlord also indicates that the whole rental unit needed to be painted due to various damage to the walls and doors.

The Tenant acknowledges putting in his pool, adding a roof over the deck, and putting a room in the garage, though indicates that he did so with the consent of the Landlord. He indicates that he asked the Landlord before the tenancy began whether he could install his pool in the back and was told that was acceptable. The Tenant further testified that the Landlord agreed to his putting a roof over the patio as a section of it had begun to rot such that the roof protected it.

The Tenant argued that many of the complaints are normal wear and tear and that he had a long-term tenancy such that there should not be the expectation that the whole rental unit be repainted at his expense. The Tenant testified that he patched the holes before leaving. The Tenant further argued that the blinds in question were approximately 16 years old, which was contested by the Landlord. The Landlord did not advise how old the blinds were. The Tenant admits that he did not remove the compost area he had in the backyard, that one toilet was damaged, and that some of the fixtures needed replaced.

The Tenant testified that on February 15, 2022 he was given a cheque by the Landlord for the full return of his deposits, but could not deposit the cheque because of a torn corner cutting out relevant banking information. I am advised by the Tenant that he notified the Landlord of this and that the Landlord re-issued a new cheque on February 18, 2022, but for a revised amount of $1,250.00. The Landlord confirmed this information at the hearing. The Tenant argued that the Landlord had already retained the amount for damages to the rental unit.

The Landlord’s evidence includes a written move-in and move-out condition inspection report. The Tenant testified that he never conducted a written inspection report with the Landlord. The Tenant pointed out that the move-out inspection was conducted on February 19, 2022, which is after he last saw the Landlord, and that the move-in inspection date shows that the date of February 19, 2022 was whited-out and August 18, 2013 written in above it.

The Landlord testified that he had found the condition inspection report in his papers. The Landlord further testified that the Tenant refused to sign the inspection report on both the move-in and move-out inspection. The Landlord testified that he called the Tenant to conduct a move-out inspection but that his phone number was blocked. The Tenant indicates that he last saw the Landlord on February 18, 2022, which is the day before the report indicates the move-out inspection was conducted, and that the topic of a move-out inspection was not canvassed.

Analysis

The Tenant seeks compensation equivalent to 12 times the rent payable under the tenancy agreement after receiving the Two-Month Notice. The Landlord seeks compensation for damage to the rental unit.

Pursuant to s. 51(2) of the *Act*, a tenant may be entitled to compensation equivalent to 12 times the monthly rent payable under the tenancy agreement when a notice to end tenancy has been issued under s. 49 and the landlord or the purchaser who asked the landlord to issue the notice, as applicable under the circumstances, does not establish:

- that the purpose stated within the notice was accomplished in a reasonable time after the effective date of the notice; and
- has been used for the stated purpose for at least 6 months.

Policy Guideline #50 provides guidance with respect to compensation claims advanced under s. 51 of the *Act*. It states that once a notice is issued under s. 49 the purpose stated in the notice must be accomplished and cannot be substituted for another purpose even if the separate purpose would have been valid grounds for ending a tenancy under s. 49.

In this instance, the Two-Month Notice clearly states that it was issued on the basis that the Landlord's parents or the parents of his spouse were to move into the rental unit. It is undisputed that this did not occur, with the Landlord admitting that his in-laws moved to another community rather than move into the rental unit. As Policy Guideline #50 makes clear, once a notice to end tenancy is issued under s. 49 of the *Act* the purpose states in that notice must be fulfilled and cannot be substituted for another. That is precisely what has occurred here. I find that the Landlord has failed to demonstrate the purpose stated in the Two-Month Notice was fulfilled.

Pursuant to s. 51(3) of the *Act*, a landlord may be excused of a compensation claim under s. 51(2) if there are extenuating circumstances which prevent the landlord from carrying out the stated purpose set out under the notice issued under s. 49. Policy Guideline #50 provides specific examples of what would constitute extenuating circumstances, including the destruction of the rental unit in a fire or the death of the individual that was to occupy the rental unit. The Landlord provided no submissions on whether extenuating circumstances were present, nor would those be present here as there was no suggestion that his in-laws had died or were otherwise incapable of moving into the rental unit. Rather, the Landlord's in-laws simply moved to another

community by choice. That is not an extenuating circumstance as contemplated under s. 51(3) of the *Act*.

Accordingly, I find that the Landlord admits that the purpose stated within the Two-Month Notice, which is its occupation by his father-in-law and mother-in-law, was not fulfilled and that no extenuating circumstances are present. I find that the Tenant is entitled to compensation under s. 51(2) of the *Act*, which in this case is $29,520.00 ($2,460.00 x 12). I note that the Tenant's application indicates rent was payable in the amount of $2,500.00 per month, though at the hearing the parties confirmed rent was payable in the amount of $2,460.00 per month. I accept the undisputed evidence of the parties at the hearing that rent was payable in the about of $2,460.00 at the end of the tenancy.

I would also highlight that the following chronology which is relevant to credibility in the present dispute:

- February 15, 2022 – The Tenant moved out of the rental unit. The Landlord returned the deposits in full.
- February 18, 2022 – The Landlord returns $1,250.00 of the deposits to the Tenant.
- March 2, 2022 – Based on the information on file, the Tenant files his application.
- March 10, 2022 – The Tenant receives the Notice of Dispute Resolution from the Residential Tenancy Branch.
- March 12, 2022 – Registered mail was sent by the Tenant to the Landlord.
- March 15, 2022 – The registered mail was received by the Landlord, as confirmed by the tracking information provided by the Tenant.
- April 3, 2022 – Based on the information on file, the Landlord files his application

The Landlord's evidence includes a purported inspection report, which the Landlord indicated under oath that he had "found it in his papers" and that the Tenant refused to sign it. The Tenant denies that there was ever a written move-in or move-out inspection. I note that the condition inspection report is in the standard #RTB-27 form and on the bottom left corner shows that the version was created in September 2021. The tenancy in this matter started in 2013. In other words, the form used could not have been used for the move-in inspection as it was not created by the Residential Tenancy Branch until September 2021. Further, the inspection report provided by the Landlord shows that the purported move-in inspection was conducted on August 18, 2013, despite "19/Feb/20.." being clearly visible through white-out below the date written. I place no weight in the

condition inspection report provided to me by the Landlord as it cannot be said to be an accurate reflection of the rental unit due the questionable circumstances of its creation.

I note these issues because I found the Landlord to lack credibility with respect to his evidence. It is clear based on the chronology and the questionable nature of his written and oral evidence that his claim was advanced after he received notice of the Tenant's claim. Surely had damages been so significant he would have filed for them sooner and would not have returned the deposits, which in the first instance was in full but later reduced unilaterally by the Landlord to $1,250.00.

The Landlord provided no affirmed testimony with respect to the allegation raised in his written submissions that the advertisement provided by the Tenant was fraudulent. Perhaps the Landlord did not feel it was important to advance that argument at the hearing. I do not know. Though not strictly necessary due to my findings above, I find that the Tenant's evidence demonstrates it is more likely than not that the rental unit was listed for rent by the Landlord, with the Landlord moving into the rental unit on April 15, 2022 upon receiving notice of the Tenant's application. I make this finding because it draws into question the accuracy of the Landlord's written submissions in which fraud is alleged without supporting affirmed evidence or any other supporting evidence at all.

Turning to the Landlord's monetary claims, under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Section 37(2) of the *Act* imposes an obligation on tenants to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the rental unit or the residential property. Policy Guideline 1 defines reasonable wear and tear as the "natural

deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion."

I have reviewed the photographs provided to me by the Landlord, which clearly shows a toilet was broken. The Tenant admitted that it was broken during the tenancy. Based on the Tenant's admission, I find that the Tenant breached his obligation under s. 37 of the *Act* with respect to the toilet. The Landlord's evidence indicates that he purchased two toilets for $400.00 through what appears to be an online marketplace. Accordingly, I find that the Landlord is entitled to $200.00 for the cost of the one toilet that the Tenant admitted to breaking. I have no evidence with respect to the cost of its installation, though the Landlord's evidence shows the cost of installing the toilet seats was $350.00. As there is no direct evidence on the cost of installing the toilet, only the toilet seats, I accept that the Landlord is entitled to $200.00 for the cost of the one toilet.

The Landlord indicates that he seeks various amounts related to the removal of a room in the garage, landscaping costs, and the removal of a roof on the deck. However, the Landlord's evidence indicates that these are based on estimates and that no work has been completed. Only one written estimate was provided to me in the Landlord's evidence, the others appearing to be oral estimates based on the written submissions. Without considering whether there is, in fact, a breach of the *Act* or tenancy agreement giving rise to damages for these amounts, I find that the Landlord has failed to properly quantify his loss with respect to these three components of his claim. The estimates are merely speculative as it is uncertain whether the work would in fact be done and what the final cost would be. Further, only one written invoice was provided to me, the other amounts appearing to be based on oral estimates transmitted to me in written submissions that I find to be of questionable reliability. As these three portions of the claim were not quantified by the Landlord, they are dismissed without leave to reapply.

The Landlord also seeks the cost of repainting the rental unit and other repairs. I note that Policy Guideline #1 states that landlords are responsible for painting the interior of the rental unit at reasonable intervals and that a tenant may only be responsible for damage caused by them. Policy Guideline #1 also indicates that most tenants will put up pictures and that, absent rules set by the Landlord beforehand, the tenant will only be responsible for repairing walls where there are an excessive number of nail holes or large holes are present.

I have reviewed the photographs provided to me and I find that the Landlord has failed to demonstrate that any of the holes within the rental unit rise above the level of normal

wear and tear one would expect of a tenancy that lasted nearly 9 years. There is no evidence before me to indicate that the Tenant was not permitted to hang pictures on the walls, which is they type of use of the space one would expect under the circumstances. Further, there is no evidence to support that the photographs provided were not present when the Tenant took occupancy of the rental unit when the tenancy began. Accordingly, I dismiss the Landlord's claim for repainting the walls and other repairs without leave to reapply.

Similarly, the Landlord seeks costs for replacing window coverings and electrical outlets. There is no evidence to support that the window coverings were damaged at all or that they were damaged by the Tenant. The photograph of the electrical outlet does not establish whether the damage was present when the tenancy began. Accordingly, I dismiss both of those aspects of the Landlord's claim.

The Landlord's written submissions indicate the cost of cleaning the compost area and removing garbage was $1,904.00. Dealing first with the garbage removal, I have reviewed the photographs provided, which shows many garbage bags in the back of the property. I note that the amount and extent of garbage would likely have been seen or remarked by the Landlord at the end of the tenancy on February 15, 2022. However, he returned the deposits in full on that date and this was later corrected to $1,250.00 on February 18, 2022 when the cheque had to be reissued. Given these circumstances and as there is no move-out inspection report, I find that the Landlord has failed to establish that the extent of garbage removal is attributable to the Tenant. The claim for garbage removal is dismissed without leave to reapply.

Looking next at the cost of removing the compost area in the backyard, the Tenant admits that he did not clean it out at the end of the tenancy. Based solely on the Tenant's admission, I find that the Tenant breached his obligation under s. 37 of the *Act* with respect to the compost bin. The Landlord's evidence includes an invoice dated April 3, 2022, which pertains to various work done at the property, including a fee for $700.00 related to the removal of the compost bin. However, the Landlord's written submissions list it as being $350.00. As the Landlord's written submissions limit the claim for the compost bin at $350.00 and since this amount is at least supported by an invoice, I find that the Landlord is entitled to $350.00.

Finally, the Landlord seeks $236.25 with respect to the replacement of washroom fixtures. The Tenant admits to this portion of the claim. As this portion of the claim was admitted by the Tenant, I find that the Landlord is entitled to compensation with respect

to it. The invoice provided by the Landlord indicates that the cost of this was $225.00, which with sales tax would be $236.25. Accordingly, I find the Landlord is entitled to this portion of his claim.

The Landlord provided no submissions at the hearing with respect to his claim for interest as listed in the Notice of Dispute Resolution. As the Landlord did not advance this claim at the hearing, I find that he has failed to demonstrate any entitlement to it whatsoever. It is dismissed without leave to reapply.

In total, I find that the Landlord is entitled to $786.25 ($236.25 + $350.00 + $200.00). All other portions of the Landlord's monetary claims are dismissed without leave to reapply. As the Landlord unilaterally retained $300.00 from the security deposit, this will be deducted from his monetary claim.

Conclusion

I find that the Tenant is entitled to compensation under s. 51(2) of the *Act*, which in this case is $29,520.00 ($2,460.00 x 12).

The Landlord has demonstrated an entitlement to $786.25, less the $300.00 retained from the deposits, totalling $486.25.

I find that the Tenant was successful in his application and that the Landlord largely was not. Accordingly, I order pursuant to s. 72(1) of the *Act* that the Landlord pay the Tenant's $100.00 filing fee. The Landlord's claim under s. 72(1) of the *Act* is dismissed without leave to reapply.

I make a total monetary award in the Tenant's favour taking the following into account:

Item	**Amount**
Tenant's Compensation under s. 51(2)	$29,520.00
Less the Landlord's Compensation under s. 67	-$486.25
Return of the Tenant's filing fee under s. 72(1)	$100.00
TOTAL	$29,133.75

Pursuant to ss. 51, 67, and 72, I order that the Landlord pay **$29,133.75** to the Tenant.

It is the Tenant's obligation to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be filed by the Tenant with the Small Claims Division of the Provincial Court and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 27, 2022

Residential Tenancy Branch