



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNRT, MNDCT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for compensation, or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

As the parties were in attendance, I confirmed that there were no issues with service of the tenants' application for dispute resolution ('application'). In accordance with sections 88 and 89 of the *Act*, I find that the landlords duly served with the tenants' application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Are the tenants entitled to a monetary order for compensation for money owed or monetary loss under the *Act*, regulation, or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and /

or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on March 1, 2017. Monthly rent was set at \$1,387.66, payable on the first of the month. A security deposit of \$650.00, and a pet damage deposit of \$200.00 was paid by the tenants, and dealt with at the end of the tenancy.

The tenants filed this application as they were served with a 2 Month Notice to End Tenancy for Landlord's Use on December 1, 2021, for an effective date of February 28, 2022, and did not receive one month's compensation as required under the *Act*. The tenants testified that they had found a new place, and had given notice to the landlords on January 23, 2022 that they were exercising their right to move out earlier than the effective date, and were ending the tenancy on February 1, 2022. The tenants paid a full month's rent for the month of January 2022. Both parties confirmed that the keys were returned to the landlords on February 1, 2022. The tenants testified that although the landlords did originally provide the tenants with a cheque in the amount of \$1,387.66, the cheque was subsequently cancelled on February 7, 2022.

The landlords do not dispute that the cheque was cancelled, and that the one month's compensation was not provided to the tenants. The landlords testified that the tenants failed to give proper notice to move out, and also refused to sign the inspection report to acknowledge the damage in the rental unit.

The tenants are also requesting compensation in the amount of \$840.00 as compensation for having to deal with the mould in the rental unit, and the health issues caused by the mould. The tenants testified that they had requested several times for the landlord to deal with the mould issue, and had to treat the mould themselves after their children became ill with pneumonia and asthma, and ended up being hospitalized for almost three weeks. The tenants testified that they had attempted to recover the cost of the testing and treatment from the landlords, but the landlords refused to reimburse the tenants. The tenants testified that the professional confirmed that there was definitely mould in the rental unit.

The tenants testified that the other tenants in the home informed them that there was mould in the home. The tenants testified that their daughter's health had improved after moving from the home. The tenants submitted a copy of the decontamination report dated December 6, 2021. The tenants also provided text messages and photos to support that there was a suspected leak in the bathroom. The tenants testified that

the landlords had cut a hole in the wall to investigate the matter, and the tenants discontinued use of the shower to prevent further issues. The tenants testified that the issue was never fixed despite the fact that the landlord was aware of it since 2020. The tenants also submitted photos of rusty screws from the moisture in the home.

The landlords testified that the tenants never provided proof that there was indeed a mould issue in the home, including any professional reports. The landlords testified that the tenants took it upon themselves to perform the testing at their own cost, and that there were condensation issues in the rental unit due to the living conditions in the rental unit.

The landlords confirmed that they had cut a hole to investigate a leak in the rental unit, but that no leak was found. The landlords testified that they believe the water was from water spraying from the shower.

Analysis

Section 51 of the *Act* reads in part as follows:

51 (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

Section 50(1) of the *Act* allows a tenant who receives a notice to end tenancy for landlord's use of the property (pursuant to section 49 of the *Act*) under these circumstances to end the tenancy early by "giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice." If a tenant elects to exercise this option, the tenant is only responsible for paying to the landlord "the proportion of the rent due to the effective date of the tenant's notice" as per section 50(1)(b) of the *Act*.

Section 51(1.2) of the *Act* states the following: If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.

In consideration of the evidence before me, I find it undisputed that the tenants paid rent for the entire month of January 2022. I'm satisfied that the tenants did provide the landlord with notice to end the tenancy on a date earlier than the effective date on the 2 Month Notice, as allowed under section 50(1) of the *Act*. I am satisfied that the tenants

notified the landlord on January 23, 2022 that they were giving their notice to move out early, which the tenants exercised. I do note that although the tenants returned the keys on February 1, 2022, the earliest qualifying date would be February 2, 2022 as 10 day's notice is required. Pursuant to section 53(1) of the *Act*, incorrect effective dates are automatically changed: "If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable." The effective date of the tenants' notice is therefore corrected to February 2, 2022.

Accordingly, the tenants are responsible for the "proportion of the rent due to the (corrected) effective date of the tenant's notice" as per section 50(1)(b) of the *Act*. In this case the tenants are responsible for paying rent for February 1, 2022 and February 2, 2022, which in this case is \$99.12 ($\$1,387.66 / 28 \text{ days} * 2 \text{ days}$). As noted under section 50(3) of the *Act*, "A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*]." The tenants are therefore entitled to the equivalent of one month's rent, less the \$99.12 owed for February 1 and 2, 2022.

The tenants are also seeking compensation in the amount of \$840.00 for what the tenants believe was mould in the rental unit.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

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

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

The test established by Section 7 is as follows,

1. Proof the loss exists,

2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bear the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

The landlord's obligations to maintain and repair facilities in a rental property are set out in section 32(1) of the *Act* which reads in part as follows:

- 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,...*

Section 33 of the *Act* states the following in regards to emergency repairs:

Emergency repairs

- 33** (1) In this section, "**emergency repairs**" means repairs that are
- (a) urgent,
 - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
 - (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or

(vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Under Section 33 (1)(c) of the *Act*, major leaks and damaged water pipes are considered emergency repairs. However, in review of the evidence and testimony before me, I am not satisfied that the evidence presented supports that there were any major leaks or damaged water pipes in the rental unit. The tenants did not provide any expert evidence, invoices, or reports confirming that there was in fact a major leak or damaged water pipe. As noted above, the applicant bears the burden in supporting their claim. I find that the tenants not only failed to establish that there was a major leak or damaged water pipe, I find that the tenants failed to provide sufficient evidence to support that the required steps were followed pursuant to section 33 of the *Act*, including providing the landlord with any receipts related to repairing any major leaks or damaged water pipes.

I will now consider whether the landlords failed to perform repairs and maintain the home in accordance with section 32(1) of the *Act*, and whether the losses claimed are associated with this contravention of the *Act*. In this case, although I am extremely sympathetic about the medical issues the family faced while living in the home, I am not convinced that the suffering was the result of the actions of the landlords, or contravention of the *Act*.

As multiple factors could contribute to the presence of mould such as high humidity due to living conditions, I am not satisfied that the tenants have met the burden of proof to support that the presence of mould was caused by the landlords' actions or failure to comply with the *Act*. As shown in the tenant's own evidence, there is evidence to support high humidity levels in the rental unit. Although the tenants believe that the referenced medical issues were caused by mould, I am not satisfied that the tenants provided sufficient evidence, whether this be medical reports or expert evidence, to support that this was in fact the case.

As noted above, the applicant bears the burden in supporting their claim. I find that the tenants not only failed to establish that the mould in the home was due to the landlords' failure to maintain the home or perform repairs, I find that the tenants failed to establish that the losses claimed stemmed directly from a violation of the agreement or a contravention of the *Act* by the landlords. Accordingly, I dismiss the tenants' application for monetary compensation in the amount of \$840.00 without leave to reapply.

Conclusion

I issue a **\$1,288.54** Monetary Order in the tenants' favour as set out in the table below:

Item	Amount
Compensation under section 51(1) of the Act	\$1,387.66
Less Pro-rated rent owed for February 1-2, 2022	-99.12
Total Monetary Order to Tenants	\$1,288.54

The tenants are provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) 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 remainder of the tenants' application is dismissed without leave to reapply.

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

Dated: November 17, 2022

Residential Tenancy Branch