



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, AAT, LRE, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order that the landlord allow access to the rental unit for the tenant and the tenant's guests;
- an order limiting or setting conditions on the landlord's right to enter the rental unit;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The landlord was accompanied by an Articled Student and Senior Counsel, as well as another person for support. The tenant also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to give submissions.

During the course of the hearing the tenant withdrew the following applications:

- for an order that the landlord allow access to the rental unit for the tenant and the tenant's guests;
- for an order limiting or setting conditions on the landlord's right to enter the rental unit; and

- for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

At the commencement of the hearing the landlord's Legal Counsel indicated that the tenant's evidence has not been provided to the landlord, other than 26 pages, and that the documents received did not include receipts. The parties agree that all of the landlord's evidentiary material has been provided to the tenant.

The tenant's witness testified that on August 26, 2022 while moving out, the witness personally served the landlord with a package that contained receipts. The package was also sent by registered mail in early September, 2022 and the witness was present. The tenant had asked the witness to review the contents before it was sent, and the witness did so. The package contained evidence, including the Notice of Dispute Resolution Proceeding, receipts and a letter requesting compensation.

The landlord's Counsel agreed to carry on with the hearing without the missing evidence. Therefore, all evidence of the parties, excluding receipts, has been reviewed and is considered in this Decision.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for recovery of costs of improvements to the rental unit?

Background and Evidence

The tenant testified that this month-to-month tenancy began sometime in September, 2017, but the rental unit was not ready to be occupied. The tenancy ended on or About August 23 or 24, 2022. There is no written tenancy agreement, however rent in the amount of \$900.00 was payable on the 1st day of each month and there are no rental arrears. The landlord did not collect a security deposit or a pet damage deposit from

the tenant. The rental unit is a basement suite, and the landlord lived in the upper level of the home during the tenancy.

The tenant further testified that the parties had an agreement that the tenant could live in the rental unit forever, and the landlord would change the landlord's Will to give a life-time tenancy for the tenant. The tenant moved there in good faith to live and put a lot of money into the suite expecting to live in a nice place. The tenant did not alter the unit, but the landlord's partner took the kitchen out, laid tiles on the floor which had been purchased by the tenant, but the tenant never would have spent the money if the tenant had known that the tenant could not remain there.

The tenant claims the following:

- \$2,473.00 for a fridge and stove purchased by the tenant;
- \$1,453.41 for a microwave oven and dishwasher;
- \$326.55 for electrical expenses to fix electric heaters in the living room;
- \$985.52 for plumbing in the kitchen and bathroom;
- \$3,143.00 for a marble shower;
- \$1,000.00 for a shower door;
- \$3,143.50 for window blinds;
- \$519.88 for a bathroom sink and vanity;
- roughly \$10,000.00 as an estimate for replacement of countertops, cabinets (upper and lower), a sink and floor tiles;
- \$1,185.95 for floor tiles, shower taps and a toilet.

The tenant also put in a \$5,000.00 shower, which the tenant is not claiming. The tenant gave a list of items that the tenant put into the rental unit to the landlord and each line had a cost. The cupboards that were originally in the rental unit were not suitable, and the landlord took out what was there to make it vacant, and the tenant brought items in. None of the improvements were emergency repairs, however the deal was that the tenant would be able to live there till the tenant died.

The tenant denies that the photographs provided by the landlord for this hearing illustrate the condition of the rental unit or appliances at the beginning of the tenancy. The fridge was in bad condition. When the tenant moved in, there was nothing there; even the bathtub had been taken out, and everything put in was brand new. The tenant paid for the alterations in exchange for reduced rent. Rent was increased from \$800.00 per month to \$900.00 per month after the first year. At that time \$800.00 was reasonable because it was not a great suite.

The items removed were listed for sale by the tenant on Facebook Marketplace after receiving no communication from the landlord that the landlord might be interested in purchasing them.

The tenant's witness was re-affirmed, and testified that the tenant had talked about living in the rental unit. The witness recalls that the previous tenants were drug addicts and the landlord didn't want to end up with that again and approached the tenant about moving in. The tenant told the witness that the agreement was for the tenant to be able to live there until the tenant passed away, and the landlord's Will would be changed so that the survivor would be bound by that agreement. The tenant would be guaranteed to live there if the tenant renovated and made the rental unit her own. Also that the \$800.00 per month rent would not change, but it did.

The landlord testified that one of the previous tenants did drugs, and the original tenant had a girlfriend who did drugs. The original tenant was embarrassed by it and moved out. The only damage left was a hole punched in the bedroom drywall.

The landlord denies representing to the tenant to live there for life, or to changing the landlord's Will to reflect that. The tenant approached the landlord before the tenant decided to move in. The tenant came from a condominium that needed to be fixed all the time, and the landlord believes the tenant was worried about money. The agreement was for the tenant to rent from the landlord for \$800.00 per month. It's a huge suite, and that wasn't covering expenses, and the tenant agreed to the \$100.00 per month increase after the first year.

The tenant had called the landlord saying she was bringing a dog to the property and the landlord didn't want a dog. So the tenant asked the landlord if the landlord wanted the tenant to move out, and the landlord replied in the affirmative. The rental unit has not been re-rented.

SUBMISSIONS OF THE TENANT:

It was very stressful and confrontational. The tenant had been going back and forth, working remotely, and when the tenant told the landlord that the tenant was returning, the landlord told the tenant to move out, which had nothing to do with having a dog. When the tenant arrived at the rental unit the landlord got confrontational. The tenant

called a friend and wrote a note saying that the tenant was sorry that it came down to this and the tenant was giving notice to end the tenancy under duress. It caused a great amount of anxiety, losing a friend of 25 years was terrible. When the tenant arrived to move out, the tenant had to call police 5 times because the landlord blocked the entrance.

SUBMISSIONS OF THE LANDLORD'S ARTICLED STUDENT:

A tenant's repairs or modifications allowed are emergency repairs, and with the consent of a landlord changes can be made, but the main crux is that if a tenant is claiming such items, the tenant has the obligation to return the suite to its original condition. The photographs provided by the landlord are accurate. A tenant can remove items that the tenant put in, but still has to return it to the condition that it was before. The tenant disposed of those items, listing them for sale for significantly less than the tenant is claiming, and any award would be unjust enrichment. The tenant testified that there was a quid pro quo arrangement for a significant reduction in rent, at a value close to the cost of the renovations.

Analysis

Where a party makes a monetary claim for damage or loss against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

The *Act* permits a tenant to be repaid by a landlord for emergency repairs made by a tenant, and there are rules around that. In this case, the tenant testified that the modifications were not emergency repairs, but does not agree that the photographs provided by the landlord depict the condition of the rental unit prior to the modifications. The *Act* does not contemplate that a tenant may make modifications that are not emergency repairs. The tenant testified that the landlord removed the older items and the tenant paid to replace them. My authority is under the *Residential Tenancy Act*, which states 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, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

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.

In the circumstances, I am not satisfied that the tenant has established a claim under the *Residential Tenancy Act*, and I dismiss the tenant's application.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety 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: January 14, 2023

Residential Tenancy Branch