



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNR, MNDC, MNSD, MNETC

Introduction

This hearing convened by teleconference on November 3, 2022, to deal with the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for the following:

- reimbursement of the cost of making emergency repairs;
- compensation for a monetary loss or other money owed;
- a return of their security deposit; and
- compensation from the landlords related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice).

The tenant and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The hearing continued for 35 minutes, at which time the hearing was adjourned due to the length of time taken for discussion of evidence issues. An Interim Decision was issued on November 4, 2022, which is incorporated by reference herein and should be read in conjunction with this Decision.

At the reconvened hearing, the tenant attended, and the landlord did not. The parties were advised in the Interim Decision that the hearing would proceed whether they were present or not. For that reason, the hearing continued on the tenant's application in the absence of the landlord.

The tenant provided their evidence orally, referred to relevant documentary evidence submitted prior to the hearing, and made submissions to me. I have reviewed all oral,

written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the tenant's submissions and evidence are reproduced in this Decision. Further, only the evidence relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

As the landlord did not attend the hearing and did not provide evidence that they served the tenant with the landlord's evidence, I declined to consider the evidence filed with the RTB in advance of the hearing on November 3, 2022.

Issue(s) to be Decided

Is the tenant entitled to compensation from the landlord?

Background and Evidence

The evidence showed the tenancy began on June 20, 2021, for a fixed-term ending on June 30, 2021, which was typo. The fixed-term was meant to expire on June 30, 2022. The monthly rent was \$1,850 and the tenant paid a security deposit of \$925 and pet damage deposit of \$460.

The tenant submitted the tenancy ended January 27, 2022.

The tenant's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Security deposit	\$925.00
2. Other money	\$1,638.19
3. Wrongful eviction	\$9,250.00
4. Emergency repairs	\$400.00
TOTAL	\$12,213.19

Security deposit

As to the return of their security deposit, the tenant submitted they sent their written forwarding address in an email to the landlord. The tenant was not sure when the email was sent.

In this portion of their application, the tenant wrote the following:

Landlord wrongfully evicted me as she wanted to get renovation, unreasonable grounds, I'm on disability, due for surgery, landlord is renovating, not returning deposit, not returning repairs \$ paid during stay, fixed term broken by landlord, I had to leave, did not provide lock on time, evicted me for installing my own lock, won't leave the lock she bought behind, won't accept keys to lock, wrongful eviction as she's renovating the unit , not allowing handyman I arrange to finish minor fixes.

[Reproduced as written]

Other money

In their application under this issue, the tenant wrote the following:

\$140 (movers fees) \$560.19 (storage fees) \$495 (accommodation fees) \$443 (flight ticket) =\$1638.19 compensation costs. All last minute costs due to eviction on wrong reasons.

[Reproduced as written]

Wrongful eviction

The tenant made this claim of \$9,250 under the portion of the application that states the following:

I want compensation because my tenancy ended as a result of at two, four, or 12 Month Notice to End Tenancy, and the landlord has not complied with the Act or used the rental unit/site for the stated purpose

To describe this claim, the tenant wrote in their application the following:

*\$7400 (\$1850x4months breaking fixed term agreement) + \$1850 1month rent
(Renovations)*

[Reproduced as written]

Emergency repairs

To describe this claim, the tenant wrote in their application the following:

\$ 400 Repairs after move in, Minor fixes and materials , plus labor paid by me in full

[Reproduced as written]

In their application, the tenant filed evidence which was duplicated in several instances under each of the separate monetary issues.

In general, to support their application, the tenant submitted that they were illegally evicted by being issued a One Month Notice to End Tenancy for Cause (Notice/1 Month Notice) by the landlord. The tenant's evidence showed they believed the landlord evicted them for the purpose of making renovations rather than for cause. The tenant confirmed they did not file an application to dispute the 1 Month Notice because they knew they had to leave as the landlord was making their life "hell".

The tenant submitted that there were repairs to be made during the tenancy and the landlord refused to make those repairs or changes to accommodate her disability with mobility issues. The tenant submitted that, among other things, the drawers and patio door sliders were broken. The tenant submitted that they claimed costs for approved repairs.

The tenant submitted they had to change the front door locks because basically duct tape was put over the lock and was left for 24 days.

The tenant submitted that the landlord discriminated against her by making fun of her disability in text messages and they just got tired of fighting with the landlord. The tenant said she had a loss of dignity during this tenancy.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, 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 party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

In reviewing the tenant's application, I found the description listed shows that 3 of the 4 separate monetary claims are interrelated to their assertion that the landlord illegally evicted them, resulting in an early end to the tenancy, with moving and transportation costs. Within these separate claims, the tenant has submitted the same evidence, in many instances and find it generally unclear as to what evidence supported each claim as a result of the duplicate submissions. For instance, the tenant has requested compensation under illegal eviction because they received a 2, 4 or 12 month notice to end a tenancy, when in fact the tenant received a 1 Month Notice for cause. Within the description of claim the tenant requested compensation for ending a fixed term tenancy.

For these reasons, I will address the tenant's main assertion they were illegally evicted by the landlord.

In these matters before me, the tenant was issued a 1 Month Notice for cause and claimed this to be an illegal eviction.

Under the Act, a landlord is entitled to issue a tenant a 1 Month Notice if they believe they have sufficient cause and the tenant has the right to file an application for dispute resolution to dispute the Notice. Information on how to dispute a Notice is listed on the first and third pages of the Notice for the benefit of tenant. Under the Act, if a tenant fails to dispute the Notice within 10 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date on the notice and must vacate the rental unit by that date.

If the tenant thought the 1 Month Notice was invalid, or illegal as the tenant termed it, the tenant ought of have filed an application in dispute so that an arbitrator could decide the merits of the landlord's Notice. Instead, the tenant chose to vacate the rental unit rather than dispute the Notice, which I find is reasonable to interpret that they accepted

that the tenancy was ending by the effective date on the Notice, in this case, February 28, 2022.

It is unknown if the landlord's 1 Month Notice was invalid, or even illegal, as the tenant states, as the tenant chose not to dispute the Notice. Had the tenant done so, there would have been findings in a written Decision on whether the 1 Month Notice was valid or not. I cannot decide the validity of the Notice after a tenant chooses to move out.

For these reasons, I find the tenant submitted insufficient evidence to prove the landlord breached the Act in ending the tenancy. I find the tenant has failed to provide sufficient evidence to hold the landlord responsible for choices made by the tenant.

Security deposit

Under section 38(1) of the Act, a landlord is required to either repay a tenant's security deposit or to file an application for dispute resolution to retain the deposit within 15 days of the later of receiving the tenant's forwarding address in writing or at the end of a tenancy.

In this case, I find the tenant submitted insufficient evidence to show if or when they served the written forwarding address or how the written forwarding address was provided to the landlord, if it was. The tenant said the address was sent in an email, but was not sure when. I find this insufficient evidence that the landlord was given the written forwarding address in a manner required under section 88 of the Act. The landlord is not required to return the security deposit until the written forwarding address has been provided by the tenant.

Due to the tenant's insufficient evidence that they provided a written forwarding address, I **dismiss** the tenant's claim of \$925 for their security deposit, **without leave to reapply**. The tenant had one year after the date the tenancy ended to provide their written forwarding address and the tenancy here ended on January 28, 2022. If a tenant fails to do so, their right to a return of the security deposit is extinguished.

Wrongful eviction

For the above reasons, I find the tenant submitted insufficient evidence to support their claim of \$7,400 for the landlord breaking a fixed-term agreement. As to the tenant's additional claim under this section of their application, the tenant also asked for a

month's rent for renovations, which I find was not supported by the evidence, as the tenant did not receive a two, four, or 12 month notice to end a tenancy.

The tenant alleged the 1 Month Notice was for renovations. However, if the landlord made renovations after the tenancy ended, I find that once a tenancy ended when the tenant chose to vacate, the landlord has the right to do what they want with the rental unit.

As I find the tenant submitted insufficient evidence to prove a breach of the Act by the landlord in ending the tenancy, I **dismiss** the tenant's claim of \$9,250 for the equivalent of 5 months' rent, **without leave to reapply**.

Other money

As to the tenant's claim for moving expenses, these are choices the tenant made in ending a tenancy, on how to facilitate their moving and I find the tenant has failed to provide sufficient evidence to hold the landlord responsible for choices made by the tenant under the Act. I therefore **dismiss** their claim for \$1,638.19, **without leave to reapply**.

Emergency repairs

As described by the tenant, I find the issues were not emergency repairs as defined by section 33 of the Act, for minor fixes and materials. As to any repairs in order to provide and maintain a residential property in a state of decoration and repair, I find these are the landlord's responsibility under the Act and I find the tenant had no authority to make any repairs. If the tenant made any repairs, I find by so doing was the tenant's choice. If the landlord had failed to make repairs that were necessary, the tenant ought to have filed an application for dispute resolution requesting an order for those repairs.

For these reasons, I **dismiss** the tenant's claim for \$400, **without leave to reapply**.

As I have dismissed each of the tenant's monetary claims, I **dismiss** the tenant's application, **without leave to reapply**.

Conclusion

The tenant's 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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 24, 2023

Residential Tenancy Branch