Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Tenant: MNDCT, MNSD, MNETC, FFT
Landlord: MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order of $2,960.42 for the Tenant's monetary loss or money owed by the Landlord pursuant to section 67;
- return of double the Tenant's security deposit and/or pet damage deposit in the amount of $2,850.00 pursuant to section 38;
- compensation in the amount of $2,850.00 due to the Landlord having ended the tenancy and not complied with the Act pursuant to section 51; and
- authorization to recover the filing fee for Tenant's application from the Landlord pursuant to section 72.

This hearing also dealt with the Landlord's cross-application under the Act for:

- a Monetary Order of $2,850.00 for unpaid rent pursuant to section 67;
- a Monetary Order of $10,482.91 for damage that the Tenant, their pets or their guests caused during the tenancy pursuant to sections 32 and 67;
- a Monetary Order of for compensation for monetary loss or other money owed pursuant to section 67;
- to retain the security and/or pet damage deposit pursuant to section 72(2)(b); and
- authorization to recover the filing fee for the Landlord's application from the Tenant pursuant to section 72.

The Landlord, the Landlord's agent KD, and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

The parties did not raise any issues with respect to service. The Landlord acknowledged receipt of the Tenant's notice of dispute resolution proceeding package (the "Tenant's NDRP Package") and documentary evidence. I find the Landlord was served with the Tenant's NDRP Package and documentary evidence in accordance with sections 88 and 89 of the Act. The Tenant acknowledged receipt of the Landlord's notice of dispute resolution proceeding package (the "Landlord's NDRP Package") and documentary evidence. I find the Tenant was served with the Landlord's NDRP Package and documentary evidence in accordance with sections 88 and 89 of the Act.

Issues to be Decided

1. Is the Tenant entitled to:
    a. compensation of $2,960.42 for monetary loss?
    b. return of double the security deposit?
    c. compensation of $2,850.00 under section 51 of the Act?
    d. reimbursement of the Tenant's filing fee?
2. Is the Landlord entitled to:
    a. compensation of $2,850.00 for unpaid rent?
    b. compensation of $10,482.91 for damage to the rental unit?
    c. compensation of $584.64 for monetary loss?
    d. reimbursement of the Landlord's filing fee and to retain the security deposit?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the parties' applications and my findings are set out below.

This tenancy commenced on March 1, 2021 and ended on May 27, 2022. Rent was $2,850.00 per month. The Tenant paid a security deposit of $1,425.00. Copies of the tenancy agreement have been submitted into evidence.

The parties did not attend any formal move-in or move-out inspections and did not complete any condition inspection reports.

The Tenant seeks compensation as follows:

Item	Amount
Payment to Replace Floor	$2,221.42
Internet Company Charges	$739.00
Return of Double the Security Deposit	$2,850.00
Compensation of One Month's Rent	$2,850.00
Filing Fee	$100.00
Total	**$8,760.41**

The Tenant gave the following evidence and arguments:

- The Tenant paid $2,221.42 to a flooring company to replace the floor of the smaller bedroom in the rental unit. The Landlord had accused the Tenant's cats of urinating on the floor and causing damage. The Tenant had two spayed female cats and one unneutered male cat during the tenancy. The Tenant's male cat was kept in the small room. The Tenant seeks to recover the amount paid to the flooring company because she realized that the floor was very old. The Tenant suggested that the floor was 54 years old and past its useful life of 20 years. Elsewhere in her evidence, the Tenant suggested that the floor was 17 years old as the rental unit was built in 2005.

- The Tenant paid $739.00 for an unreturned modem and monthly internet from May to August 2022 at $110.00 per month, which the Tenant did not use. The Landlord had asked the Tenant to take over the internet service. The Landlord did not return the modem when requested by the Tenant. The Tenant paid the internet company using her credit card for these charges and there was no receipt.

- The Tenant gave the Landlord her forwarding address on May 27, 2022 via text message. The Tenant submitted a screenshot of this message into evidence. The Landlord did not return the security deposit to the Tenant until three months after the Tenant moved out. The Tenant seeks a return of double the security deposit.

- The Tenant argued that when a landlord ends a tenancy for the landlord's use of property, the landlord must give the tenant one month's rent as compensation.

The Tenant had received a call on May 9, 2022 from the Landlord asking her to move out by July 1, 2022, as the Landlord needed the rental unit for her family.

The Landlord seeks compensation as follows:

Item	**Amount**
Floor Replacement ($1,047.20 + $12,000.00) × 70% for depreciation over 6 years	$9,732.91
Security System	$250.00
Damaged Countertop	$500.00
Lack of Notice to Move Out	$2,850.00
Hotel Stay	$584.64
Filing Fee	$100.00
Total	**$14,017.55**

The Landlord and KD gave the following evidence and arguments:

- The internet was included in the rent for most of the tenancy. In the last month of the tenancy, the Landlord asked the Tenant if she wanted to take over the internet. The Tenant did so, and cancelled the internet service on the day she moved out. The Landlord later set up internet service with a different company. The Tenant did not come back to pick up the modem and had blocked the Landlord. The Tenant did not submit any receipts for internet charges. The modem would have been rented from the internet company and would not have cost that much. After receiving notice of this dispute, the Landlord mailed the modem to the Tenant in August 2022.

- Restoration and flooring companies hired by the Landlord confirmed that the damage to the flooring due to cat urine was extensive throughout the rental unit, not just in one room. The Tenant acknowledged in the presence of the flooring company contractors that her cats caused the damage, accepted responsibility, and said she would pay. The Landlord submitted a text message from the Tenant which says that the Tenant will “change the floor” and “do everything to make it good”. The Tenant later changed her position and claimed that the floor was too old. The document provided by the Tenant suggesting that the floor was 54 years old refers to an address that is not the rental unit. The floor in the rental unit was in fact replaced in 2016. The Landlord submitted an invoice of $1,047.20 for baseboard repairs dated June 3, 2022 and photos of the damage. The Landlord received an estimate of $12,000.00 to $15,000.00 plus tax to complete the

remainder of the repairs to the floor. Considering the floor was 6 years old, the Landlord depreciated the amount paid of $1,047.20 and estimated repairs of $12,000.00 by 30%, to arrive at a total repair cost of $732.91 + $9,000.00 = $9,732.91.

- The Tenant did not receive the Landlord's permission to have three cats. The Landlord did not collect a pet damage deposit under the tenancy agreement. The Landlord purchased the rental unit in 2018 and resided there for about 1.5 years. The Landlord had one spayed female cat.

- Prior to the start of the tenancy, the Landlord temporarily moved to a larger home to accommodate the Landlord's mother, who was visiting to help the Landlord as she had just given birth. The Landlord's family was renting another residence. After the Landlord's mother left, the Landlord's family intended to move back into the rental unit. The Landlord called the Tenant in May 2022 to talk about moving back by July 1, 2022. The Tenant texted the Landlord on May 11, 2022 to say that she will move out May 27, 2022. The Tenant did not give the Landlord enough notice so that the Landlord could notify her own landlord. The Landlord had to help her landlord find a new tenant for June 1, 2022. The Landlord's family tried to move back into the rental unit on June 1, 2022, but due to the smell of cat urine and repairs, they had to stay in a hotel for two nights. The Landlord submitted a hotel booking confirmation showing $584.64 paid for check-in on June 1, 2022 and check-out on June 3, 2022.

- The Tenant left behind other damage in the rental unit, including scarring of the bathroom countertop and removing the security system from doors and windows. The Landlord submitted before and after photos of the countertop. The Landlord also submitted text messages and photos sent to the Tenant regarding the missing security system parts.

The Landlord submitted a statement from AM, the owner of the flooring company hired by the Landlord. According to this statement, AM attended the rental unit on May 27, 2022 with the parties, and witnessed the Tenant verbally acknowledge responsibility for damaging the floors. AM confirmed his company received an initial payment from the Tenant to repair the most damaged bedroom. AM noted that the damage was extensive and that it was recent, with some underlay still moist with urine. AM was of the view that the floor needed to be removed down to the concrete, cleaned out, and replaced to get rid of the odour. AM gave an estimate of $12,000 to $15,000.00 plus taxes to complete the reflooring work.

The Landlord also submitted a statement from a restoration company dated July 22, 2022. The restoration company noted similar damage and recommendations as AM.

Analysis

1(a). Is the Tenant entitled to compensation of $2,960.42 for monetary loss?

Under section 7 of the Act, a landlord or tenant who does not comply with the Act, the regulations, or their tenancy agreement must compensate the affected party for the resulting damage or loss, and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Under section 67 of the Act, if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement, the director may determine the amount of compensation that is due, and order the responsible party pay compensation to the other party.

Residential Tenancy Branch Policy Guideline 16. Compensation for Damage or Loss further explains that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Tenant claims compensation of $2,221.42 for the payment that she made to the flooring company to repair the floor in the smaller room. Based on the text message submitted by the Landlord, the Landlord's testimony, and the statement from AM, I find the Tenant had acknowledged that she was responsible for the damage and had agreed to make the payment. I find the Tenant e-transferred the payment to repair the smaller bedroom to AM's flooring company directly. Under these circumstances, I do not find this expense could be said to have resulted from a failure on the part of the Landlord to

comply with the Act, regulations, or tenancy agreement. I accept the Tenant later changed her mind. However, I do not see any basis to interfere with or re-decide what the parties had agreed to. Therefore, I decline to award the Tenant compensation for this expense under section 67 of the Act.

The Tenant claims $739.00 for an unreturned modem and internet charges from May to August 2022. I find the Tenant has not explained why she could not have cancelled the internet service to prevent the monthly charges. I find the Tenant has not provided evidence to show that the Landlord knowingly withheld the modem. Furthermore, I find the Tenant has not provided evidence, such as a credit card statement or internet bill statements, in support of the amount claimed. Based on the foregoing, I am not satisfied that the Tenant had incurred a loss with respect to an unreturned modem and internet charges due to any fault of the Landlord. I also find there is insufficient evidence to prove the value of such loss, or that the Tenant had acted reasonably to minimize any loss. The Tenant's claim for compensation under this part is dismissed without leave to re-apply.

1(b). Is the Tenant entitled to return of double the security deposit?

Under section 38(1) of the Act, within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit to the tenant or make an application for dispute resolution claiming against the deposit.

Provided that the tenant's right to a return of the deposit is not extinguished first, if a landlord does not receive the tenant's written consent or an order from the Residential Tenancy Branch to keep the deposit, and does not comply with the 15-day requirement above, the landlord must pay the tenant double the security deposit under section 38(6) of the Act.

In this case, I find the Tenant did not extinguish her right to a return of the deposit under sections 24(1) or 36(1) of the Act, since I find the Tenant was not given two opportunities for move-in or move-out inspections. I find the Landlord's right to claim against the security deposit for damage to the rental unit was extinguished under section 24(2) of the Act, since the Landlord did not offer two opportunities for an inspection and did not complete the inspection report

I find this tenancy ended on May 27, 2022.

According to the Tenant, she provided her forwarding address to the Landlord via text message on May 27, 2022.

I note that text message is not an acceptable method of service under the Act. Under section 88 of the Act, documents such as a forwarding address letter may be served on a landlord by:

- leaving a copy with the landlord or an agent of the landlord
- sending a copy via ordinary mail or registered mail to the landlord's address
- leaving a copy in the landlord's mailbox
- attaching a copy to the landlord's door

Moreover, I have reviewed a copy of this text message and find the Tenant did not provide a full address. I find the Tenant did not include the city or the postal code. Therefore, I do not find the Landlord to be sufficiently served with the Tenant's forwarding address in writing by virtue of this text message.

I find the Landlord would have received the Tenant's full address sometime in July 2022, after being served with the Tenant's application. I find it is not disputed that the Landlord subsequently returned the Tenant's security deposit in full in August 2022.

According to Residential Tenancy Branch Practice Directive 2015-01 on "Forwarding Address for the Return of a Tenant's Security Deposit" dated September 21, 2015, a forwarding address only provided by a tenant on the application for dispute resolution does not meet the requirement of a separate written notice and should not be deemed as providing the landlord with the forwarding address. Landlords may believe that because the matter is already scheduled for a hearing, it is to late to file a claim against the deposits. Arbitrators are directed not to make an order for return of the deposits, whether in the original amount or doubled, based on the date that the application was served or filed by the tenant.

Under these circumstances, I find there is insufficient evidence that the Landlord had been properly served with the Tenant's forwarding address in writing. I find the 15-day time limit under section 38(1) of the Act had not yet triggered when the Landlord returned the security deposit to the Tenant via e-transfer in August 2022. Therefore, I conclude that the Landlord is not in breach of section 38(1) of the Act and is not liable to the Tenant for return of double the security deposit under section 38(6) of the Act.

The Tenant's claim for return of double the security deposit is dismissed without leave to re-apply.

1(c). Is the Tenant entitled to compensation of $2,850.00 under section 51 of the Act?

Under section 51(1) of the Act, a tenant who receives a notice to end tenancy under section 49 for landlord's use of property is entitled to receive from the landlord an amount equal to one month's rent payable under the tenancy agreement.

Under sections 49(2)(a) and 49(3) of the Act, a landlord may issue a two month notice to end tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

In order to be effective, the two month notice to end tenancy must, among other requirements, be given in writing, be signed and dated by the landlord giving the notice, state the grounds for ending the tenancy, state the effective date of the notice, and be in the approved Residential Tenancy Branch form (see sections 49(7) and 52 of the Act).

I find the Landlord did not give the Tenant a notice to end tenancy under section 49 of the Act, that is, a two month notice to end tenancy for landlord's use of property. I accept the parties had a telephone conversation about the Landlord's family needing to move into the rental unit. However, I do not find this telephone call to meet the above requirements of a section 49 notice to end tenancy.

I conclude the Tenant did not receive a section 49 notice to end tenancy from the Landlord. Therefore, I find the Tenant is not entitled to compensation of one month's rent under section 51(1) of the Act. The Tenant's claim under this part is dismissed without leave to re-apply.

1(d). Is the Tenant entitled to reimbursement of the Tenant's filing fee?

The Tenant has not been successful in her application. I decline to award reimbursement of the Tenant's filing fee under section 72(1) of the Act.

2(a). Is the Landlord entitled to compensation of $2,850.00 for unpaid rent?

I accept the Landlord's evidence that the Tenant notified the Landlord via text message on May 11, 2022 about moving out on May 27, 2022. In addition, I have already found above that the Landlord's phone call to the Tenant on May 9, 2022 did not constitute a notice to end tenancy under the Act.

Based on the tenancy agreement submitted into evidence, I find this tenancy became a month-to-month tenancy after the one-year fixed term expired on February 28, 2022.

Under section 45 of the Act, a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day rent is payable under the tenancy agreement.

In other words, at least one clear month's notice is required for a tenant's notice to end tenancy. If the Tenant was giving the Landlord notice in May 2022, and rent is due on the first day of each month, the earliest permitted tenancy end date would have been June 30, 2022.

I note that a tenant's notice to end tenancy also needs to meet form and content requirements under section 52 of the Act. A text message would not be sufficient.

In any event, I find the Tenant moved out of the rental unit on May 27, 2022, without having received a valid notice to end tenancy from the Landlord, without giving one clear month's notice, and without having reached an agreement with the Landlord about May 27, 2022 as the tenancy end date.

Under these circumstances, I conclude that the Tenant did not give the Landlord proper notice for vacating the rental unit as required under section 45 of the Act.

However, I find the Landlord was not trying to re-rent the rental unit after the Tenant moved out. I find the Landlord's family needed to move into the rental unit for June 2022. Therefore, I do not find that any loss of rental income for the month of June 2022 can be attributed to the Tenant giving insufficient notice to end the tenancy.

I accept that normally a landlord who is given insufficient notice by a tenant will suffer a loss of rental income due to being unable to fill the vacancy right away. I do not find this to be the case here.

I also note that as the tenancy ended on May 27, 2022, the Landlord would not be entitled to "unpaid rent" for the month of June 2022, since rent is only payable during the tenancy.

Accordingly, the Landlord's claim under this part is dismissed without leave to re-apply.

2(b). Is the Landlord entitled to compensation of $10,482.91 for damage to the rental unit?

The Landlord claims compensation of $732.91 for baseboard repair (based on invoice of $1,047.20 and 30% depreciation), $9,000.00 for rest of the floor repair (based on estimate of $12,000.00 and 30% depreciation), $500.00 for damage to bathroom countertop, and $250.00 for damage to security system.

I find the parties suggest that that the useful life of flooring and baseboards in the rental unit is around 20 years. I find this is similar to the useful life of hardwood flooring provided in Residential Tenancy Branch Policy Guideline 40. Useful Life of Building Elements.

I find the rental unit was built in 2005 based information submitted by the Tenant. I accept the Landlord's testimony that the flooring was replaced in 2016, and was therefore 6 years old at the time the tenancy ended.

Based on the evidence before me, including Tenant's text message agreeing to "change the floor", the Landlord's testimony that the Tenant had agreed to accept responsibility for the damage, and AM's statement confirming the same, I find on a balance of probabilities that the damage to the baseboards and flooring were likely caused by the Tenant's cats. I find it is likely that the damage had occurred during the tenancy, because AM had observed the underlay to still be moist with urine, showing both the extent of the damage and the fact that it was likely recent.

Under section 32(3) of the Act, a tenant must repair damage to the rental unit caused by the actions or neglect of the tenant. I am satisfied that allowing cats to urinate on the floor amounts to neglect, and the Tenant is therefore liable for the damage caused.

I find the Landlord has submitted a copy of the invoice for the baseboard repairs. I find the $732.91 claimed by the Landlord accounts for 30% depreciation, due 6 of the 20 years of useful life already expended. I find this amount to be reasonable in the circumstances.

The Landlord bases the remainder of her floor damage claim on the lower end of the estimate provided by AM's flooring company, at $12,000.00, plus 30% depreciation. However, I find there is insufficient detail to explain the proposed scope of work. I find there is also no breakdown to explain the estimated cost of materials or estimated cost of labour. Under these circumstances, I am not satisfied that the Landlord has provided

sufficient evidence to prove the value of the damage or loss. Therefore, I decline to award compensation for this portion of the Landlord's claim.

Similarly, I find the Landlord has not provided any evidence to support the $500.00 claimed for the bathroom countertop damage or $250.00 claimed for the security system. I am unable to conclude that the Landlord has established the value for these losses. Therefore, I decline to award the Landlord compensation for the bathroom countertop and security system.

Based on the foregoing and pursuant to section 67 of the Act, I order the Tenant to pay the Landlord $732.91 for repairing damage to the baseboards and accounting for 30% depreciation. The remainder of the Landlord's claims for damage to the rental unit is dismissed without leave to re-apply.

2(c). Is the Landlord entitled to compensation of $584.64 for monetary loss?

Section 37(2)(a) of the Act requires that when a tenant vacates the rental unit, the tenant must leave the renal unit reasonably clean, and undamaged except for reasonable wear and tear.

I find the Tenant did not leave the rental unit reasonably clean when she moved out. I find the Tenant left the rental unit with strong odours of cat urine. I have also found above that the Tenant is liable for the damage to the baseboards.

I accept that due to the baseboard repairs and needing to air out the odours, the Landlord's family ended up spending two nights in a hotel from June 1, 2022 to June 3, 2022. I am satisfied that the Landlord's hotel expenses were incurred because the Tenant did not leave the rental unit reasonably clean and undamaged as required under section 37(2)(a) of the Act. I find the Landlord has supported the amount claimed with the hotel booking confirmation submitted into evidence. I find the Landlord mitigated her damages by staying for only two nights. Pursuant to section 67 of the Act, I order the Tenant to pay the Landlord $584.64 for the Landlord's hotel expense.

2(d). Is the Landlord entitled to reimbursement of the Landlord's filing fee and to retain the security deposit?

The Landlord has been partially successful in her application. I award the Landlord reimbursement of her filing fee under section 72(1) of the Act.

As noted above, I find the Landlord already returned the security deposit to the Tenant. Therefore, I do not make any order about retaining the security deposit under section 72(2)(b) of the Act.

The total Monetary Order granted to the Landlord in this decision is calculated as follows:

Item	**Amount**
Baseboard Replacement ($1,047.02 × 70% for depreciation)	$732.91
Hotel Stay	$584.64
Filing Fee	$100.00
Total Monetary Order for Landlord	**$1,417.55**

Conclusion

The Tenant's application is dismissed in its entirety without leave to re-apply.

The Landlord's claims to recover the hotel expense and the filing fee for the Landlord's application are successful. The Landlord's claim for damage to the rental unit is partially successful. The Landlord's claim for unpaid rent (loss of rental income) is dismissed without leave to re-apply.

Pursuant to sections 67 and 72 of the Act, I grant the Landlord a Monetary Order in the amount of **$1,417.55**. This Order may be served on the Tenant, filed in 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: April 01, 2023

Residential Tenancy Branch