Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: MNETC, FFT
Landlord: MNDL-S, FFL

Introduction

The Tenant filed an Application for Dispute Resolution (the "Application") on September 9, 2022 seeking compensation for associated with the Landlord ending the tenancy via a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice"). They also seek reimbursement of the Application filing fee.

The Landlord filed an Application on March 23, 2023. I joined the Landlord's Application to that of the Tenant so that the matters could be heard together, thereby cancelling the need for a second separate hearing. The Landlord seeks to apply the security deposit they held after the end of the tenancy to offset the expense of damage in the rental unit. The Landlord also seeks the return of the Application filing fee.

I adjourned the matter to ensure the parties received full disclosure of all evidence for each other's Application.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on June 5 and June 30, 2023. The Tenant attended the reconvened hearing 50 minutes after the hearing started; however, I provided the Tenant the opportunity to provide fulsome submissions on their Application, and responses to the Landlord's Application.

Issues to be Decided

- Is the Tenant entitled to compensation for the Two-Month Notice, pursuant to s. 51 of the *Act*?

- Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*

- Is the Landlord entitled to compensation for damage to the rental unit, pursuant to s. 67 of the *Act*?

- Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The parties did not have a documented tenancy agreement in place when the tenancy started in 2014. Both the Landlord and the Tenant provided the rent amount of $905 per month on their Applications. Each provided that the security deposit amount was $400.

i. Tenant's claim for compensation - 12 months of rent

On the Tenant's Application, the provided the date of June 30, 2022 as the final end-of-tenancy date. On their separate Application, the Landlord provided this same date.

The Landlord served the Two-Month Notice to the Tenant on November 19, 2021. This set the end-of-tenancy date on June 30, 2022. The Landlord indicated on page 2 that the rental unit would be occupied by the Landlord. The Tenant did not formally dispute this end-of-tenancy notice by application to the Residential Tenancy Branch.

On their Application, the Tenant noted the following:

> Section 5 of the notice of End of Tenancy clearly says that if the landlord does not take steps towards the purpose, [the Landlord] said [the Landlord] was going to move in and did not, [the Landlord] now has new renters and has raised the rent and is now doing renovations, I have been wrongfully evicted with three children and [the Landlord] has broken the law. I am owed 12 times $905 because [the Landlord] never did move in and I always paid my rent. Compensation should be paid to my family, we had no where to move and am currently with out power.

In the hearing, the Tenant stated that before they received the Two-Month Notice, the Landlord said they were planning on renovating the entire rental unit. The following month after that discussion, the Landlord stated they were going to move into the rental unit. Specifically, the Landlord said that things could not be done while the Tenant was living there, because the Landlord could not work around the Tenant.

The Tenant also described the Landlord giving a "verbal eviction" in May 2021 for the reason of the Tenant not fixing up the house. According to the Tenant, this is when the talk of "renoviction" came up as a reason for ending the tenancy. The Tenant maintained that the Landlord ended the tenancy just for the purpose of renovating the place. Further, when the Tenant requested it in writing, the Landlord served the Two-Month Notice, it was for the reason of the Landlord's own use. The Tenant also provided that the Landlord served this Two-Month Notice when the Tenant challenged the Landlord on the Landlord's imposed rent increase.

As set out in a letter of support that the Tenant provided as evidence, the new occupant in the rental unit after the tenancy ended was an acquaintance of the Tenant. The Tenant provided images of the text messages they had with this person beginning on September 7. The new occupant confirmed the amount of rent they paid was $1,300. This new occupant stated that "[the Landlord] never said how long we could stay"

The Tenant maintains that the Landlord did not use the rental unit for the reason indicated on the Two-Month Notice. For this, as per the *Act*, the Tenant seeks the equivalent of 12 months of rent compensation. This amount is $10,860 based on the rent amount of $905.

In the reconvened hearing, the Landlord provided a response to what the Tenant described. They wanted to use the basement in the rental unit as a workshop, and live upstairs. When they visited to the rental unit on July 10th after the Tenant had vacated, their plans changed.

An acquaintance approached the Landlord about living in the rental unit after the tenancy ended. The Landlord's response to that query was to state that the rental unit was not livable in the state it was in. This discussion with the acquaintance "just came up", and the Landlord agreed that if the acquaintance could fix the rental unit, they that acquaintance could rent it.

This acquaintance moved in with their spouse, and the spouse appears to be the person who communicated with the Tenant via text message, as set out above.

The acquaintance who moved into the rental unit and completed repairs and renovations provided a written statement in the Landlord's evidence, dated June 22, 2023. As stated: ". . . I offered to do the necessary repairs to make the house livable if he would let my wife and I live there." Then: "I spent over a month cleaning the house before my wife and I could move in." The acquaintance who occupied the rental unit from July 2022 onwards described various work they did in the rental unit, discussed further below in the next section of this decision.

In the hearing, the Landlord summarized the Tenant's points about imposed rent increases and ending the tenancy for the purpose of renovations as conjecture and speculation. In summary, the Landlord provided evidence of their intention to use the property, including the fact that they purchased a particular piece of equipment – a hoist – in early 2022. The Landlord's plans changed, and the unlivable state of the rental unit at the end of the tenancy constitutes extenuating circumstances in this situation.

ii. Landlord's claim for damage to the rental unit

The Landlord described reviewing the condition of the rental unit as it then was at the start of the tenancy. The Tenant was listing things that were wrong at that time. In the hearing, the Landlord stated they were "not stating that the property was pristine at the start of the tenancy." The Landlord emphasized that certain of the items they found at the end of the tenancy were beyond what could be considered normal wear and tear in the rental unit, thereby constituting damage.

The Landlord described the Tenant just moving out at the end of the tenancy, without telling the Landlord. As noted on the Tenant's Application, the final date of the tenancy was June 30, 2022. The Landlord entered to the rental unit on July 10. At this time, they noted a couple of items of "increased damage" that were something more than regular wear and tear over the course of the tenancy.

The Landlord provided as evidence the statement of a third party who resided at the rental unit after the Tenant vacated. This third party noted they approached the Landlord and inquired on the status of the rental unit to see if it was available for rent "in or around July 2022." The Landlord answered the rental unit was "not in a livable state". This third party offered to do repairs in the rental unit if they could live there and the Landlord accepted this offer.

This third party provided that they “spent over a month cleaning the house” before they could move in. This included:

- removing the carpet and underlay and staples – “it was stained and stunk so bad it almost burnt your nose”. They painted the floor to cover pet stains.
- a bedroom door was “seemingly ripped off as one hinge was on the door and the holes in the frame were as if the screws were pulled out, one hinge still in the molding and the door is no good and has a big hole in it as well”
- they repaired all the holes and molding in the hallway and living room drywall, then painted these areas
- they removed mould from the main bathroom and then painted
- they cleaned the septic in the basement
- they need to replace “five out of the 10 screens in the windows” because of tears/rips
- the kitchen counters were worn and stained, requiring refinishing.

This third party took the photos between July 9 and July 16, 2022, provided by the Landlord as evidence for this hearing.

The Landlord described attending to the rental unit in April 2022. At that time, they discovered standing water in the basement. This was in response to the Tenant calling about a leaking water tank that was not immediately evident to the Landlord. Instead, what they observed was a “total flood of the basement”.

The Landlord retained a contractor who was present when the Landlord spoke to the Tenant about the matter. That contractor provided a written statement that the Landlord provided in their evidence. They noted “standing water was present in at least 25% of the lower level but was not coming from the water tank.” This contractor also did an inspection of the rental unit on April 2, 2022, and noted the following:

- bent window frames, with tears in the screens “suggesting pet damage” – replacement cost “in the region of $500”
- painting that was “previously agreed to be done by the tenant had not been completed”
- carpets were removed at that time, with large stained areas visible beneath, requiring sealing (3 gallons at $110 per gallon), and labour at $600
- the large living room window broken, on the inner pane – “a quote for replacement is pending but will likely exceed $5000.00”

- a bedroom door “broken off [its] hinges” – replacement of 2 doors and one frame estimated at $600
- stove-top burners broken – replacement required because original parts are not available – estimate $1,800
- total 606 square feet of carpeting needing to be replaced – estimate $6,000

The Landlord completed a monetary work sheet to prepare for this hearing. On this sheet they referenced the contractor’s input, and provided the amount of $16,000.

In the hearing, the Landlord emphasized that the large window had “extensive cracking”, and this was undisputed by the Tenant at the end of the tenancy. The carpets were stained when the Tenant first moved in; however, the presence of odours was very noticeable at the end of the tenancy. The Landlord also pointed to the Tenant’s own written statement that they broke the stovetop.

In response to the Landlord’s Application, the Tenant provided a written statement in response to the Landlord’s Application. They noted the house had “extensive damage” when they first moved in, and this required cleaning for which the first month’s rent was deducted. There was no inspection upon move-in, nor upon move-out.

In the statement, the Tenant stated the “glass [*i.e.*, the window] was cracked and chipped”. In the hearing, the Tenant provided that the crack in the large window was caused by the foundation of the building structure shifting, with evidence for this being a crack present in the wall that was already there when they moved in. They estimated the crack to be just in the living room: “a smaller crack, not obvious from the curtains covering it.” In the hearing, the Landlord re-stated that this window crack damage was new to them when the Tenant moved out.

In writing, the Tenant stated they had the carpets cleaned but the carpets remained stained. In the hearing, the Tenant described the carpets and “stained and burned” at the start of the tenancy. At that time the Landlord said the carpets were coming out anyway. The Tenant also observed that the carpets in the rental unit have never been replaced since the rental unit property was constructed. In response, the Landlord noted specifically that it was the odour discovered at the end that made the rental unit essentially unliveable.

The Tenant recalled that every single screen had tears in them, and very old, with some of the screen frames made out of wood. By asking when the rental unit property was originally built, they alluded to the screens being original to the home when it was built.

In writing, the Tenant stated “I am sure they were originals from when the house was built.” In reply, the Landlord stated the screens were installed in 2010 or 2011.

The Tenant verified that the stovetop broke when they lived there, and they were unable to find a replacement. In writing, they stated this was the reason they did not request their damage deposit returned. In the hearing the Tenant stated they searched and tried to find replacements for the ceramic heating elements that was impossible due to the age of the component.

As another example of maintenance and/or repair, the Tenant described the Landlord replacing the bathtub a few years prior; however, this was left in an unfinished state. Additionally, mould from the basement entered upstairs, and the dryer vent was channelled straight into the attic, as opposed to venting outside of the rental unit, causing moisture issues.

Regarding the condition of the walls, the Tenant stated they were already worn when the tenancy started. There was never any painting completed in the full 7 years of this tenancy.

In regard to doors, the Tenant requested the Landlord to inspect the doors; however, the Landlord’s instruction, as per the Tenant’s recollection, was to remove the door and place it downstairs it the rental unit. Any scratching to the door is actually from the door’s own mechanism, after the door would not slide properly anymore and the Tenant left it halfway open all the time. In reply, the Landlord pointed to their own photos that show something different than the Tenant’s descriptions.

In general, the Tenant observed that the Landlord would rely on the Tenant for upkeep in the rental unit. The Tenant questioned whether the normal maintenance in the rental unit would normally be the obligation of the Landlord. The Tenant also stated their assumption that the Landlord was bringing this claim for damage in the rental unit because of the Tenant’s own claim for compensation tied to the reason the Landlord ended the tenancy – they cited the timeframe of 10 months from the end of the tenancy to the time of the Landlord’s Application, not made in a timely manner, thereby proving that the Landlord was retaliating.

The Tenant also provided written statements of family and acquaintances who provided details on the state of the rental unit:

- windows were “outdated and some were broken” and could not be opened

- the deck was “an extreme danger” and falling apart
- the front door was unusable with no steps leading up to it
- carpets were stained with burns in them, “permanently stained and worn out”
- a fence that blocked access to the roof of the garage (level with the back porch) was broken in pieces
- there were visible cracks in living room walls, ceiling to floor length

Analysis

i. Tenant’s claim for compensation - 12 months of rent

The *Act* s. 49 allows for a purchaser to end a tenancy if they or a close family member intends in good faith to occupy the rental unit.

There is compensation awarded in the situation where a landlord issues a Two-Month Notice. This is covered in s. 51:

> (2) Subject to subsection (3) the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant . . .an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if
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> (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose of ending the tenancy, or
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> (b) the rental unit is not used for that stated purpose for at least 6 months’ duration, beginning within a reasonable period after the effective date of the notice.
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> (3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director’s opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, from
>
> (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
>
> (b) using the rental unit . . . for that stated purpose for at least 6 months’ duration, beginning within a reasonable period after the effective date of the notice.

The *Residential Tenancy Policy Guidelines*, in particular *50. Compensation for Ending a Tenancy* provides that extenuating circumstances are those “where it would be

unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control."

The Landlord must prove that they accomplished the purpose for which the tenancy ended, within a reasonable period or for at least 6 months' duration. The burden of proof is on the Landlord to show this was so.

Here, the Landlord issued the Two-Month Notice on November 19, 2021. This set an end-of-tenancy date that was quite some time in the future. The Tenant did not challenge the validity of the Two-Month Notice, and moved out by June 30, 2022. The Tenant, through their acquaintance, discovered that others were living in the rental unit. This was by September 2022.

The text message provided by the Tenant as evidence reveals that their acquaintance was paying rent in the amount of $1,300. This was while being tasked with repairs and renovations in the rental unit. The Landlord confirmed that this person who was a contact approached them and the Landlord then made this arrangement whereby the rental unit would be repaired by someone who was living there.

I find as fact, and confirmed by the Landlord in the hearing, that the Landlord did not accomplish the stated purpose for ending the tenancy. Alternately, the Landlord did not take steps to accomplish that stated purpose and made no apparent moves to occupy the rental unit on their own. Moreover, there is no evidence, and the Landlord did not state positively in the hearing, that they used the rental unit for the stated purpose for at least 6 months' duration.

For this reason, I conclude the Landlord must pay the Tenant the equivalent of 12 months monthly rent.

The Landlord presented that there were extenuating circumstances prevented them from accomplishing the stated purpose, or not using the rental unit for that purpose for at least 6 months' duration. This was the state of the rental unit being unlivable.

I find the Landlord fails on proposing this reason as being extenuating circumstances. For one, I find the Landlord was aware of the state of the rental unit at least by April 2023, when they were attending to the rental unit to deal with the basement flooding issue. A contractor they hired did a comprehensive evaluation of various aspects of the rental unit, and listed approximate prices for repairs/replacements/renovations. That is solid proof that the Landlord was fully aware of the state of the rental unit. That includes

carpets, which the Landlord seemed to focus on as being simply the worst aspect of the rental unit due to the odour.

There is nothing to suggest the Landlord was not aware of the pending end-of-tenancy date set at June 30. They serve the Two-Month Notice with that date provided. By April, I find the Landlord had a full understanding of the state of the rental unit. That did not alter or change the Landlord's plans. The Landlord provided the date of July 10 as that being when they discovered the state of the rental unit, but I find this is simply not plausible where a contractor made available to the Landlord a comprehensive report to set out the state of the rental unit.

In conclusion, I find no extenuating circumstances were present. I find the condition of the rental unit could entirely be anticipated by the Landlord, and the state of the rental unit was not outside a reasonable owner's control. As per s. 51(2), I order the Landlord to pay the Tenant the equivalent of 12 times the monthly rent payable. As indicated by the Tenant on their Application, this amount is $10,860. I grant a monetary order to the Tenant for this amount.

The Tenant was successful in this Application; therefore, I grant reimbursement of the Application filing fee, and add this to the compensation amount.

ii. Landlord's claim for damages to the rental unit

There are several points in the legislation, as well as references to policy, that apply in this situation:

- The *Act* s. 32 sets obligations on a landlord and tenant to repair and maintain. A landlord must maintain the property in a state of decoration and repair that "complies with the health, safety and housing standards required by law" as well as "having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant."

- This same section provides that a tenant must maintain reasonable health, cleanliness and sanitary standards. A tenant must repair damage caused by their actions or neglect. Further: a tenant is not required to make repairs for reasonable wear and tear.

- Concerning the condition of the unit at the end of a tenancy, s. 37 specifies that a tenant must "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear."

- The *Residential Tenancy Policy Guideline 40. Useful Life of Building Elements* gives a statement of the policy intent of the legislation. It is a general guide for determining damages, with consideration to "the acceptable period of use" for an item under normal circumstances. An arbitrator may consider the age of an item when calculating a tenant's responsibility for the cost or replacement.

  The following items are listed:

  - doors: 20 years
  - windows: 15 years
  - window framing: 15 wood, 20 aluminium
  - carpets: 10 years
  - painting: 4 years interior
  - stove: 15 years

More generally, a party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage, an applicant has the burden to provide sufficient evidence to establish the following four points:

- that a damage or loss exists;
- that a damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- the value of the damage or loss; and
- steps taken, if any, to mitigate the damage or loss.

I find the Landlord has not established, with sufficient evidence, that damage in the rental unit resulted from the Tenant violating s. 32 or s. 37 of the *Act*. I find the Tenant presented an alternate account on all pieces of the Landlord's evidence and testimony, and this points back to the condition of the rental unit at the start of the tenancy, which was neither inspected by the parties jointly, nor documented as required. On virtually every piece, the Tenant provided testimony that diminished the weight of the Landlord's evidence.

I assign greater weight to the Tenant's account for each piece of damage identified by the Landlord, finding that the accounts also provided by the family and acquaintances of the Tenant are consistent in their descriptions of the extant issues within the rental unit, both at the time the tenancy started and as it continued.

I find the Landlord did not repair and maintain the rental unit in a state of repair that complies with health, safety, and housing standards. There are two glaring details of repairs lacking: that of front entrance steps, and that of the deck. Though the Landlord did not claim any damage specific to these two items, I find this detail gives an instance of the Landlord not maintaining the rental unit as required during the tenancy. That leads me to conclude that, more likely than not, the state of the rental unit was not in the livable state that the Landlord flagged after the end of the tenancy. This is my overall assessment of what the Landlord brought to this tenancy in terms of maintaining the rental unit as required.

More specific to damage, I find it also more likely than not that items in question were not replaced or repaired since the rental unit was first built. This includes carpeting which is long past its useful life of 10 years, any doors for which the mounting hardware was malfunctioning, windows including its' hardware and framing, the condition of the doors, and certainly the stove which in the photo appears original to the rental unit, and impossible to repair. I find the Tenant credible on their accounting for the large window glass damage attributable to the shifting foundation of the house, also mentioned in relation to the state of the walls within in one of their acquaintance's account. For these items, I find the Tenant bears no responsibility for any replacement or repair. In sum, similar to a motor vehicle in a more serious accident, I find the items in question are not worth the cost of repair given the state things were in at the start of the tenancy, and the Landlord's lack of maintenance throughout.

In sum, there is a consistent record on deficiencies in the rental unit, from the start of the tenancy through to the end of the tenancy. This makes anything beyond normal wear and tear very difficult to assess without a record of the state of the rental unit at the beginning of the tenancy, and that responsibility rests with the Landlord.

To assess the value of the damage or loss, the Landlord presented the account of the contractor who attended in April 2023 for a specific purpose, but then also gave a broad assessment of miscellaneous points of the rental unit. The Landlord did not assess the damage in terms of actual cost to them and then rounded-up a list of figures provided by this contactor – all very rough estimates – to $16,000. I question why the Landlord did not account for the actual work completed by the person who took up occupancy in the

rental unit, that person who specifically undertook repairs which presumably cost some amount to them individually, after the Tenant moved out.

The tenancy ended on June 30, 2022. In regard to mitigation, I question why the Landlord waited until May 2023 to obtain a quote on broken window glass. This would more accurately help to assess a true value if the Landlord wished to maintain the rental unit, even if only as an asset. Similarly, the paint purchases were made months after the end of the tenancy. This taints the reliability of the Landlord's account regarding the Tenant being the source of damage and needed repairs. I cannot understand why the Landlord waited months later to take up this case of damage, even when someone who was making repairs in the rental unit was present and undertaking that work immediately post-tenancy. I find these amounts, shown with three paint invoices and one quote for glass replacement, are not an effort at mitigation, almost one full year after the tenancy ended. Again, there is no accounting for the work undertaken by the person who occupied the rental unit immediately and made repairs. This lends veracity to the Tenant's own account that the rental unit was in a questionable state at the beginning of the tenancy, and this carried forward all the way through the tenancy until the end.

In summary, I find the Landlord was too hands-off throughout the tenancy, and not attentive to maintenance or repairs. It is disingenuous, and simply unfair, for the Landlord to make a claim against the Tenant at this stage. I find there was no loss to the Landlord resulting from any violation of the Act or the tenancy agreement by the Tenant. Aside from this, the Landlord's accounting on assessing actual amounts is not accurate enough to compensate them for any piece of their claim.

For the reasons above, I dismiss the Landlord's Application in its entirety, without leave to reapply. The Landlord is not eligible for reimbursement of the Application filing fee.

The Landlord applied to retain the security deposit in full; however, I grant no compensation to the Landlord. I order the return of the full amount of the security deposit to the Tenant, and add that amount to the compensation I awarded to the Tenant above.

Conclusion

I order the Landlord to pay the Tenant the amount of $11,360. I grant a Monetary Order to the Tenant for this amount. Should the Landlord not comply, the Tenant may file this Monetary Order at the Provincial Court (Small Claims) where it will be enforced as an order of that court.

As above, I dismiss the Landlord's Application 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 s. 9.1(1) of the *Act*.

Dated: July 12, 2023

Residential Tenancy Branch