



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT

### Introduction

This hearing dealt with the tenant's application for a Monetary Order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67 of the *Residential Tenancy Act* ("the *Act*").

The landlord, the landlord's contractor, the landlord's accountant, the tenant and the tenant's advocate attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The advocate had an assistant attend the hearing for training purposes.

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and the tenant's evidence which was served to them by registered mail while the tenant acknowledged receipt of the landlord's evidence which was also served by registered mail. In accordance with section 89 of the *Act*, I find that the landlord and the tenant are duly served with the Application and each other's evidence.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award for damage or loss under the *Act*, regulation or tenancy agreement?

### Background and Evidence

Written evidence was provided by the tenant that this tenancy began on April 01, 2003, with a monthly rent of \$888.00 due on the first day of each month. The tenant testified that their tenancy ended when the landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) on or about April 15, 2016.

A copy of the Two Month Notice dated April 13, 2016, was included in the tenant's evidence with an effective date of June 30, 2016. The reason cited on the Two Month Notice is;

*The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.*

In addition to the above, the tenant also provided in evidence:

- A list of permits issued by the municipality that the rental unit is located which shows that a permit was issued to plumbing company A to change fixtures;
- Multiple internet advertisements showing different rental units available for different dates and amounts including a 750 square foot unit available for August 01, 2016, at \$1,750.00 in monthly rent and another 800 square foot unit available for August 01, 2017, at \$1,800.00 in monthly rent; and
- A copy of a Monetary Order Worksheet showing the tenant's claim of double the monthly rent.

The landlord provided in evidence:

- A copy of a building permit for the building where the rental unit is located and issued to plumbing company A;
- Copies of e-mails from other occupants of the building where the rental unit is located including the tenant's advocate regarding leaks occurring in the building as well a few pictures;
- A copy of the floor plan for the building; and
- A copy of a utility bill showing the meter reading from November 22, 2016 to July 23, 2017.

The advocate testified that they researched the plumbing permit provided in evidence for plumbing company A and found out that plumbing company A never actually performed the work associated to the permit issued. The advocate submitted that no permit was issued for the work that was completed by the landlord. The advocate stated that the work actually performed by the landlord was minimal and did not require vacant possession as there was no permit required or inspection completed when the work was completed.

The advocate referred to the Residential Tenancy Branch policy guidelines which indicate that a Two Month Notice may only be issued when the work being competed is so extensive that it could not be performed with an occupant in the rental unit. The

advocate stated that the guideline goes on to say that it is not sufficient to issue the Two Month Notice because it is easier or more economical to perform the renovations without an occupant in the rental unit.

The advocate submitted that the landlord did not issue the Two Month Notice in good faith as they performed renovations which did not require the rental unit to be vacant. The advocate maintained that the landlord only issued the Two Month Notice so that they could rent out the unit for a higher rent. The advocate stated that there are very few hours of work demonstrated in the invoices provided which required the rental unit to be empty. The advocate stated that the landlord changed the carpets in the rental unit on May 29, 2017, which was not a repair that required the rental unit to be vacant. The advocate submitted that the tenant is seeking compensation equal to two months' rent due to the landlord not taking steps to accomplish what they said they would do on the Two Month Notice.

The contractor referred to the e-mails provided in evidence about water leaking in the building, including one from the advocate on behalf of the tenant which is about water leaking in the bathroom ceiling of the tenant's rental unit.

The landlord submitted that there was water leaking due to corroded piping and which was causing the floor to rot. The contractor stated that they had to remove walls and other components of the rental unit to replace the piping and which required the rental unit to be vacant. The contractor testified that this work was completed from August 29, 2016, to May 29, 2017, and that no one was living in the rental unit during this time. The contractor stated that there was a different plumber who completed the work and that no permits were required to repair the piping.

The accountant referred to the utility bill which shows that there was no meter reading for 11 months.

The advocate responded by indicating that the utility bill only begins November 22, 2016, until July 23, 2017, and questioned what happened from June 2016 to November 2016.

The contractor indicated that from July 01, 2016, to October 2016 the landlord was completing work and assessing other work that needed to be completed in the rental unit and that there was no one occupying the rental unit during this time.

Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act, Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 49 of the *Act* establishes that a landlord may issue a Two Month Notice when the landlord or a close family member intends on occupying the rental unit.

As the Two Month Notice was served in April 2016, I find that section 51 (2) of the Act that was in force prior to May 17, 2018, is applicable. This section stipulates that a landlord must pay the tenant, in addition to the one month's rent in compensation, an amount that is equivalent to two times the monthly rent if steps have not been taken within a reasonable period after the effective date of the notice to accomplish the stated purpose for ending the tenancy, or the rental unit is not used for that stated purpose for at least six months' duration. I find that the second page of the Two Month Notice that was served to the tenant and provided in evidence also indicates the same information.

Residential Tenancy Policy Guideline #2 states:

*A landlord cannot end a tenancy for renovations or repairs simply because it would be easier or more economical to complete the work. If repairs or renovations require the unit to be empty and the tenant is willing to vacate the suite temporarily and remove belongings if necessary, ending the tenancy may not be required.*

I have reviewed all documentary evidence and affirmed testimony and I find that the tenant has not established a monetary loss due to the actions of the landlord in violation of the *Act, Regulations* or tenancy agreement. I find that the landlord has demonstrated that they took steps to accomplish the stated purpose for ending the tenancy within a reasonable period and that the rental unit was required to be vacant for the repairs.

I find that it is undisputed that there were leaks in the tenant's rental unit as well as in other areas of the building and that there were repairs required as the advocate had previously sent an e-mail to the landlord on behalf of the tenant regarding a leak to be addressed by the landlord.

Based on a balance of probabilities, I find that it is not reasonable to conclude that the landlord entered into a tenancy after the effective date of the notice and before the date of the utility bills showing no meter readings to demonstrate that the rental unit was vacant. Although the advocate questioned the landlord about whether the unit was actually vacant during this time, I find that there is no actual evidence to support that it was not. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. I find that, when presented with the landlord's evidence, the advocate did not dispute that the rental unit was vacant for an extended period of time, only that the repairs did not require the rental unit to be vacant.

I find that having the rental unit empty for 11 months and not accepting rent for that period is not an economical way to complete the work. I find that, if the landlord had not issued the Two Month Notice in good faith, it would be reasonable to conclude that the landlord would perform the repairs in a more timely manner so that they could collect rent again as soon as possible as the landlord incurred a loss of at least \$8,800.00 in rent and possibly more than that if they had completed the repairs faster to have it available to rent faster.

Based on a balance of probabilities, I accept the landlord's submission that permits were not required for the work that was completed as the pipes were only repaired, not moved. I find that it would not have been reasonable for the tenant to only vacate temporarily as the repairs took almost a year to complete. I find that it would not be reasonable for the occupant to remain in the rental unit when the water is turned off for an extended period of time to repair the pipes, or when the flooring and walls are removed to access the rotted material and pipes underneath for the purpose of repairs. I find that the landlord installing new carpets, as the advocate submitted, supports the landlord's submission that the floor was rotted and needed repair, which then required new carpets.

For the above reasons, the tenant's Application for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement is dismissed, without leave to reapply.

Conclusion

The tenant's Application is 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: November 30, 2018

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Residential Tenancy Branch