



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes MNDCT, MNETC, FFT, MNDCL, FF

Introduction

This hearing was convened in response to applications by the tenant and the landlord under the *Residential Tenancy Act* (the “Act”).

The tenant’s application was filed on February 27, 2021, seeking orders as follows:

1. For monetary compensation relating to a notice to end tenancy;
2. For monetary compensation for monetary loss or other money owed; and
3. To recover the cost of filing the application.

The landlord’s application was filed on June 20, 2021, seeking orders as follows:

1. For a monetary order for loss or damage; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

This matter commenced on July 16, 2021, and had multiple reconvene dates of November 2, 2021, March 10, 2022. Interim Decisions were made and should be read in conjunction with this final Decision.

Landlord’s application

I have not considered the landlord’s claim as it was filed on June 20, 2021, and the tenancy ended on February 28, 2019, I find the landlord’s application was not made within the two-year period and is barred from being heard, pursuant to section 60(1) of the Act.

Issue to be Decided

Is the tenant entitled to monetary compensation?

Background and Evidence

The tenancy began on January 28, 2013. Rent in the amount of \$900.00 was payable on the first of each month. A security deposit of \$325.00 was paid by the tenant. The tenancy ended on February 28, 2019. The tenant filed their application on February 27, 2021.

Tenant's application

The tenant claims as follows:

a.	Loss of laundry	\$ 431.84
b.	Loss of internet	\$ 125.00
c.	Compensation related to the tenancy ending	\$10,800.00
d.	Loss of access due to damage to suite	\$11,700.00
e.	Unlawful rent increase	\$ 4,200.00
f.	Loss of quiet enjoyment	\$ 1,000.00
g.	Filing fee	\$ 100.00
	Total claimed	\$28,356.84

Item a

The tenant testified that they did not access the laundry after they sent the landlord a demand letter as they didn't feel comfortable. The tenant stated they had to go elsewhere to do their laundry. The tenant submits a photograph of a laundry website showing the cost of the services. The tenant provided no receipts.

The landlord testified that the tenant was never locked out of the laundry room by their actions.

Item b

The tenant's agent testified that the tenant was paying \$25.00 per month to be allowed to use the landlord's Wi-Fi and that the tenant was deliberately locked out after the landlord was served with a demand letter. The tenant seeks to recover loss of the internet for five months.

The landlord's agent testified that they gave the tenant the password on October 26, 2018. The agent stated there was never any request after that date and this was not an issue at the previous hearing.

Item c

The tenant's agent testified that the tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property on October 25, 2018, which the reason for ending the tenancy was the rental unit will be occupied by the landlord or landlord's close family member (parent, spouse or child; or the parent or child of that individual spouse).

The tenant's agent testified that the rental unit was not used for the stated purpose as the sister from another country was coming to stay and the rental unit seemed vacant for an extended period of time. Filed in evidence are two audio recordings which I have reviewed.

The landlord's agent testified that their mother had died, and the family was broken, and they were told by counsellors that they needed to bring family in to help get them through this crisis and they needed the rental unit as an extension of their home.

The landlord's agent testified that the landlord's son, his brother, was staying in the bedroom when he was down supporting the family after the tenant had vacated. The landlord's agent stated that the landlord sister did come to help the family and stayed as their guest. The landlord's agent stated that the tenant's son would harass them entering their home without permission and would record their family.

Item d

The tenant's agent testified that there was a flood in the rental unit in June of 2017, and the landlord did nothing to rectify the problem, which created a black mould issue and they ended up sick. The tenant's agent stated they were in the hospital on April 14, 2018, and the tenant on April 18, 2018, due to lung issues as result of mould. The tenant's agent stated that the master bedroom was unusable, and they had to move those items to other areas of the rental unit, which was very difficult to move around, and they could only use about 35 to 40% of the rental unit. The tenant seeks to recover loss of use of 65% for 1.5 years in the amount of \$11,700.00. Filed in evidence are undated photographs, text messages and a doctor's letter dated February 4, 2021,

which states the tenant has a long history of asthma events and was in the hospital on April 18, 2018.

The tenant confirmed they did not have tenant insurance.

The landlord's agent testified that it happened so long ago; and the flood occurred in 2018. The landlord's agent stated that the landlord was taking steps to rectify the problem, and this was never an issue until they served the tenant with notice to end the tenancy on October 25, 2018. The landlord's agent stated that the tenant responded by sending them a demand letter on November 7, 2018, to have the work completed by December 1, 2018, and alleging multiple breaches. The landlord stated that the work to the rental unit was mostly completed by that time.

The landlord's agent testified that at an earlier hearing the tenant claimed for the same issue which was dismissed with leave to reapply. However, in their monetary worksheet dated November 7, 2018, filed in evidence they claimed only the amount of \$5,550.00 and now it has over doubled to \$11,700.00. Filed in evidence is a copy of the monetary worksheet the tenant provided at an earlier hearing as evidence dated November 7, 2018.

Item e

The tenant's agent testified that the rent was \$750.00 at the start of the tenancy on February 1, 2013. The tenant's agent stated that the rent was not increased each year. The agent stated that on January 1, 2016, the tenant's rent was increased by \$50.00 to the amount of \$800.00 without been given a written notice of rent increase and over the allowable amount. The tenant's agent testified that on January 1, 2017, the rent was again increased by a \$100.00 to the amount of \$900.00 and there were no further rent increases during the tenancy.

The landlord's agent testified that any rent increase given to the tenant was by agreement and this issue was never raised. The landlord's agent stated that his mother the landlord and the tenant were friends and she dealt with the issues of the tenancy,

and they are now deceased. The agent stated that this was never raised during the tenancy only after they served the tenant with a notice to end tenancy.

Item f

The tenant's agent testified initially that the loss of quiet enjoyment is related to the loss of use of the rental . I note the tenant did not provide any particulars in the details of dispute and the tenant is claiming twice for the same issue. Therefore, I dismiss this portion of the tenant's claim.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 7(2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement **must do whatever is reasonable to minimize the damage or loss.**

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Item a

I am not satisfied that the tenant did not have access to the laundry. The evidence of the tenant was that they did not use the services because they felt the relationship with

the landlord had become hostile. I find it was the tenant's personal choice not to use the laundry facilities. I find there was no breach of the Act by the landlord. Therefore, I dismiss this portion of the tenant's claim.

Item b

The October 26, 2018, text message shows the landlord giving the tenant the password. I find if the tenant could not access the Wi-Fi after this time they would have notified the landlord and there is no such documentary evidence before me.

Further, the internet was not a service included in the tenancy agreement, this was under a separate agreement, where the tenant would pay the amount of \$25.00 for this service. However, if this service was terminated as alleged it would make no sense for the tenant to continue to pay the \$25.00 for any of these months if this was true. I find the tenant has failed to prove a breach of the Act by the landlord. Therefore, I dismiss this portion of the tenant's application.

Item c

Section 51 of the Act applies and states:

Tenant's compensation: section 49 notice

51 (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. (2)Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that

- (a)the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- (b)the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(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, and

(b)using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

In this case, the landlord's wife had passed away and the family was in a crisis and were in the need of family support. This was not denied by the tenant.

Whether the landlord's son was staying in the rental unit from time to time or if the landlord's sister was staying as a guest in their home while helping the family through this crisis, I find this supports the landlord was using the rental unit as an extension of their home to use for their own purpose. There is no evidence before me that would lead me to believe the rental unit was re-rented during the required period of six months or there was any other ulterior motive.

Further, I have reviewed the audio recordings which were all taken by the tenant's son before the tenant had vacated. While it is clear the landlord's sister was coming to help the family during this crisis; however, I can afford very little weight to the recordings for the following reasons.

The tenant's son is recording the landlord without their knowledge and in a manner that in my opinion is aggressive. The tenant's son is clearly attempting to build a case by making these recordings and asking very leading questions and by giving the answer they were seeking to their question at the same time by talking over the other person. I also note there is a language barrier between the parties.

As an example, in the audio recording the tenant's son states to the landlord "so your sister is going to live in the basement" which the landlord said "ya probably" then the tenant's son says, "**so you are renting to your sister**", '**correct?**'. However, the landlord did not respond, and the tenant's son took his own answer to be the truth.

I find the landlord was under pressure when he was questioned in such a manner and was not obligated to provide any information to the tenant's son. Further, it would make no sense for the landlord to be renting to his sister when she was travelling from another country to help the landlord's family deal with the death of their loved one. This clearly was then words of the tenant's son and not the landlord.

The next recording the tenant's son goes to the landlord's son who was also unaware of being recorded. The tenant's son states "**so your dad said** his sister is moving into the basement" where the son says "ya ya, the counsellors say we don't have enough support around us".

I find the video supports the landlord's son was uncomfortable with the questions and would have had no prior knowledge to what his father actually did or did not say.

While the current Residential Tenancy Branch Policy Guideline 2a, was not in effect at that time this Notice was issued. I find the same logic would apply at the time this Notice was issued, which allows the landlord to reclaim the space for their own use, such as a second living room, or a recreation room. I find it is not unreasonable that this would include a bedroom for the landlord's adult children or guests to use while staying in their home if that space is needed.

Based on the above, I dismiss this portion of the tenant's claim.

Item d

In this case, the tenant is claiming the amount of \$11,700.00 for loss of use of space for 1.5 years that they said was due to a flood that occurred in the rental unit in June 2017. I find that to be highly unlikely as the first correspondence between the parties filed in evidence was dated May 2018. I have gone through all the text messages and nowhere does the tenant raise any issues that they have lost the use of 65% of space due to their furniture having to be moved. The evidence shows that on June 28, 2018, the tenant was helping the landlord source out materials as the tenant had found a flooring that was cheaper than what the landlord had found.

Further, I question the credibility of the tenant as the monetary worksheet dated November 7, 2018, submitted as evidence at a previous hearing claimed the amount of

\$5,550.00 for the loss. This leads me to believe the claimed amount has been artificially increased without merit.

Further, had the tenant had proper tenant insurance their insurance would have covered living accommodations elsewhere, and cost of storage of their belongings while the repairs were made. It was only after the landlord issued a notice to the end tenancy that the matter escalated by the landlord's son and I find is retaliative.

Based on the above, I find the tenant has failed to prove their claim and has failed to mitigate the loss as required by section 7 of the Act. Therefore, I dismiss this portion of their claim.

Item e

The tenant is claiming an illegal rent increase that occurred on January 1, 2016, and again on January 1, 2017. The evidence of the landlord's agent was this was an agreement between the tenant and his mother who is now deceased.

In this case, I find it more likely than not that this was an agreed upon rent increase between tenant and the deceased landlord, who were friends. I find the tenant's actions are contrary to what is implied as they continue to pay this amount for several years. It was not until after the tenant was served with a notice to end tenancy that this issue was raised, which I find to be retaliative. I find the landlord had the right to rely upon the action of the tenant.

Further, the tenant took no reasonable step to mitigate the loss, such as making an application in 2016 or even 2017. This application was made on February 27, 2021, five years after they allege the first breach occurred. I find the tenant have failed to mitigate the loss as required by section 7 of the Act.

I also note in the monetary worksheet dated November 7, 2018, that was used for a prior hearing and filed in evidence for this hearing, show at that time the tenant claimed the amount of \$1,890.00 for an illegal rent increase; however, at this hearing claimed the amount of \$4,200.00. This leads me to question the credibility of the tenant. Therefore, I dismiss this portion of the tenant's claim.

Conclusion

In light of the above, I dismiss the tenant's application without leave to reapply. The landlord'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*.

Dated: July 14, 2022

Residential Tenancy Branch