



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, MND-S, FF

Introduction

This hearing convened by teleconference on July 21, 2023, to deal with the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenants applied for compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) and recovery of the filing fee.

The landlord applied for compensation for alleged damage to the rental unit by the tenants, authority to keep the tenants' security deposit to use against a monetary award, and recovery of the filing fee.

The tenants 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 65 minutes, at which time the hearing was adjourned as there was insufficient time to conclude all matters. An Interim Decision was issued on July 24, 2023, which is incorporated by reference and should be read in conjunction with this Decision.

At the reconvened hearing, the tenants and the landlord attended.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. At the reconvened hearing, no parties raised concerns with service of the other's evidence.

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 parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the

parties and 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.

Issue(s) to be Decided

Are the tenants entitled to compensation relating to being served a 2 Month Notice by the landlord and recovery of the filing fee?

Is the landlord entitled to compensation from the tenants, to keep the tenants' security deposit in relation to a monetary award, and recovery of the filing fee?

Background and Evidence

The tenancy began in October 2018, the monthly rent was \$2600, and the tenants paid a security deposit of \$1300, which the landlord has retained having made this claim against it. There was a dispute as to when the tenancy ended. More specifics will be provided in the parties' respective submissions.

A written tenancy agreement was not provided.

Tenants' claim –

The tenants' claim is \$2600. In their application, the tenants wrote the following:

Landlord sent a 2 month notice to end tenancy for Landlords Use of property dated Jan 05, 2022 with a move out date for April 01, 2022 latest. On Feb 07th , we (tenants) responded by registered mail with a 10 day notice to move out early notice , to move out Feb 28th. We had already payed our monthly rent of 2600 \$ for the month of February. Landlord refused to return our rent for the month of February or provide us with one months compensation . Section 51 of the RTA

The tenants overall asserted that they received the landlord's 2 Month Notice, they vacated because of the Notice, and the landlord has not compensated them a month's rent.

The landlord agreed they had not paid the tenants a month's compensation.

Landlord's claim –

The landlord's monetary claim is \$2800. In their application, the landlord submitted the following description to support their claim.

THE TENANTS DID MAJOR SCRATCHES & GOUGES IN EVERY ROOM OF HARDWOOD FLOORS.
 THE OVEN WAS RUINED CAUSE THEY DIDN'T FOLLOW THE SIMPLEST INSTRUCT ON THE STOVE DASH BRD.
 THE DISHWASHER HAD DIRT INSIDE & WAS NOT WORKING. FRONT DR BELL-GONE
 BIFOLD DOORS FOR LAUNDRY AREA & 1 BDRM - GONE.
 BROKEN WINDOW IN DINING ROOM & ALSO IN GLASS DOORS INSIDE HOUSE TO SUNROOM.
 MOUNTED TV - 3 BIG SCRATCHES ON SCREEN - DINING TABLE VENEER PURPOSELY RUBBED DOWN TO PARTICLE BOARD - HANGING KITCHEN LIGHT INSIDE WHITE PAINT PURPOSELY SCRATCHED - 2 LG. WINDOW BLINDS - GONE ETC. ETC.
 HE HAD AN ADDENDUM WITH 8 CONDITIONS INCLUDED IN CONTRACT THAT THEY CONTRAVENED (1) SMOKING (2) PAT INDOORS (3) ANOTHER TENANT MOVING IN (4) PERM TO MAINTAIN GARDEN

In their evidence, the landlord submitted a monetary order worksheet, reproduced in part as follows:

#1	FRONT DOOR DEADBOLT & (RONA) ISAW STORE.	FRONT DOOR HANDLE & DEADBOLT LOCK.	\$ 89.58
#2	PARTS SELECT. CA FRIDGE & PIPE MISSING PARTS.	FRIDGE - 2 DR 67.19 SHELF RETAIN 49.05	\$ 116.24
#3	ORKIN - RODENT-EVACUATE CANADA PROGRAM	RODENT-INFESTATION	\$ 472.50
#4	HOME DEPOT - RMD. (2)	MISSING FLU-RM LOUVER & FRONT BLINDS BDRM.	\$ 201.53
#5	HOMESENSE - 2 BDRM (3 WINDOWS)	2 BDRMS MISSING 3 WINDOWS COVERS.	\$ 111.99
#6	ESTIMATE ELECTRIC MOWER GONE - 4 YRS. LEFT-WORK. H. HARDWARE	MISSING LAWN MOWER	\$ 120.93
#7	MISSING - SNOW SHOVEL H. HARDWARE	FOUND BROKEN END.	\$ 17.09
#8	MISSING - 8' LADDER	SHORT LADDER -	\$ 32.08
#9	GAR. DR - 1 BIFOLD SLIDES CAN. TIRE (2)	GARAGE DOOR LOCK & HANDLE	\$ 70.08
#10	BAS APPL. - DELIVERED/INSTALLED WHIRLPOOL	KITCHEN BROKEN DISHWASHER	\$ 907.00
#1	H. HARDWARE - MISSING	CORDLESS SCREWDRIVER KIT	\$ 25.78
#2	H. HARDWARE MISSING	WHEELBARROW	\$ 128.77
#3	CAN TIRE MISSING SPECIFIC RECYCLE	GREEN GARBAGE BIN	\$ 48.15
#4	CAN. TIRE MISSING		\$
#5	H. HARDWARE SONIC PESTCHASER	REPEL RODENTS	\$ 19.23
#6	CAN. TIRE ORIGINAL ??? REPLACE - NOT MINE	FLR. REGISTERS	\$ 27.79
#7	MY 1/2 MONTHS' MARCH - 2022 FOR SUITE IN RENTAL HOME		\$ 500.00
#8	2 BIFOLD DOORS BOUGHT PRIVATELY ONLINE		\$ 80.00

The landlord confirmed there was no move-in or move-out condition inspection report (Report).

The landlord and tenant testified to each of the claims, as follows:

Deadbolt lock -

They had to replace the deadbolt lock for security reasons.

Fridge shelves –

There were a couple of missing shelves that required replacing. The receipt provided was undated, with amounts written in by the landlord.

The tenant responded that as far as they recall, the refrigerator was more than 20-25 years old and do not recall that shelves were missing. They kept the fridge working and clean.

Pest control program –

There was a massive amount of rodent droppings in the rental unit, which required pest control treatment. The landlord said that the tenants are responsible as this occurred during the tenancy. The landlord's evidence shows that the landlord has obtained a service contract for every 3 months.

The tenant responded that they tried to catch the rats themselves and just generally handled the rodent issues during the tenancy. The rat droppings were cleaned out.

Home Depot –

The landlord submitted that after the tenancy ended, there were two louvered blinds missing from the living room and front bedroom.

The tenant said that the blinds were there when they left and they were cleaned.

Window covers –

The landlord said that there were three missing window covers.

The tenant said they do not know about that claim and nothing comes to mind.

Missing lawnmower –

The landlord said that the lawn mower that was left at the residential property was missing. The claim was an estimate of replacement. The lawnmower was 8-10 years old. The landlord's evidence showed a lawnmower purchase in April 2023.

The tenant said they were using a lawnmower on a small patch of grass and the motor started burning. They asked the landlord if they would like the pushmower, and they left that for the landlord, because the electric lawnmower quit.

Snow shovel –

The landlord said that they found the broken end of the snow shovel and claim a replacement. This item was left at the residential property. The landlord's evidence shows another snow shovel was bought in November 2022.

The tenant said they used the shovels during the tenancy, but they were old and brittle. They did buy a couple of snow shovels during the tenancy.

Missing ladder –

The landlord submitted that a short, 8' ladder was left with the residential property, and was missing at the end of the tenancy. The ladder was older and solid.

The tenant said they had their own aluminum ladders they used and does not know what the landlord is talking about.

Garage door lock and handle and bifold slides –

The landlord said that they never received the keys back from the tenants and was made to feel insecure in case they came back.

The tenant said that they returned all the keys.

Dishwasher replacement –

The landlord admitted that the dishwasher was old but it worked. At the end of the tenancy, the dishwasher did not work and there was dirt left in it. The landlord's evidence shows the dishwasher was replaced in April 2023, a year after the tenancy ended.

The tenant agreed that the dishwasher was old, but that it worked up to the day they vacated. They spent days cleaning.

Missing cordless screwdriver kit, wheel barrow, and green garbage bin –

The landlord said that they still had the screwdriver case, but some of the tools were missing. In addition, the wheelbarrow was left at the residential property and was missing, as was the green garbage bin.

In response, the tenant said that he was not sure about the screwdriver and they did not take the wheelbarrow or garbage bin, as they did not need either.

Sonic pest catcher –

The landlord said that they need to buy these items because the crawl space was black with rodent droppings.

Floor registers –

The claim listed was described in the landlord's evidence as "original??? Replace- not mine". The landlord's evidence shows the registers were replaced in April 2023.

The tenant did not comment other than to say they did not exchange the floor registers.

Half month's rent for the rent at their home at the time –

This claim arose from the landlord's claim that they had to stay an extra half month at their rental home at the time due to the tenants' failure to vacate the rental unit on February 28, 2022.

The tenants said they met the landlord at the home on March 1, but the landlord said they were not ready to move in. The landlord said they could take their time, and as they could not find a cleaner, they decided to do a deep clean themselves. They left the keys to the rental unit on March 12, 2022.

The landlord said they did not come to the rental unit until March 1, 2022, and as the tenants were not ready to leave, they gave the tenants until March 10, 2022 to vacate, to which they agreed. The landlord confirmed receiving the keys on March 12, 2022, but not the garage door keys.

The tenant said that if the landlord was ready to move in, why did they not have their furniture with them at the time. The tenant said they were confused about the timelines as this was a year and half ago.

The landlord said they already knew they were not getting into the rental unit on March 1, 2022. The landlord said they did not want to hire a truck when the tenants were not ready to vacate by March 1, 2022.

The landlord's evidence was the tenants' written notice to vacate on February 28, 2022 and a receipt for half-month's rent from their landlord.

Bi-fold doors –

The landlord said the doors were missing and they replaced them with some privately purchased ones.

The tenant had no comment.

The landlord's evidence also included the dates of purchase for different items claimed. For instance, a screwdriver set in December 2023, garage door locks in March 2023, and other items beginning in June 2022 through April 2023.

Analysis

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

Tenants' application –

The 2 Month Notice was given to the tenants listing that the landlord or landlord's spouse will occupy the rental unit.

Under section 51(1) of the Act, 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.

The undisputed evidence is that the tenants received a 2 Month Notice from the landlord, for an effective date of April 1, 2022.

As the undisputed evidence is the landlord never compensated the tenants the equivalent of one month's rent, I find the tenants submitted sufficient evidence to support their monetary claim of \$2600, the equivalent of 1 month's rent. I therefore find the tenants have established a monetary claim of **\$2600**.

Landlord's application –

Test for damages or loss

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 sections 7 and 67 of the Act. Accordingly, an applicant must prove each of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

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.

As to the costs claimed by the landlord associated with cleaning and repairing, Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

Reasonable wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case, I find the landlord failed to comply with their obligations under the Act when they did not inspect the rental unit together with the tenants at the beginning or end of the tenancy and to complete a move-in and move-out condition inspection report (Report).

An inspection and Report are important as they allow both the landlord and the tenant to comment on the condition of the rental unit when they inspect the rental unit together. Without the Report being completed as required under the Act, I find I could not assess the condition at the end of the tenancy compared with the beginning of the tenancy.

Deadbolt lock –

I find the landlord submitted insufficient evidence to show that they were required to replace the deadbolt lock. Also, I find it was unclear from the evidence what amount should be claimed. There was a receipt with differing amounts and additional items. Also, the landlord marked through front door lock. As there was no move-out inspection, I find the landlord submitted insufficient evidence that the lock required changing. I dismiss this claim, without leave to reapply.

Fridge shelves; Home depot; Window covers; Floor registers; Bi-fold doors; Garage door lock and handle and bifold slides –

I have no evidence to show the condition or state of the rental unit at the beginning of the tenancy or at the end of the tenancy, which would be noted on a move-in and move-out inspection report, or even comprehensive photos from the move-in date. I therefore could not determine if the items claimed to be missing were present at the start of the

tenancy or at the end. I find this is insufficient evidence to support the landlord's monetary claim on these items, and they are dismissed, without leave to reapply.

Pest control program; Sonic pest catcher –

I find the landlord submitted insufficient evidence that the tenants were responsible for the rodents on the property. I also find the tenants would not be responsible for an ongoing rodent treatment. I dismiss these claims, without leave to reapply.

Missing lawnmower; Snow shovel; Missing ladder; Missing cordless screwdriver kit, Wheel barrow; Green garbage bin -

These items were claimed to be left on the residential property by the landlord. However, the landlord failed to provide an inventory of personal property taken at the start of the tenancy. With that being the case, I find the landlord submitted insufficient evidence that the tenant removed or broke these items during or after the tenancy. Apart from that, all items but the bi-fold door and garage door lock were purchased and replaced at different times/months after the tenancy ended. For these reasons, I find the landlord submitted insufficient evidence to prove these claims, and they are dismissed, without leave to reapply.

Dishwasher replacement –

The landlord described the dishwasher as very old. With that testimony and absent corroborating evidence of the age, I find it reasonable to conclude the dishwasher was beyond its useful life of 10 years, as listed in Tenancy Policy Guideline 40, and that it was fully depreciated. I dismiss the landlord's claim to replace the old dishwasher with a new dishwasher, without leave to reapply.

Half month's rent for the rent at their home at the time –

The landlord's documentary evidence showed the tenants provided a written notice to vacate to the landlord, for an effective date of February 28, 2022, and the undisputed evidence is that the tenants failed to vacate by that date.

The parties provided contradictory testimony on this issue as to whether the landlord consented to the date of March 10, 2022.

I accept the documentary evidence over the disputed testimony of the parties. Under the Act, one way a tenancy ends is when a tenant provides a written notice. The evidence is that the tenants did not comply with the date on their written notice, as they returned the keys on March 12, 2022, and as a result, I find it reasonable to award the landlord compensation for having to continue residing in their rental unit for a half

month. The landlord provided proof of payment, and **I grant the landlord a monetary award of \$500.**

For above reasons, I **dismiss all** the landlord's claims as noted above, with the exception of their claim for \$500 for a half-month's rent, **without leave to reapply.**

The landlord has established a monetary claim of \$500.

With interest to date, the tenant's security deposit of \$1300 has accumulated interest of \$19.38, for a total of \$1319.38 held by the landlord.

The landlord has been granted a monetary award of \$500. The tenants have been granted a monetary award of \$2600.

I direct the landlord to retain \$500 from the tenants' total security deposit and interest of \$1319.38 in satisfaction of their monetary claim, and **order the landlord to return the balance \$819.38.**

To give effect to this order and to the tenants' monetary award of \$2600 on their application, **I grant the tenants a monetary order of \$3419.38.**

Should the landlord fail to pay the tenants this amount without delay, the tenants must serve the Order on the landlord for enforcement purposes by means under section 88 of the Act. The landlord is informed that costs of such enforcement are recoverable from the landlord.

As both parties were at least partially successful, I do not award either party recovery of their filing fee.

Conclusion

The tenants' application was granted in full.

The landlord's application was partially successful as noted above.

The tenants have been issued a monetary order in the amount of \$3419.38.

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: October 06, 2023

Residential Tenancy Branch