



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the two tenants and two other occupants.

The tenants submitted documentary evidence to confirm the landlords were served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on November 9, 2012; December 7, 2012 and December 13, 2012 in accordance with Section 89. The tenants also testified they served the landlord with their final binder of evidence on January 25, 2013 by registered mail. As per Section 90, the documents are deemed received by the landlords on the 5th day after it was mailed.

Based on the evidence of the tenants, I find that the landlords have been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for compensation for damage or loss; for double the amount of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The tenants testified the tenancy began on July 1, 2011 as a month to month tenancy for a monthly rent of \$1,100.00 due on the 1st of each month with a security deposit of \$550.00 paid. The tenancy ended on October 31, 2012. The tenants provided their forwarding address via email on November 4, 2012.

The tenants submit that on November 12, 2012 the landlord returned all but \$150.00 and that on December 18, 2012 the landlord returned the balance of the security deposit (\$150) plus some utility funds (\$152.21) for compensation for the basement tenant's utility usage the period from July 22, 2012 to October 21, 2012. The tenant's

seek compensation for the landlord's failure to return the security deposit in full in accordance with the *Act*.

The tenants submit that the landlord failed to provide them with a copy of the tenancy agreement and that as a result they seek compensation in the amount of \$700.00 for pain and hardship for not having a copy of the agreement or the landlord's address.

The tenants also seek compensation for the costs for BC Assessment and a title search to find the landlord's address in the amount of \$16.00. The tenants also seek compensation in the amount of \$500.00 for pain, suffering, time lost from work and travelling and not being able to file a claim with the Residential Tenancy Branch (RTB) because of not having the landlord's address.

The tenants seek compensation for utility costs related to the usage of both other tenants in the basement rental unit and the landlord when the landlord was making repairs and renovations to the lower rental unit. The utility compensation sought is outlined as follows:

| Description | Amount |
|---|------------------|
| Hydro – June 28, 2011 to July 25, 2011 – hydro used by previous tenants | \$40.00 |
| Hydro – a few days in 2011 and 2012 – renovations in the basement unit | \$150.00 |
| Hydro – July 21, 2012 – October 22, 2012 – landlord has provided \$83.43 | \$131.29 |
| Gas – July 2012 – October 2012 – landlord has provided \$68.78 | \$41.57 |
| Compensation – repeatedly having to ask the landlord for this money and having all the utility bills in the tenant's name | \$2,500.00 |
| Total utility claim | \$2862.86 |

The tenants also seek compensation for the filing fee of \$100.00 plus the costs of serving the landlord with documents through registered mail in the amount of \$84.12 and for the frustration, time, and inconvenience of having to resend mail, visit the RTB and fax documents to the RTB in the amount of \$450.00.

The tenants submit that at the start of the tenancy the rental unit was filthy and required substantial cleaning. In addition the tenants submit that the toilet was inoperable and it took over a month for the landlord to replace it. During this time the tenants were required to use the bathroom in the basement rental unit.

The tenants also submit that there were a number of repairs requested and never provided such as the fridge, dishwasher, fireplace, faucet and doorknobs. As a result the tenants were not able to use the dishwasher or fireplace for the duration of the tenancy. At one point the bathtub became plugged and the tenants had to have it repaired at a cost of \$75.00.

For repairs and cleaning the tenants seek the following compensation:

| Description | Amount |
|--|-------------------|
| Clean up at start of tenancy | \$1,000.00 |
| Loss of working days (time off to clean) | \$500.00 |
| Emergency toilet repair | \$1,500.00 |
| Other repairs needed but never provided | \$2,000.00 |
| Repair of bathtub (cost to tenants) | \$75.00 |
| Compensation for frustration of having to live without repairs in a timely fashion or at all | \$300.00 |
| Total | \$5,375.00 |

Despite complaints from the tenants to the landlords the tenants submit that they suffered a loss of quiet enjoyment as a result of the actions of the most recent basement occupant; the landlords' parents; and the landlords when conducting renovations.

In relation to the basement occupant the tenants submit that the occupant would have wild midnight parties; knock on the tenants' door at 11:00 p.m.; be loud on the phone; have frequent guests at odd hours; shout; bang; use obscene language and cook late at night. The tenants submit that they complained to the landlords and nothing was done about these disturbances. The tenants seek compensation in the amount of \$2,000.00 for these disturbances between May 2012 and October 2012.

The tenants seek compensation in the amount of \$3,000.00 for the landlord's parents reporting the tenants' "every move" to the landlord; demanding that the lawn be mowed in front of "well-respected members of the community"; accusing the tenants of locking the basement unit door on purpose; and defamation of character by talking to other community members about the tenants.

The tenants submit that the landlord had completed repairs/renovations in the basement rental unit on average once every 2 ½ months for a week at a time between July 2011 and May 2012 and they seek \$1,300.00 in compensation. The tenants also seek replacement costs for a vacuum cleaner that the landlord used after completing renovations in the amount of \$138.02.

The tenants seek compensation from the landlord for the bullying, humiliation and harassment committed by the occupant in the basement rental unit in the amount of \$2,500.00. The tenants submit that the landlord should compensate the tenants for the basement occupants threats; use of offensive language; terrorizing them; leaving bullying voice messages; taking advantage of the tenants being seniors and their disabilities; and visits from his "scary" friends.

The tenants seek \$5,500.00 for the bullying, harassment and terrorization toward the end of the tenancy agreement of the tenants by the landlord. The tenants submit the landlords misused their power and authority; took advantage of the tenants being seniors and their disabilities; cruelty; lies about what he would do (payments and repairs); use of offensive language; use of intimidation ("hope you have a good lawyer"); humiliation and terrorization in front of witnesses; and harassments caused affects on their emotions and health.

Analysis

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

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 13 of the *Act* requires a landlord to prepare a written tenancy agreement that must be provided to the tenants within 21 days of entering into the agreement. I accept from the tenants' undisputed testimony that the landlord failed to provide the tenants with a copy of the tenancy agreement.

As to the claim for compensation as result of this violation of the *Act*, I accept the tenants suffered a loss of \$16.00 in obtaining the landlord's address through BC Assessment and completing a title search. In regard to the tenants' claim for compensation for pain and hardship (\$700.00) and for pain, suffering and time lost from working (\$500.00), I find these items to be the same and find the tenants are seeking compensation in the amount of \$1,200.00 for these items.

However, I find that the tenants have failed to establish that failing to have the landlord's address or a copy of the tenancy agreement caused them such hardship or loss that it would warrant any compensation other than what it cost them to find the landlord's address.

The tenants have provided no indication that they had previously tried to apply for dispute resolution against the landlords or that as a result they suffered any losses. I also note that the tenants submitted this Application for Dispute Resolution on November 7, 2012, only 7 days after the end of the tenancy and as such, I find the tenants suffered no loss. I dismiss this portion of the tenant's Application.

Based on the tenants' undisputed testimony and submission regarding utilities I find the tenants have establish the landlord failed to reimburse the tenants for utilities used by the basement occupant at the time the tenants moved into the unit. However, the tenants submit that the bill was for \$52.35 and they are seeking \$40.00. As the tenants

have provided no evidence to establish how they determined usage, I find the tenants are entitled to ½ the billed amount only.

In relation to the tenants' claim for compensation for hydro costs when the landlord was completing renovations and repairs to the basement unit, I find the tenants have established by their undisputed testimony that the landlord used the hydro for periods of a week in duration at least on 4 occasions during the tenancy. I find the estimate of \$150.00 to be reasonable compensation for the use of the tenants' utilities for this purpose.

Based on the undisputed testimony of the tenants I accept their calculations for the hydro and gas charges for the basement occupant usage in the amounts of \$131.29 and \$41.57.

As to the compensation the tenants seek in the amount of \$2,500.00 for the frustration of having to repeatedly ask the landlord for the utility monies and for having to take on the responsibilities of having utility bills in their name, I find this was a condition of the tenancy that the tenants agreed to and as such they cannot now rely on their dissatisfaction of how it worked to be compensated for it. I dismiss this portion of their claim.

In relation to the tenants' claim for registered mail costs and compensation for the frustration, time and inconvenience of having to resend mail and attend the RTB, I find these to be costs of pursuing their claim and not a result of a violation of the *Act*, regulation or tenancy agreement and I dismiss this portion of their claim.

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

In relation to the tenants' claim for compensation for cleaning and loss of working days I accept, based on the tenants' undisputed testimony that the rental unit was not adequately cleaned at the start of the tenancy. From the list of cleaning that was required I accept the tenants required substantial time to clean the rental unit.

However, the tenants have failed to provide any evidence to establish their loss for cleaning was \$1,000.00 and that any time off work was required or the value of that lost work time. As such, I find, based on the work required and in the absence of any other information from the tenants as to how they determined this value, that \$200.00 is reasonable compensation.

I accept that for the period of 1 month at the start of the tenancy the tenants were without a working toilet in the rental unit and despite being able to use the toilet in the rental unit, the landlord had an obligation to ensure the tenants' own rental unit was suitable for occupation. I find inclusion of a working toilet is essential to making a unit

suitable for occupation and as such, I find the landlord failed to meet his obligations under Section 32 of the *Act*.

However, the tenants are seeking \$1,500.00 equivalent to one month's rent and compensation for inconvenience. To determine a reasonable amount of compensation I must consider the impact of the lack of the toilet had on the entire tenancy. For example, the tenants were able to sleep, eat, socialize, watch television or partake in every other function one would undertake in a rental unit.

Further, I must consider the landlord did provide an alternate toilet until the tenants' toilet was replaced. As such, I find \$50.00 for the month to be sufficient compensation.

In relation to the tenant's claim for compensation because the landlord failed to repair the dishwasher, fireplace, refrigerator; faucet and doorknobs I accept the tenants informed the landlord of these problems early in the tenancy. From the tenants documentary evidence the first record of these complaints is in an email to the landlord dated September 26, 2011. As such, I find the landlord failed to comply with his obligations under Section 32 of the *Act*.

Again, I must consider the impact on the landlord's failure to make these repairs to the value of the tenancy including the duration of the landlord's awareness of the request for these repairs. In the case of these repairs I find the landlord was aware of these request for at least 13 months of the tenancy (from September 2011 to October 31, 2012).

While the tenants seek \$2,000.00 in compensation for the failure of the landlord to comply with Section 32 they have provided no explanation as to how they have determined this amount. Based on the items that required repairs I find that \$100.00 per month from the first documented complaint to the end of the tenancy is a reasonable loss in value of the tenancy for a total compensation for this claim of \$1,300.00.

The tenants claim \$75.00 for actual costs incurred for clearing a drain during the tenancy and while I accept the tenants may have had to deal with this issue based on their undisputed testimony, they have provided no evidence, such as a receipt, for any costs incurred to have the drain cleared. Therefore I dismiss this portion of the tenants' claim.

In regard to the tenants' claim for compensation in the amount of \$300.00 for frustration of having to live without the repairs I find that *Act* does not allow for compensation of a party to a tenancy for frustration over one party's failure to comply with their obligations. Further, as I have already determined the tenants are entitled to compensation for the loss in value of the tenancy for the landlord's non-compliance I find the tenants have been sufficiently compensated for this issue.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and use of common areas for reasonable and lawful purposes, free from significant interference.

As the tenants have provided copies of several emails dated from May 2012 from themselves to the landlords, with responses from the landlords attached, complaining about being disturbed by the occupant in the unit below I find the tenants informed the landlord on several occasions of the disturbing behaviour.

From the tenants undisputed testimony I accept that the landlord failed to deal with any of the tenants' complaints. I also accept from their testimony and the emails that the disturbances from the occupant of the rental unit in the basement were of sufficient concern that I find the tenants suffered a loss of their quiet enjoyment of the rental unit.

While the tenants claim \$2,000.00 for this loss they have provided no indication of how they established this value and as such, I must consider the seriousness of the disturbance; their frequency and the length of time the landlord was aware of the problems and failed to act.

From the tenants' undisputed testimony and evidence I find the occupant disturbed the tenants for at least 6 months and that the content of that disturbance included deliberate aggressive behaviour and threats as such I find the loss of quiet enjoyment to be substantial and grant the tenants \$100.00 per month for the landlord's failure to act.

In relation to the tenants' claim for compensation for loss of quiet enjoyment caused by the interference from the landlord's parents, I find the tenants are claiming for activities related to interaction with the landlord's parents in their community centre and within their community, however the tenants have provided no evidence to establish that these actions are in contravention of the *Act*. I therefore dismiss this portion of the tenants Application.

As to the tenants' claim for \$1,300.00 for disturbances while the landlord was renovating the basement rental unit, I accept the tenants' undisputed submission that the landlord completed 1 week of renovation/repair work every 2½ months between the period of July 2011 and May 2012 for a total of 4 weeks.

The tenants provided no explanation as to how they determined this amount, however based on the total amount (\$1,300.00) and the number of weeks (4), the tenants are seeking \$325.00 per week. However, the value of 1 week's amount of rent is \$275.00 and the tenants are claiming \$50.00 per week of disturbance over and above the amount of rent they paid.

As the tenants are seeking compensation for a loss of quiet enjoyment I find it is unreasonable to be compensated more than they would have paid in rent. Further there

is nothing in the tenants' evidence to suggest that they were not able to use the rental unit during these work weeks and as such I also find it unreasonable to compensate the tenants for the full amount of rent for those periods.

Residential Tenancy Policy Guideline 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property. As such, I find the tenants are entitled to compensation in the amount of \$75.00 for each week of disturbance for a total of \$300.00.

I accept, based on the tenants' undisputed testimony, that the landlords had borrowed the tenants' vacuum cleaner to clean the basement unit from the mess of repairs and renovations. I also accept the vacuum was returned in a condition that required it to be discarded, however the tenants have failed to provide any evidence to establish the value of the vacuum and I therefore dismiss this portion of their claim.

The tenants seek compensation, in the amount of \$2,500.00 from the landlord for the threats, terrorization, use of foul language, shouting and screaming on the part of the tenant used by the tenant in the basement rental unit however, I have already determined that the tenants are entitled to compensation in the amount of \$600.00 for the loss of quiet enjoyment as a result of this behaviour.

Further, I find the tenants are seeking compensation specifically for the basement occupant's behaviour and in essence seeking the landlord to provide that compensation. If the tenants feel they were terrorized and threatened by the basement occupant they should pursue action against that occupant not the landlord. For these reasons, I dismiss this portion of the tenants claim.

In regard to the tenant's claim for \$5,500.00 primarily for the 1½ hours it took to conduct the final move out inspection. The tenants seek this compensation because they submit the landlord misused his authority and power; took advantage of the tenants because they were seniors and have disabilities; lied about repairs etc; used offensive language and intimidation; and humiliated and terrorized the tenants in front of witnesses.

As I have determined throughout this decision that the tenants are entitled to compensation for the landlords' failures to comply with the *Act* on several issues and from the tenants' own testimony that this portion of their claim is primarily for the last 1½ hours that they had interaction with the landlord I find this portion of their claim to be frivolous and unwarranted. I, therefore dismiss this portion of their claim.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit.

Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the tenants provided the landlords with their forwarding address in writing on November 4, 2013 and the landlords did not file an Application for Dispute Resolution seeking to claim against the tenants' security deposit, I find the latest the landlord should have returned the tenants' deposit, in full, was November 19, 2013.

Despite eventually returning the full amount of the deposit by only providing a partial refund by November 12, 2013 I find the landlords failed to comply with their obligations under Section 38(1) and as such the tenants are entitled to double the amount of the security deposit in accordance with Section 38(6).

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$3,964.98** comprised of \$16.00 title search; \$349.03 utilities; \$200.00 cleaning; \$1,350.00 repairs; \$900.00 loss of quiet enjoyment; \$1,100.00 double the security deposit and \$50.00 of the \$100.00 fee paid by the tenants for this application, as they were only partially successful.

This order must be served on the landlords. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

I note that the tenants have received cheques from the landlord totalling \$702.21. As long as the tenant is still able to negotiate these cheques I note that these amounts must be considered as partial satisfaction of the above order.

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: February 18, 2013

Residential Tenancy Branch