



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNSD, O, OLC, PSF, RP, RR

Introduction and Preliminary Matter

This hearing convened as a result of the Tenants' Application for Dispute Resolution filed June 1, 2015.

The Tenants confirmed the tenancy had ended, as such they no longer required an Order that the Landlord comply with the *Act* or tenancy agreement, make repairs, or provide services. Further, the Tenants confirmed the Landlord returned the security deposit. Accordingly, the only relief sought on the Tenants' application left to be decided was the Tenants' request for a Monetary Order for money owed or for compensation for damage or loss under the *Act*, *Regulation*, or tenancy agreement.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to compensation money owed or for compensation for damage or loss under the *Act*, *Regulation*, or tenancy agreement?

2. Should the Tenants recover the filing fee?

Background and Evidence

The Tenant testified that the tenancy began on December 31, 2014. Monthly rent was payable in the amount of \$1,050.00. At first the tenancy was to be for a fixed 1 year term. A few weeks into the tenancy the Tenants asked to go month to month, which was agreed to by the Landlord and at that time the parties also agreed to increase rent to \$1,100.00 per month.

The tenancy ended on June 29, 2015.

The Tenants sought monetary compensation equivalent to one month's rent: \$1,100.00, as well as the sum of \$550.00 for "having to move out early" in addition to recovery of the filing fee. A.M. testified on behalf of the Tenants and stated the following reasons for seeking one month's rent:

1. The **washing machine** did not work for three weeks in May 2015. The Tenants have a two year old child. They had to go to a laundromat and their parents to do laundry.
2. The **toilet** was "broken" in March of 2015 and never fixed during the tenancy. When I asked A.M. what she meant by broken, she clarified that 90% of the time it continually ran and she was required to lift the back cover and jiggle the chain.
3. The Landlord did not provide three **window screens** as promised. She stated that two months into the tenancy he had yet to install the screens and when he did so, he only provided two. At the end of the tenancy one window still didn't have a screen. She felt this was a safety issue for her two year old child.
4. The **front door handle**. The Tenants further stated that when the Landlord went to Mexico he told the Tenants they could email him. When she told him about the broken door handle he told the Tenants to call a third party to make the repair. The Tenant says that the front door handle was not fixed until the last month of their tenancy.
5. The **light fixtures** were old and resulted in lightbulbs "popping". A.M. says she worried about the safety of these fixtures. She also said that the Landlord promised to send an electrician but never did.

6. The **closet door** needed repair and the Landlord said he would fix it and never did.
7. When the Tenants moved into the rental it was not clean and they spent 8 hours **cleaning**. She said that they had to hire a carpet cleaner at the time they moved in.
8. The Tenants had to move out early and want compensation for ending the tenancy early. A.M. stated that they moved out as they believed the Landlord had no intention of maintaining or repairing the rental unit. From A.M.'s perspective she says they felt like an inconvenience. The Tenant stated that they hired a moving truck, and her husband had to take three days off work. She also stated that they wanted a long term tenancy and only lived there six months.

The Tenants introduced in evidence email correspondence between themselves and the Landlord, including:

- An email from the Tenants to the Landlord dated May 19, 2015 wherein the Tenants inform the Landlord about the broken washing machine. The Tenants also write that they wish to *"dismiss themselves from this property as its just been problems after problems from day one & some of those problems still haven't been taken care of and it's been 5 months now."* The Tenants also propose to pay half a month's rent for June 2015 "because of the inconvenience".
- An email from the Tenants March 10, 2015 regarding their request for window screens and an electrical repair to the garage light.
- Copies of emails between the Landlord and the Tenants dated March 10, 12, and 31, 2015 as well as April 20-22, 2015 wherein the screens are discussed. The Tenants note they wish to have screens for safety reasons due to the age of their young child.

Also introduced in evidence was a copy of the move in and move out condition inspection report.

In response to the Tenant's claims the Landlord testified as follows.

1. The Tenants informed him that the **washing machine** was broken on May 19, 2015 and it was fixed the next day.
2. The **toilet** "ran" but was never broken. In any case, he attended to fixing it whenever they called. At one time he was at the rental unit and did not notice

- it running. Introduced in evidence were copies of receipts for replacement parts which the Landlord stated confirmed he attended to the repairs.
3. The Tenants were aware that the rental unit did not have **screens** on three windows. The Landlord noted that the move in condition inspection made no mention of missing screens or any agreement by the Landlord to provide them. He provided two as a favour, not due to an obligation.
 4. The Tenants emailed him on May 19 regarding the **front door**, and he attended the next day to its repair.
 5. The Tenants advised him of the issues with the **light fixtures** and he replaced one of them. He testified that after replacing this fixture he did not hear back from the Tenants and presumed there were no further issues.
 6. The **closet door** was the bi-fold door which closed off the small area where the hot water tank was housed. The door was “rickety” but not broken, and in any case he did not believe this to be a significant issue.
 7. The rental unit was brand new, with a brand new kitchen and freshly painted. The move in condition inspection report noted the condition as “good”. The Landlord offered to **clean** the rental on January 31, 2015, and the Tenants asked to move in early. The Tenants did not clean for 8 hours. If they felt it was not to their standards it is simply because their standards are higher than that which is reasonable. In any case, the Tenants did not submit any photos which would support their claim that they had to clean the rental unit before moving in.
 8. The Tenants did not wish to have a fixed term tenancy and asked to go month to month. As well, to his knowledge they wanted out of the rental unit as her husband had lost his job and they needed to relocate.

Analysis

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;

- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Tenants have the burden of proof to prove their claim.

Washing machine

The Tenants claim they were without a washing machine for three weeks. They stated that they called the Landlord's daughter while he was on holidays regarding the broken washing machine and that he did not repair it until he returned.

In response, the Landlord stated that he asked them to email him while he was away as he would not have cell phone reception. He further testifies that when he received their email, he attended to this repair immediately.

I accept the Landlord's evidence that he asked the Tenants to email him while he was away and that when he received their email he tended to the repair.

Further, I note that the Tenants failed to provide any supporting evidence as to the value of their loss from having a broken washing machine, such as receipts for laundromat services.

In consideration of the above, and on the balance of probabilities, I find that the Tenants have failed to meet the burden of proving that they should be compensated for this alleged loss.

Toilet

The Tenants claimed that the toilet was "broken" in that it ran 90% of the time. The Landlord conceded that he attempted to repair the toilet on two occasions, but that it continued to run. The receipts provided by the Landlord confirm that this was an ongoing issue.

I accept the Tenants' claim that an improperly functioning toilet is an inconvenience. For this disruption I award them the nominal sum of **\$100.00**.

Window Screens

The Tenants allege that the Landlord promised to install window screens for all opening windows. No mention of these promised screens is made on the move in Condition Inspection Report. While the Tenants clearly communicated with the Landlord about their wish to have all windows screened, the Landlord testified that he provided two screens as a favour, not because he felt obliged to do so.

To prove their claim, the Tenants must prove that the Landlord breached the Act, the tenancy agreement or the regulations. I am unable to find that the Landlord was obligated to provide the requested screens. Further, I find that the Tenants have failed to provide any evidence as to the value of the alleged loss associated with not having all windows screened. Accordingly, I find that the Tenants have failed to meet the burden of proving that they should be compensated for this alleged loss.

Front door handle

The Tenants alleged that the front door handle remained broken throughout their tenancy. The condition inspection report makes no mention of this handle being broken. Further, the Tenants failed to provide sufficient details as to how the handle was broken, nor did they suggest it was broken to the point of being a safety and security risk. They further testified that when the Landlord went on holidays he asked them to email him and that when they did, he suggested they have a third party attend to the repair. The Tenants failed to advise why they did not take the Landlords suggestions and attend to the repair and seek compensation thereafter.

I find that the Tenants have failed to meet the burden of proving that they suffered a loss as a result of the alleged broken door handle; accordingly, their request for compensation in this regard is dismissed.

Light Fixtures

The Tenants allege that the light fixtures cause the lightbulbs to "pop". The Landlord responded that he tended to the requested repairs and did not hear anything further from the Tenants. The Tenants failed to provide any evidence of the alleged loss associated with these light fixtures, such as receipts for light bulb purchases.

I find that the Tenants have failed to meet the burden of proving that they suffered a loss as a result of the alleged faulty light fixtures and accordingly, their request for compensation in this regard is dismissed.

Closet Door

The Tenants allege that the closet door was broken during the entirety of their tenancy. The condition inspection report makes no mention of this broken door. In any case, the Landlord testified that it was a door which closed off the room where the hot water tank was located and that it was not broken but simply “rickety”. The Tenants did not dispute the Landlord’s submissions in this regard.

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. In this case, I find that the Tenants have failed to prove they suffered a loss from the alleged broken closet door and as such their request for compensation in this regard is dismissed.

When I asked the Tenants to clarify the grounds for their monetary claim, A.M. testified that they felt entitled to this compensation as the Landlord did not attend to repairs, they had to clean the rental unit and they had to “move out early”.

The Tenants failed to provide any evidence of the condition of the rental unit to support their claim for compensation for 8 hours of cleaning of the rental. The move in Condition Inspection Report makes no mention of the rental unit requiring cleaning. Section 21 of the Residential Tenancy Regulation provides as follows:

Evidentiary weight of a condition inspection report

- 21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Without supporting evidence, I am unable to find that the condition of the rental unit necessitated 8 hours of cleaning. I also note that the Tenants do not appear to have asked the Landlord for compensation, or a rent reduction at the time the alleged cleaning occurred. Presumably, had they spent 8 hours cleaning they would have brought this to the Landlord’s attention at the time.

The Tenants confirmed that when offered a fixed term tenancy, they asked to go month to month. This is incongruous with their claim for compensation as they “had to move out early”. Had they wished to have a longer term tenancy, the option of a fixed one year term was available to them. Accordingly, I dismiss their claim for compensation for having to move out early.

In total, I award the Tenants the nominal sum of \$100.00 for the inconvenience of having a malfunctioning toilet during their six month tenancy. The Tenants are awarded a Monetary Order for this amount and must serve the Order on the Landlord. Should the Landlord fail to pay, the Tenants may file this Order in the Provincial Court (Small Claims Division) and enforce the Order as an Order of that Court.

Conclusion

The Tenants are awarded the sum of **\$150.00** including \$100.00 for the inconvenience of having a malfunctioning toilet in addition to the filing fee.

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: August 24, 2015

Residential Tenancy Branch

