



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, CNL, CNC, FF, DRI, OLC, RP, LRE, RR, O

Introduction

This hearing addressed the tenants' application pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- cancellation of a 2 Month Notice to End Tenancy for Landlord's Use, ("2 Month Notice") pursuant to section 49;
- cancellation of a 1 Month Notice to End Tenancy For Cause ("1 Month Notice"), pursuant to section 47;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72;
- an order regarding a disputed additional rent increase pursuant to section 43;
- order the landlord to comply with the *Act*, regulations or tenancy agreement, pursuant to section 62;
- an order for the landlord to make repairs to the unit, site or property, pursuant to section 33;
- order the landlord to suspend or set conditions on the landlord's right to enter the rental unit, pursuant to section 70; and
- authorization for the tenant to reduce rent for repairs, services or facilities agreed upon but no provided, pursuant to section 65.

The tenants and landlord DM (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenants' application for dispute resolution, and evidence package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application, and evidence package.

Preliminary Issue – Sever Tenants' Application

Rule 2.3 of the RTB *Rules of Procedure* states that claims made in an application must be related to each other and that an Arbitrator has discretion to dismiss unrelated claims with or without leave to reapply. I advised both parties at the outset of the hearing that the central and most important issue for this hearing was whether this tenancy would end pursuant to the landlord's 1 Month Notice or 2 Month Notice and if there was enough time to hear the tenant's remaining claims, I would hear them. During the hearing I determined there was enough time to hear evidence on the damage claim and advised the parties. The parties provided testimony and presented their evidence in relation to the damage claim. At the end of the hearing, I advised both parties that there was not enough time to hear the tenant's remaining claims, as 90 minutes had already expired in the hearing. I have addressed the remainder of the tenants' claims in the analysis and conclusion sections of this decision, below.

Preliminary Issue – Amendment of Tenant's Application

The tenants confirmed that they wished to amend the tenants' application to increase the \$5,000.00 monetary order they were seeking to \$6,557.11. The landlord agreed to the requested amendment. Based on the landlords agreement and in accordance with section 64(3)(c) of the *Act*, I amend the tenants application to increase the monetary claim to \$6,557.11 total.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for money owed or compensation for damage or loss?

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The parties testified that this tenancy began on December 7, 2013 on a fixed term until December 31, 2014 at which time the tenancy continued on a month-to-month basis. As per the written tenancy agreement, rent in the amount of \$1,600.00 was payable on the first of each month. The parties testified and agreed that a few months into the

tenancy, as per a verbal agreement, rent became payable on the 19th of each month. The parties further testified and agreed that approximately five to six months ago, again as per a verbal agreement, rent became payable on the 27th of each month. The tenants remitted an \$800.00 security deposit at the start of the tenancy. The tenants continue to reside in the rental unit.

On January 28, 2016 the tenants experienced a flood in the kitchen as a result of a detached hose from the dishwasher. The tenants disconnected the dishwasher and contacted the landlord this same date to report the issue. On February 25, 2016 the landlord paid her insurance deductible and repair work commenced on February 29, 2016. In order to repair the damage, the lower kitchen cabinets and two layers of kitchen flooring were removed. The entire contents of the lower cabinets in addition to kitchen table and chairs had to be moved and stored in the living room. The lower kitchen cabinets were put back and kitchen flooring replaced between April 25 and April 27, 2016. An operating dishwasher was installed May 11, 2016 which completed the repair work needed.

Monetary Compensation

The tenants seek a monetary order of \$6,557.11 in compensation.

\$1,200.00 Rent Abatement

The tenants testified that because kitchen furniture and lower cabinet items had to be relocated to the living room, they lost the use of their living room and dining room during the repair work. The tenants found it difficult to use the kitchen due the absence of the dishwasher, lower cabinets and relocation of stored kitchen items. The tenants testified that the fridge was moved within the kitchen and as a result the water line was disconnected and never reconnected. The tenants maintained use of the fridge but lost use of the water and ice feature of the fridge. The tenants testified that because the stove had to be moved to accommodate the floor removal and replacement they lost use of their stove for two days. During the repair work, the tenants contacted the landlord and requested money to compensate them for their loss of use and inconvenience. It is the tenants' position that the landlord agreed to reimburse 50% of the affected months' rent but instead reimbursed only 25%. The tenants are seeking the remainder 25% in the amount of \$1,200.00.

\$800.00 Loss of Use for April

The tenants seek an additional \$800.00 to compensate them for their loss of enjoyment over the Easter holidays. Due to the relocation of their dining room table, absence of lower kitchen cabinets and relocation of lower cabinet items to the living room, they

were unable to host their regular Easter dinner. The tenants based the \$800.00 on a 50% reduction of April's rent.

\$3,200 Loss of Use for May & June

The tenants seek \$3,200.00 in compensation for the loss of quiet enjoyment, stress, headaches, stomach aches, sleepless nights and anguish as a result of the landlord's eviction notices and harassment. The tenants calculated this amount based on reimbursement of May and June rent.

\$300.00 Food Expenses

The tenants seek \$300.00 in compensation for food expenses. The tenants' state they were without a full kitchen for at least two days because of the workers and consequently they had to eat out. During the restoration of the kitchen, the tenants could not make certain meals. The tenants have not submitted receipts for food expenses.

\$20.70 Electricity Costs

Although the tenants initially sought \$50.00 in electricity costs for the extra electricity utilized during the restoration time, in the hearing they agreed to the reduced amount of \$20.70 as evidenced by the electricity bill produced by the landlord.

\$331.41 Miscellaneous Costs

The tenants seek \$4.50 in long distance calls made to the restoration contractor, \$22.21 for gas and parking for Residential Tenancy Branch visit, \$192.00 for loss of income to attend arbitration hearing, and \$12.70 for staples and paper.

\$60.00 Dryer Duct Cleaning

The tenants testified that in October of 2014 they cleaned the dryer duct vent and are seeking \$60.00 to compensate them for two hours of time. The tenants acknowledged that the landlord did not request this service.

\$460.00 Stove Replacement

The tenants testified that over a year ago, their oven stopped working and the stove had to be replaced. The tenants paid \$150.00 for a replacement stove and at that time the landlord deducted this amount from their rent. The tenants removed the stove and installed the replacement stove themselves. The tenants are now seeking \$400.00 in compensation. They state they were without a stove for a week. The tenants seek an additional \$60.00 for the removal and installation of the stove. They calculated this task took two hours and their time was worth \$30.00 per hour.

\$30.00 Ceiling Fan Duct Cleaning

The tenants estimate that sometime last year they cleaned the ceiling fan duct work and now seek compensation in the amount of \$30.00 for one hour of time.

\$65.00 Repair and Loss of Use Toilet

The tenants estimate that in May of last year they replaced the seal on the ensuite toilet and are now seeking \$45.00 for an hour and half of their time. They stated that the uneven tile floor led to the repair and lengthy time it took to conduct the repair. They state they were a week without a toilet and are seeking \$20.00 for this loss. The tenants testified that the rental unit contains three bathrooms.

\$100.00 Filing Fee

The tenants seek to recover the \$100.00 filing fee paid.

The landlord testified that prior to the dishwasher issue; the landlord and tenants were on friendly terms. The restoration of the rental unit led to a dispute over what constituted appropriate compensation. It is the landlord's position that she never agreed to 50% off all rent, she agreed to speak to her insurance provider and provide some sort of compensation. The landlord and insurance provider agreed to compensate the tenants 25% rent for the duration of the restoration. In total, between April 12 and April 18, 2016 the landlord paid \$1,200.00 in compensation to the tenants. The landlord is agreeable to compensate the tenant \$20.70 in utilities used during the restoration period. The landlord stated that in regards to the other repairs the tenants are now claiming compensation to, she did not have notice of these repairs and did not authorize them.

Notice to End Tenancy

2 Month Notice

On April 19, 2016 the landlord issued the 2 Month Notice, which indicated that the landlord had all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that required the rental unit to be vacant. The notice indicated an effective move-out date of June 30, 2016.

The landlord testified that she had plans to sell the rental unit for some time and after learning the tenants would not be purchasing the rental unit she set about preparing the unit for sale. She issued the 2 Month Notice with plans to repair the following; kitchen cupboard refacing or replacement, upstairs and stair carpet replacement, interior painting, plumbing and floor in bathroom ensuite, ceiling above fridge and 2 exterior door replacements.

The tenants testified that the 2 Month Notice was issued in response to the ongoing dispute about compensation between themselves and the landlord. Further, the tenants testified that the repair work the landlord sought was purely cosmetic and did not require vacancy of the rental unit.

1 Month Notice

The landlord issued a 1 Month Notice on April 22, 2016 which required the tenants to vacate the rental unit by May 31, 2016. The 1 Month Notice indicated that the tenant or person permitted on the property by the tenant had significantly interfered with or unreasonable disturbed another occupant or the landlord. On two separate occasions the landlord scheduled inspections of the rental unit and was denied entrance each time. On April 19, 2016 the landlord's agent posted a 24 hour notice to the tenants' door in response to the tenants request to repair the bathroom ensuite floor and to determine the repairs and estimate of repairs needed to prepare the rental unit for sale. On April 20, 2016 the tenants only allowed insurance repairs to be completed and did not allow further inspection of the rental unit at this time. On this same date, April 20, 2016, the landlord's agent posted a second 24 hour notice of entry to the tenants' door. The tenants advised the landlord that this notice would take effect three days' later because it was posted and not hand delivered. In response, the landlord's agent personally served the tenants a 24 hour notice on April 21, 2016. The landlord was denied entry to the home on April 22, 2016.

The tenants confirm receipt of the first 24 hour notice posted to their door on April 19, 2016. The tenants agreed that on April 20, 2016 they only allowed repairs in relation to the restoration work and did not let any further inspection take place. The tenants stated they were not home on April 22, 2016 and had advised the landlord prior to the inspection they would not be granted entry this day.

Analysis

Monetary Compensation

Section 28 of the *Act* establishes a tenants entitlement to quiet enjoyment which include 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 and use of common areas for reasonable and lawful purposes, free from significant interference.

Section 32 of the *Act* requires a landlord to 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 to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

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 on a balance of probabilities. To prove a loss, the tenant must satisfy the following four elements:

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 tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The tenants claim for monetary compensation in the amount of \$1,200.00 for rent from March to May 2016, \$800.00 for April rent, and \$3,200.00 for May and June rent. Liability for this amount is governed by section 65(1)(f) of the *Act*.

Section 65(1)(f) of the *Act* allows me to issue an order to reduce past or future rent by an amount equivalent to a reduction in the value of a tenancy agreement. In this case, I find that as a result of breach of the tenant's right to quiet enjoyment pursuant to section 28 and the breach of the landlord's obligation to provide a rental unit that complies with section 32(1) of the *Act*, the value of the tenancy agreement was reduced. For the purposes of section 65(1)(f) of the *Act*, it does not matter whether or not the landlord was at fault. Rather, the focus is on whether the rental unit provided under the tenancy agreement was substantially the agreement that the landlord agreed to provide. In this case, the leak in the kitchen caused a material devaluation in the tenancy agreement.

Residential Tenancy Policy Guideline, "6. *Right to Quiet Enjoyment*" provides me with guidance in determining the amount of the reduction in value. The Policy establishes that I should take into consideration the seriousness of the situation and the length of time over which the situation has persisted. In this case, the nature of the situation was serious. The water leak was a persistent issue from January 28, 2016 the day the dishwasher leak occurred to May 11, 2016 the day the dishwasher was replaced. The kitchen and living room are main areas which are more integral to a rental unit. As a result of the leak, the tenants' lower kitchen cabinets had to be removed February 29, 2016 and stored in the living room, resulting in diminished functionality of those areas

until the cabinets were replaced on April 27, 2016. The tenants did not have access to an automated dishwasher for the duration of the restoration and lost temporary use of the stove. However, I do not accept the tenants' submission that the value of the rental unit was reduced by 50%, as they were still able to use large portions of the rental unit.

In this situation, the assessment of damages is not a precise science; it is not even a calculation. With consideration of the objective value of the areas impacted, the nature of water damage, and the duration of the loss, I value the diminishment of the tenancy as 25%. I find that the tenancy was devalued over the period from January 28, 2016 to May 11, 2016, I find that the tenants are entitled to a past rent abatement in the amount of \$13.17 for each of the 104 affected days based on rent being \$1,600.00 per month and a daily rental rate of \$52.66. I consider this amount reasonable given the impact that the leak had on the tenants.

In regards to the tenants claim for reimbursement of food of \$300.00 total, I find the tenants lost the use of their stove for two days due to the restoration but had access to cooking appliances for the remainder of the restoration period. The tenants did not provide receipts for restaurant expenses they incurred during this time. For these reasons I do not accept that the tenants are entitled to \$300.00 and award the tenants a nominal award of \$50.00 for each of the two days they were without a stove during the restoration period.

As the parties are agreeable to the \$20.70 incurred in electricity costs, I award the tenants \$20.70 for electricity.

I dismiss the tenants' claim of \$4.50 in long distance calls made to the restoration contractor, \$22.21 for gas and parking for Residential Tenancy Branch visit, \$192.00 for loss of income to attend arbitration hearing, and \$12.70 for staples and paper as the only hearing-related costs recoverable under section 72 of the *Act* are for filing fees.

I dismiss the tenants remaining monetary claims including \$60.00 for dryer duct cleaning, \$460.00 stove replacement costs, \$30.00 ceiling fan duct cleaning, \$65.00 repair and loss of use of toilet. I find these claims were made in an attempt to inflate the monetary amount and were not a direct result of the dishwasher issue. Further, the tenants provided vague dates and no receipts or work orders for the repair work conducted.

As the tenants were mainly successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for the application.

In total, I find the tenants are entitled to \$1,369.68 in rent abatement plus the \$100.00 in food expenses plus \$20.70 in electricity, plus the \$100.00 filing fee less the \$1,200.00 already paid by the landlord for a total of \$390.38.

Notice to End Tenancy

2 Month Notice

Section 44 of the *Act* allows a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenants questioned the good faith of the landlord suggesting the 2 Month Notice was a direct result of the ongoing dispute over compensation for the dishwasher issue. When the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to use the rental unit for the purposes stated on the 2 Month Notice. The landlord testified that after learning the tenants would not be purchasing the rental property she determined she needed to sell the property. The landlord did not specify how or when she first learned the tenants would not be purchasing property. The landlord submitted emails between the tenants and landlord to support her position that the tenants did not intend to purchase the rental unit. The landlord indicated that these emails were exchanged after the 2 Month Notice was issued. Based on the timing of the 2 Month Notice and email exchanges, I find it more probable that the landlord sought to end the tenancy on the basis of the ongoing compensation dispute over that of the landlords need to sell.

Based on these reasons I find the landlord has acted in bad faith in issuing the 2 Month Notice. Accordingly, I uphold the tenants' application to cancel the 2 Month Notice.

1 Month Notice

Under section 47 of the *Act*, a landlord may end a tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. The onus is on the landlord to prove the significant interference or unreasonable disturbance took place by the tenant or person permitted on the property by the tenant.

Section 44 of the *Act* establishes that a landlord may enter a rental unit with 24 hour written notice that includes the purpose of entering and date and time of entry. As per the Residential Tenancy Policy Guideline, "7. Locks and Access" where a valid notice

has been issued by the landlord, the tenant is not required to be present at the time of entry.

The landlord provided evidence in the form of testimony and a written letter from the contactor regarding denied entry after inspection notice was given. The tenants acknowledged entry was denied, but reasoned it was because they were not home.

Based on the landlords testimony I find the notice of inspection was valid and further find the tenants refusal to allow entry to the landlord or landlord's agent constitutes a significant interference to the landlord of the rental building. Therefore, I dismiss the tenant's application to cancel the 1 Month Notice.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

As the 1 Month Notice complies in form and content and as the tenants application has been dismissed I find that the landlord is entitled to an order of possession. I therefore grant an order of possession to the landlord effective June 30, 2016 at 1:00 p.m.

Conclusion

I issue a monetary order in the tenants favour in the amount of \$390.38 against the landlord.

The tenants' application to cancel the 2 Month Notice is upheld.

The tenants' application to cancel the 1 Month Notice is dismissed.

An order of possession is granted to the landlord effective June 30, 2016 at 1:00 p.m.

The tenants' application for an order regarding a disputed additional rent increase is dismissed with leave to reapply.

The tenants' application for an order the landlord to comply with the *Act*, regulations or tenancy agreement is dismissed with leave to reapply.

The tenants' application for the landlord to make repairs to the unit, site or property is dismissed with leave to reapply

The tenants' application to order the landlord to suspend or set conditions on the landlord's right to enter the rental unit is dismissed with leave to reapply

The tenants' application to reduce rent for repairs, services or facilities agreed upon but no provided is dismissed with 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: June 20, 2016

Residential Tenancy Branch