



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants, male and female, and the two landlords, male and female, attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 94 minutes in order to allow both parties to fully present their submissions. I note that the tenants used approximately 70 minutes of hearing time to present their submissions.

The landlords confirmed receipt of the tenants' application for dispute resolution hearing package ("Application") and the tenants confirmed receipt of the landlords' written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' Application and the tenants were duly served with the landlords' written evidence package.

Issues to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2015, for a fixed term of six months. The tenants vacated the rental unit on January 30, 2016, which was also the date that the security deposit of \$675.00 was returned to them by the landlords. Monthly rent in the amount of \$1,350.00 was payable on the first day of each month. Both parties signed a written tenancy agreement and a copy was provided for this hearing. The rental unit is referred to as the "little house" on a seven-acre property. The landlords and other tenants live on the same property in different units.

The tenants seek a monetary order of \$14,724.88 including the \$100.00 filing fee. The landlords dispute the tenants' entire monetary claim.

The female tenant testified at length regarding her ongoing issues primarily with the female landlord. The female tenant noted that the female landlord would frequently stand in the common shared driveway and stare at the tenants through their kitchen window, knowing that the tenants could see her, and invading the tenants' privacy. The female tenant first testified that the female landlord would stare at her through the kitchen window. She later changed her testimony to state that even if the female landlord could not see into her kitchen window, she knew that the female tenant could see the female landlord from inside the kitchen. When questioned about this, the female tenant then reverted to her original testimony.

The female tenant stated that she had numerous verbal altercations with the female landlord, whereby both parties would swear at each other and argue over various issues. The female tenant noted that the female landlord would bring in numerous visitors onto the rental property, including one time when the microwave was being installed. The tenants provided video footage of an altercation between the female tenant, female landlord and a male friend of the landlord.

The tenants noted that they had to move their horse from the rental property because the landlords would allow numerous visitors, riders and boarders onto the property and refused to adhere to any scheduled riding times. Both male landlords agreed that they met in person to discuss the above ongoing issues between their wives, and that both parties agreed that the tenancy should end. The tenants claimed that the male landlord advised the male tenant during the above meeting that the tenants had until June 2016

to vacate the rental unit, but that they were forced to move earlier due to the landlords' harassment. The male landlord denied the above allegations. The tenants explained that because they had to vacate early, they are currently staying in a temporary location until they are able to move to a more permanent location later.

The landlords claimed that they, along with other tenants on the rental property, used the common driveway, which was a shared space. The landlords denied staring into the tenants' kitchen window or invading their privacy. The landlords provided coloured photographs to show that they could not see into the tenants' kitchen window, emphasizing that the glass was tinted and at the height of the driveway, they could not see into the kitchen. The landlords said that the tenants harassed them and expected exclusive use of the common driveway and the riding areas. The landlords said that this is a large rental property, where multiple parties share the same acreage and all parties have the right to use these shared spaces. The landlords said that they did not agree to scheduled riding times because there were multiple parties using the riding areas.

The tenants seek \$1,000.00 for being denied access to the rental property on December 5, 2015. The tenants were unable to explain how they arrived at the above amount. The female tenant noted that the landlords intentionally decoded the gate allowing vehicle entrance on to the rental property in order to deny the tenants access for at least a couple of hours. The landlords denied this allegation. The female tenant testified that it was pouring rain, that she was unable to enter the rental property with her car, and that she had to walk on to the property instead and enter the rental unit carrying her groceries. The female tenant noted that she did not retrieve the remote control for the entrance gate because it was located in the landlords' barn, which is not on the tenants' property. The female tenant claimed that she had a verbal altercation with the female landlord during the above incident.

The landlords claimed that the tenants were only unable to use the gate entrance for about 15 minutes on December 5, 2015. The landlords noted that the tenants were still able to access their rental unit by foot, as testified to by the female tenant. They said that there were multiple electrical issues with the electronic remote control from November 11 to December 19, 2015. The landlords provided a letter, dated March 15, 2016, from the gate installation company, noting the ongoing malfunction issues during the above time period due to issues with the electronic gate, control pad and openers. The landlords also provided letters from other tenants on the same rental property indicating that they also had issues with the entrance gate and that they had discussed it with the landlords.

The tenants seek \$889.88 for future moving costs that they have not yet incurred, when they move from their temporary location to a more permanent location. The tenants provided an invoice for the above amount for costs they already incurred to move from the rental unit to their temporary location and said that the future costs are an estimate.

The tenants seek \$150.00 for moving in early to their temporary location. They provided a receipt, which they said was from their new landlord, for rent paid from January 26 to 31, 2016 in the above amount. The tenants redacted the name of their new landlord from the receipt. The tenants said that they vacated the rental unit on January 26, 2016 and only returned to clean the rental unit and give back the keys to the landlord.

The tenants seek \$1,900.00 for being “forced” to relocate to their temporary location by the landlords. The tenants said that rent at their temporary location is approximately \$950.00 per month and they are seeking reimbursement of two months. The tenants produced a cheque, dated February 1, 2016, in the amount of \$950.00, which they said was given to their new landlord. The tenants redacted the name of their new landlord from the cheque.

The tenants seek \$285.00 for a loss of wages for the male tenant, due to taking time off from work in order to move early on January 26, 2016. The tenants produced a letter, dated February 22, 2016, from the male tenant’s employer, regarding the above time off and loss of wages.

The tenants seek \$5,000.00 for mental anguish and harassment due to the landlords’ behaviour during this tenancy. The tenants were unable to explain how they arrived at the above amount.

The tenants seek \$5,400.00 for a loss of quiet enjoyment at the rental unit, due to the landlords’ behaviour during this tenancy. The tenants said that this is based on four months of rent at \$1,350.00 per month.

Analysis

Overall, I found the two landlords to be more credible and forthright witnesses than the two tenants. The landlords submitted character reference letters from various individuals. I found the landlords’ testimony to be consistent with documentary evidence to support it, while the tenants provided conflicting testimony that continued to change throughout the hearing. The majority of the tenants’ written evidence was their own written account of the events that transpired during this tenancy, rather than

independent documentary evidence from other sources. Accordingly, where there was a conflict, I preferred the testimony of the landlords over the tenants.

Monetary Claim

Section 28 of the *Act* deals with the tenants' right to quiet enjoyment:

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

As per section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlords 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 tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the tenants' claim of \$1,000.00 for being unable to access the main entrance gate at the rental property on December 5, 2015. I find that the access issue was limited in time and due to an ongoing electronic malfunctioning of the gate, control pad and openers. I find that the landlords provided documentary proof from the gate installer that the landlords repeatedly reported the above problems as soon as they were notified, that the problems were ongoing from November to December 2015, and that the issues were due to electronic malfunctioning. Accordingly, I find that the landlords made reasonable efforts to rectify the issues that were outside of their control and that they did not deliberately deny access to the tenants. I also find that the tenants still had access to their rental unit, by foot.

I dismiss the remainder of the tenants' application for \$13,624.88. The tenants were unable to justify many of the above amounts for mental anguish, stress and harassment. I also find that the tenants did not provide any documentary evidence that they suffered any of the above mental medical conditions, sought treatment or consumed medications, due to the landlords' behaviour.

I find that the tenants vacated the rental unit of their own choice, they were not "forced" by the landlords to leave and no notices of eviction were given to them. Accordingly, the tenants' moving costs and time taken off work are their own costs to bear. I find that the tenants' own video footage shows that they were invading the privacy of the female landlord by videotaping her and her guest without consent and that the female tenant was provoking confrontation with this recording and her accompanying comments. The female landlord and her guest were attempting to ameliorate the situation but the female tenant continued to provoke the situation. Further, I find that the landlords' use of the common driveway was legitimate, that the tenants had no right to attempt to restrict the landlords' or other parties' use of the driveway or the riding areas, and the landlords were not attempting to breach the tenants' privacy or look into their kitchen window.

As the tenants were wholly unsuccessful in this Application, I find that they are not entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

The tenants' entire 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 25, 2016

Residential Tenancy Branch