



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MND MNDC FF

Introduction:

Only the tenants attended the hearing and gave sworn testimony. They said that they served the Application for Dispute Resolution by registered mail on the landlord (number provided). I find that the landlord received the Application on May 31, 2017 and is served with the Application according to section 89 of the Act. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 28, 32, 33 and 67 for damages suffered due to lack of maintenance by the landlord and for compensation for significant disturbance of their reasonable enjoyment contrary to section 28;
- b) Compensation for overpaid utilities due to unfair allocation;
- c) An Order that the landlord do emergency repairs; and
- d) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the tenant proved on a balance of probabilities that they have suffered damage and loss due to act or neglect of the landlord? If so, to how much compensation have they proved entitlement? Have they proved they have suffered financial loss and that there is an unfair allocation of utilities? Are they entitled to recover compensation for loss of peaceful enjoyment and to recover the filing fee?

Background and Evidence:

The landlord did not attend the hearing although served with the Application/Notice of Hearing. The tenant attended and was given opportunity to be heard, to present evidence and to make submissions. The tenant stated that the tenancy commenced October 1, 2016 on a fixed term to September 30, 2017 and then reverts to month to month. Monthly rent is shown on the lease as \$3000 and a security deposit of \$1500 was paid. In the previous hearing to which the tenants referred, the arbitrator found that addendums to the lease provided the landlord would reimburse the tenants \$500 a month for the first twelve months so the rent was really \$2500 a month. Then in

February 2017, the fifth addendum provided that the tenants' rent was further reduced by \$500 a month. The landlord had a system of collecting the \$3000 rent from the tenants by post dated cheques and then reimbursing them for the difference.

I note the arbitrator said the landlord should abide by the addendum that states the rent is \$2500 a month and he should return any postdated cheques for \$3000 that he holds. The tenants will then provide new cheques for \$2500 a month. She noted the landlord was still to provide the further \$500 rebate agreed to in the fifth addendum. In the hearing, the tenants said they have provided post dated cheques for \$2500 a month but the landlord did not return their post dated cheques for \$3000 a month. They ask he be ordered to do so.

The tenants claim compensation today as follows:

- \$1066.12 refund for unfair allocation of BC Hydro bills.
- \$70.59 for unfair allocation of Fortis gas bills.
- \$30 for a service call to check on a broken washer. The landlord agreed to the tenants having this checked. The landlord bought a new one as the repair estimate was \$600.
- \$1000.00 for disturbance of peaceful enjoyment contrary to section 28 of the Act. They claim their quiet enjoyment was significantly disturbed by
 - (1) A hole in the closet of one room which emitted bad smells since January 1, 2017. They lost the use of that room as they had to close and block the door with a towel under it.
 - (2) A broken dining room window caused by the owner's worker; complained January 2017 and landlord put a plastic cover on it in February 2017 but cold wind still leaks into the dining room
 - (3) Broken blinds in the children's room since move-in
 - (4) The steam room is broken since move in
 - (5) Two kitchen lights are broken since move-in
 - (6) The roof gutters need cleaning since April 2017 for water pours over them on the tenants' heads.
 - (7) The harassment from the basement tenant who has tried to forcibly enter to dispute the tenants' comments about the utility bills.
- \$620 refund for the time when they were on holiday and so much electric was used. The tenant pointed out that the lower tenants heat the garage from November to January and they should not. The washer and dryer are in the garage and the water pipes to service them and the lower tenant contended it was necessary to heat the garage to keep the laundry pipes from freezing. This tenant says it is not as it is Vancouver.

The tenants said that when they entered the tenancy they were told to put the utilities in their name and the bills would be split 60/40 with the basement based on head count. They argue this is unfair as the basement is primarily heated by electric and they are primarily heated by gas. They said the landlord's agent who was the downstairs tenant gave them false information when he said the bill would be about \$145 for 6 people. In reality it is much more.

The tenant provided utility bills, letters notifying the landlord of the problems, a copy of the lease without any addendums and photographs. The landlord provided no documents to dispute the claim. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove 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.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the tenant to prove on the balance of probabilities that the landlord through act or neglect violated the Act or tenancy agreement and caused them losses for which they should be compensated.

In respect to their claim for a refund of utilities, I find they freely entered into an agreement to allocate the utilities on a 60/40 split with the basement tenant and to put the bills in their name. I find they estimated their unit to be 2000 sq. ft. and the lower unit to be 1600 to 1800 sq. ft. and said there were 3 of them in the upper unit and 2 people

in the lower. There is also a double garage that is heated by electricity which they share and in the garage are the laundry facilities. Although the tenants provided many calculations to attempt to prove that the allocation was unfair, I find that a 60/40 allocation is reasonable in the circumstances. While the female tenant insisted that it was not necessary to heat the garage in winter in Vancouver, I find insufficient evidence to support this allegation. As water pipes are in the garage, I find it reasonable and logical to heat it to prevent freezing.

I further note that in the previous hearing, reference was made to various addendums where the landlord had agreed to refunds of rent. The tenant provided none of these addendums for this hearing. I take note by the latest addendum in February 2017, according to evidence in the previous hearing the tenant was granted a further rebate of rent of \$500 a month. The tenant gave no evidence of the purpose of these rebates. They may or may not have been related to the cost of utilities. I find insufficient evidence that the landlord violated the Act or tenancy agreement by suggesting an allocation of 60/40 for the utility bill. I dismiss this portion of their claim.

However, I find it is unconscionable that the landlord require the tenant to put the utility bills in their name as it is unfair to make them responsible to pay the whole bill until he has the time to reimburse them. I find the landlord must put the utility bills in his name and collect the funds from each of the tenants in accordance with the agreed split.

In respect to the tenants' claim for unreasonable disturbance of their peaceful enjoyment due to items not being repaired, I find the weight of the evidence is that the landlord has neglected to maintain the premises contrary to section 32 of the Act. I find this neglect has significantly impacted their peaceful enjoyment. I find it is the landlord's duty to protect their peaceful enjoyment according to section 28 of the Act and the landlord has failed to do so. I find they have lost the use of one room since January 1, 2017 when a hole emitting strange smells was left open in the closet. I find them entitled a rebate of rent since January 2017. I find them also entitled to a rebate for the broken window since January 2017 which causes cold air to make the dining room uncomfortable. For these two items I find a rebate of 5% a month of their already reduced rent of \$2000 is appropriate ($6 \times 5\% \times \2000 – total \$600).

I find the broken blinds allow daylight into the child's room making it difficult to sleep. I find the steam room is not functional and two kitchen lights are broken. These items have gone unrepaired since move in although the tenants have made numerous requests in writing. For this disruption of their enjoyment, I find them entitled to 2% rebate of rent for 9 months ($9 \times 2\% \times \$2000 = \360). I find the roof gutters leaking water

on their heads is a further disruption of their peaceful enjoyment so I find them entitled to a further 1% rebate of rent since April 2017 when they noticed the gutters needed cleaning. (total 3 months x 1% x \$2000 = \$60.)

I find the tenants entitled to compensation of \$30 for the service call to which the landlord agreed at the time.

In respect to harassment from the basement tenant, I find insufficient evidence that the tenants ever requested the landlord to do something about the female basement tenant. I also find that a large part of the problem appeared to be disputes concerning the utility bills. While the tenant may not enter this tenants' unit without permission, I find there were issues on both sides. I dismiss this portion of the tenants' claim.

The tenants said the landlord had sent them a letter advising them to move out at the end of their lease. They solicited my advice. I told them their lease in evidence was continued after the fixed term on a month to month basis and the landlord could not end it with a written letter. To end the tenancy, the landlord would have to serve a formal Notice to End Tenancy based on sections 46, 47 or 49 of the Act or, in the alternative, the parties might sign a Mutual Agreement to End Tenancy (which the tenants might wish to consider if they find the bills for utilities are too high).

Conclusion:

I find the tenant is entitled to a monetary order as calculated below and to recover filing fees paid for this application. I dismiss the claim of the tenants without leave to reapply for refunds of utilities.

Calculation of Monetary Award:

Hole in closet and broken window	600.00
Broken blinds, steam room and kitchen lights	360.00
Roof gutter leaks	60.00
Service call	30.00
Filing fee	100.00
Total Monetary Order to Tenants	1150.00

I HEREBY ORDER THE LANDLORD TO DO THE FOLLOWING FORTHWITH:

- 1. To put the utility bills in his own name.**
- 2. To return post dated cheques for \$3000 to the tenants**

- 3. To repair the hole in the closet, the broken window, the steam room and the kitchen lights and to replace the blinds in the child's room.**
- 4. To have the roof gutters cleaned.**

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 04, 2017

Residential Tenancy Branch