



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the cross applications pursuant to the *Residential Tenancy Act* ("Act"). The landlord applied for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-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; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The landlord acknowledged receipt of evidence submitted by the tenants. HB testified that she did not provide the tenants with her documentary evidence as she was unaware she had to. Residential Tenancy Branch Rules of Procedure addresses this issue as follows:

"Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC office in accordance with the Act or Rules 3.1, 3.2, 3.10, 3.14 and 3.15 may or may not be considered depending on whether the party can show to the

arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence. The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice."

Based on the above the landlords' documentary evidence was not considered in making this decision. The landlords indicated that they understood.

Issue to be Decided

Are the landlords entitled to a monetary award for losses arising out of this tenancy?
Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?
Are the landlords entitled to recover the filing fee for this application from the tenant?
Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?
Are the tenants entitled to a monetary award as compensation for loss or damage under the *Act*, regulation or tenancy agreement?
Are the tenants entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on June 1, 2016 and ended on January 31, 2017. HB testified that the tenants broke the lease early which was set to expire on May 31, 2017. The tenants were obligated to pay \$1750.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$875.00 security deposit. HB testified that the tenants were becoming difficult to deal with and seemed like they really wanted to move out. HB testified that the tenants made claims of mice and mould in their unit.

HB testified that each of the items was addressed when it was brought to her attention. HB testified that neither has been an issue since the tenants moved. HB testified that she has already given the tenants some compensation for the higher than normal electricity bills. HB testified that the parties had a good relationship up until early December 2016. HB testified that the tenants were constantly seeking monetary compensation for any and all issues even though it wasn't warranted. HB testified that the parties attempted to leave on amicable terms but were unsuccessful. HB testified that the tenants gave short notice to move out and seeks one month's rent for that short notice and the recovery of the filing fee.

The tenants gave the following testimony. SJ testified that despite several attempts to work with the landlords, the landlords did not want to work with the tenants. SJ testified that they only seek to be compensated for the time that the landlord was informed about the mould and that they

chose not to address it. KJ testified that since the landlords did not conduct written move in or move out condition inspection reports; the landlords have waived their right to the security deposit and that the tenants are entitled to the return of double the amount.

SJ and MJ testified that they were always trying to work with the landlord to a peaceful resolution but were constantly denied. KJ testified that the landlord acted unconscionably in having the tenants pay for the electricity for the garage even though other parties were using it. KJ testified that the landlord was aware that the garage tenants were using the power from the main home and did not address it. The tenants seek \$3218.00 for having to deal with the mice, mould and the loss of quiet enjoyment and impact on their day to day lives. The tenants also seek \$725.00 for the higher than normal electricity bills and the recovery of the filing fee.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below. This was a very contentious hearing. The relationship between the parties is an acrimonious one. I had to caution each party several times about their behavior, however the hearing proceeded and completed on this day.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. The applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Firstly I address the landlords claim and my finding as follows.

1. One Month's Rent – \$1750.00.

HB testified that the tenants did not give sufficient notice to end the tenancy. HB testified that she was told on January 3, 2017 that the tenants would be moving out on January 31, 2017. HB then changed her testimony and advised that the tenants gave notice on December 30, 2016 that they would be vacating by January 31, 2017. I find that the tenants did give sufficient notice to end the tenancy and that the landlord has not proven this claim. The landlord acknowledged that the tenants did pay the January rent. The landlord made reference that she was unable to re-rent the unit for February.

Although the landlord only briefly and vaguely alluded to loss of revenue, for absolute clarity; I have addressed the loss of revenue comment by the landlord as follows. Although the landlord did not agree to end the tenancy early, the landlord still had a duty to mitigate their losses. Based on the evidence presented, I do not accept that the landlord attempted to the extent that was reasonable, to re-rent the premises after receiving written notice of the tenant's intention to vacate the rental unit. The landlord posted an online rental advertisement for only a couple of days. I find that the landlord has not attempted to fully minimize its losses. The landlord only advertised on one website. The landlord did not reduce the rental price of the rental unit or offered a shorter fixed term lease or a month-to-month tenancy, as incentives to try to attract potential tenants. As such, I find that the landlord has failed to fully mitigate its losses under section 7(2) of the *Act*. Based on all of the above, I dismiss the claim. The landlord has not been successful in their application.

I address the tenants' claims and my findings as follows.

1. Fortis BC electric bill -\$725.00.

The tenants testified that as a result of the landlord renting out the garage, the electricity bill was more expensive than usual. The landlord testified that the higher bills were a reflection of the colder weather and that the landlord tried to compensate the tenants for the additional costs of the garage occupants. The landlord testified that they sent an e-transfer of \$219.67 to the tenants as compensation. SJ testified that the amount submitted by the tenants was an estimate and that "we have no way to confirm or calculate the amount of electricity used". Based on the tenants own acknowledgment of being unable to provide the exact amount as required under Section 67 of the *Act*, I find that no further compensation is required and that this portion of their application is dismissed.

2. Compensation for Mould and Mice - \$3218.00.

The tenants testified that they seek a full rental rebate as a result of the mice and mould issues. SJ testified that they primarily seek the rent paid from December 5, 2016 until the end of the tenancy January 31, 2017 for having to deal with the mould issue. The tenants testified that this significantly impacted their day to day living by having to place many items in large plastic garbage bags to avoid having them exposed to the mice or the mould. The tenants testified that the landlords did not act quickly enough and allowed these issues to go on for too long.

HB testified that they dealt with the issues as they were told in a timely and reasonable manner. HB testified that it seemed that the tenants were always dissatisfied with their efforts and that they kept demanding monetary compensation for every issue that arose. HB testified that the tenants left the unit messy with food exposed which would attract more mice. HB testified that the mould issue was addressed in accordance with the instructions they received from a mould remediation expert. HB testified that the tenants have exaggerated the extent of the mould and that much of the black markings that they refer to were simply dirt stains. DB testified that there

were not any water leaks in the unit. HB testified that since the tenants were moving out and that the relationship had broken down, the final mudding and painting of the new drywall was delayed to avoid further conflict. I find that the landlords responded to and addressed the issues in a reasonable and timely manner.

The tenants have failed to satisfy me that they have provided sufficient evidence to satisfy the four grounds listed above as required under section 67 of the Act, on a balance of probabilities. Based on the insufficient evidence before me, I must dismiss this portion of their application.

3. Return of the double the Security Deposit \$1750.00.

The tenants submit that since a move in or move out condition inspection report was not conducted in writing, they should be entitled to return of double the deposit regardless of the fact that the landlord filed an application seeking the retention of the deposit within 15 days of the end of tenancy.

Residential Tenancy Policy Guideline 17 addresses this issue as follows:

*A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, **retains the following rights:***

- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;*
- **to file a claim against the deposit for any monies owing for other than damage to the rental unit;***
- to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy;*
- and*
- to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

Although condition inspection reports were not conducted, the landlord still had the right to make a claim to the deposit as noted above as they were seeking one month's rent as compensation for loss of revenue. The landlord did file an application within 15 days of the end of the tenancy and therefore the doubling provision does not apply despite the landlord not being successful in their application. However, I do find that the tenants are entitled to the return of the \$875.00 security deposit.

As the tenants were only partially successful in their application they must bear the cost of the filing fee.

The landlords' application is dismissed in its entirety.

Conclusion

The tenants have established a claim for \$875.00. I grant the tenants an order under section 67 for the balance due of \$875.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlords' application is dismissed in its entirety.

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 3, 2017

Residential Tenancy Branch