



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNSD, MNDC, FF, CNC, OLC, ERP, RP, RR

Introduction

This hearing deal with applications from both the landlord and the tenants pursuant to the *Residential Tenancy Act* (the “*Act*”).

The landlord applied for:

- an Order of Possession for cause pursuant to section 55;
- a monetary order for damage and loss pursuant to section 67;
- authorization to retain the security deposit and pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee for the application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant RM (the “tenant”) primarily spoke for both co-tenants.

As both parties were in attendance I confirmed that there were no issues with service of the parties’ respective applications for dispute resolution or either party’s evidentiary materials. The parties confirmed receipt of one another’s materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of their respective applications and their respective evidence.

Issue(s) to be Decided

Should the landlord’s 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is either party entitled to a monetary award as claimed?

Should the landlord be ordered to comply with the *Act*, regulations or tenancy agreement?

Should the landlord be ordered to make repairs to the rental unit?

Are the tenants entitled to reduce the rent for repairs, services or facilities agreed upon but not provided?

Is either party entitled to recover the filing fee for this application from the other?

Background and Evidence

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/or arguments are reproduced here. The principal aspects of the parties’ respective claims and my findings around each are set out below.

The parties agreed on the following facts. This tenancy began in September, 2016. The rental unit is a detached home with the tenants occupying the main floor. There is a second basement suite which was occupied by a separate tenant when the tenancy began. The monthly rent is \$6,000.00 payable on the first. A security deposit of \$3,000.00 and a pet damage deposit of \$2,000.00 were paid to the landlord at the start of the tenancy and are still held by the landlord.

An addendum to the tenancy agreement signed by the parties provides that the tenants will be responsible for paying for the basement suite at a rate of \$800.00 when the current tenant vacates. The tenants may use the basement suite themselves or rent it to a new tenant. The tenant for the basement suite moved out shortly after the tenancy

began and the tenants have been responsible for paying a combined monthly rent in the amount of \$6,800.00 for the rental building.

The landlord issued a 1 Month Notice for Cause dated June 29, 2017. A photo of the 1 Month Notice was submitted into written evidence. The landlord selected the following as the reasons why the 1 Month Notice was issued:

- the tenant or a person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk;
- tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - Jeopardize a lawful right or interest of another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit;
- Tenant has not done required repairs to the unit;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit;
- Rental unit must be vacated to comply with a government order.

The landlord testified that the tenants are operating a commercial business from the rental building and are also renting the basement suite to short-term tenants on AirBnB. The landlord submitted photographs of the interior of the house as evidence that a business is being operated. The landlord submitted print outs from websites showing the requirement for business licenses. The landlord claims this is illegal activity that is not permitted by legislation. The landlord further stated that operating a business is prohibited in the tenancy agreement and this is a material breach.

The landlord said that the tenant does not have occupier's liability insurance in place and therefore anyone who attends on the property is placed in serious jeopardy. The landlord said that the tenant's business causes significant risk to the property as they store products in the rental building.

The landlord testified that the tenants have installed a wall in the rental unit without prior authorization. The landlord said that the installation of the wall constitutes damage to

the rental unit. The landlord submitted photographs of the wall into written evidence. The landlord gave evidence that the tenants have damaged the bedroom doors in the rental unit.

The landlord claims the amount of \$11,692.20 for the following items:

Item	Amount
Filing Fee	\$100.00
Painting	\$750.00
Add on to dissemble wall	\$520.00
Prep downstairs bedroom	\$200.00
Mileage to and from	\$55.00
Internet – boat	\$172.00
Internet – Telus	\$64.20
Loss of Rental Income	\$6,800.00
Garbage Can	\$31.00
Landlord's Time Running Around	\$800.00
Mileage	\$720.00
Miscellaneous Costs	\$1,500.00
TOTAL	\$11,712.20

I note that the total amount of the items submitted by the landlord in her monetary order worksheets does not correspond to the total amount that the landlord claims in her application.

The landlord testified that she has been forced to respond to the tenants' demands and attend at the rental unit frequently. The landlord said that she utilized internet services while on a cruise vacation, preparing materials for this hearing and was charged for those services. The landlord estimates that the rental unit will require repairs when the tenancy ends and submits the costs of estimated repairs.

The tenants claim the amount of \$16,778.44 for the following items:

Item	Amount
Emergency Plumbing Repairs	\$602.70
Towel Replacement	\$77.24
Pest Control AAA	\$204.75
Pest Control Gilpen	\$78.75
Dryer Repair	\$85.00

Loss of Use of Premises	\$6,000.00
Loss of Sub Lease Income	\$750.00
Cleaning Emergency Sewage	\$480.00
Loss of Quiet Enjoyment	\$1000.00
Continued Loss of Quite Enjoyment, Sub-lease Income from date of filing to hearing date	\$7,000.00
TOTAL	\$16,778.44

The tenant testified that on the evening of June 21, 2017 the plumbing in the basement suite began backing up and overflowing with waste. The tenants made several attempts to contact the landlord and when they were unable to get an adequate response from the landlord, arranged for a plumber to attend that night. The tenants submitted into written evidence a copy of the invoice from the plumber for the emergency work performed in the amount of \$602.70.

The tenants gave evidence that because of the landlord's inadequate and delayed response their bath towels became unusable and unrecoverable. The tenants submitted into written evidence a receipt showing the cost of replacement towels as \$77.24.

The tenant said that the bathroom in the downstairs unit remains unusable as of the date of the hearing. The tenant testified that because the basement unit does not have a functioning bathroom they are unable to rent it out to a tenant. The tenant said that the basement unit is effectively unused as they are unable to find an occupant and they are unable to use the space themselves.

The tenant testified that there are rats in the rental building and they have been an ongoing issue since January, 2017. The tenant said that because of the presence of the rats certain areas of the rental building are unusable.

The tenants submitted into written evidence numerous correspondences with the landlord regarding various repair requests made throughout the tenancy. The tenant testified that there were agreements made with the landlord that the landlord would reimburse them for costs of arranging pest control companies to attend and assess the rental building. The tenants submitted into written evidence invoices from pest control companies as evidence in support of the costs incurred.

The tenant said that the clothes dryer required repairs and as the landlord was unresponsive they arranged for the repairs to be made. The tenants claim the cost of

the repairs. The landlord testified that she was never informed of the need for repairs and believes that any malfunction is a result of the tenants using it for commercial purposes.

The tenants gave evidence that because of the landlord's failure to maintain and repair the rental building the value of the tenancy has been diminished. The tenant specifically testified that the downstairs suite is unusable without plumbing repairs. The tenant testified that there have been rats in and about the rental building since January, 2017 and the landlord has delayed taking appropriate action. The tenant said that because of the rat infestation they limit the areas of the rental building that they use. The tenant said that the landlord frequently attends at the rental unit without proper notice. The landlord takes photographs of the unit unrelated to the reason she gives for attending in the rental unit. In addition, the tenant testified that on a number of occasions they have noticed the landlord or the landlord's spouse parked across the street for an extended period of time which they find to be disconcerting.

Analysis

Given the conflicting testimony provided by the parties, where the evidence conflicted, I made a determination of credibility. I have considered the testimonies of the parties, their content and demeanor as well as whether it is consistent with the other evidence and circumstances of this tenancy.

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice.

In the present case the landlord has taken a shotgun approach by checking off multiple reasons on their 1 Month Notice. I find that both individually and cumulatively the landlord has failed to provide sufficient evidence to show that the tenancy should be terminated for the reasons selected.

The landlord testified that the tenants do not have occupiers' liability insurance in place and therefore any individual who is present on the property is placed in serious jeopardy of their health, safety and lawful rights. The landlord said that anyone who is injured on the property will have no legal recourse to recover damages because of the tenants' failure to obtain proper insurance. I do not find the landlord's argument to be persuasive. The tenants' lack of occupier's liability insurance does not affect the health or safety of occupants or put the property at any greater risk, it merely affects the tenants' exposure to liability. Even if I were to accept that the tenants are insured, something which I find that the landlord has not provided sufficient evidence to show on a balance of probabilities, I find that the lack of insurance does not create or increase risk.

I accept the parties' evidence that the tenants conduct business from the rental building. I find that the landlord has provided insufficient evidence to show that the operation of a business is an illegal activity that places the property at risk or jeopardizes the landlord's rights. The landlord has provided little evidence that the businesses being operated are done illegally. Even if that were the case illegal activity per se is not a reason for a tenancy to be ended. The onus is on the landlord to show that the illegal activity places the property at risk of damage or jeopardizes the lawful right or interest of another occupant or landlord. I find that there is insufficient evidence to show that there is any risk to the property or infringement of any person's rights. I do not find the photographs submitted into written evidence by the landlord to show that the tenants operation of their businesses create or increase risk to the property or to other occupants. I find the landlord's arguments in support of this reason to end the tenancy to not supported by any facts.

The landlord argues that the tenants have placed a partition wall in the rental unit and this constitutes extraordinary damage to the rental unit. I do not find that there is sufficient evidence to show that the erection of this divider to be anything more than cosmetic. Based on the photographs submitted by the landlord and the testimony of the parties I find that the walls installed in the rental unit do not constitute extraordinary damage. I accept the tenants' evidence that the walls are easily removable and their installation did not cause extraordinary damage to the rental unit. I do not accept the landlord's argument that the tenants should be restricted from placing the partition and dividing the rental unit interior. The tenants have a right to the rental unit under the tenancy agreement and I find the installation of the dividing wall to be an acceptable use comparable to putting up curtains or pictures on the wall.

I find there is insufficient evidence that the tenants have failed to perform required repairs to the rental unit. As stated earlier, I find the tenants are within their rights under the tenancy agreement to place the dividing partition in the rental unit. I find that there is no requirement that the tenants remove it simply because the landlord finds it objectionable. Furthermore I find the landlord's argument that there are points of damage on the interior doors that ought to be fixed by the tenants to be unreasonable and not a request that the tenant is required to comply with under the Act. The landlord retains the right to seek recovery if there are any damages to the rental unit when the tenancy ends. However, as the tenancy is ongoing I find there is no obligation that the tenants perform repairs to the rental unit.

A material term is defined in the Residential Tenancy Policy Guidelines as a term that is so important that the most trivial breach of that term gives the other party the right to end the agreement. I do not find the AirBnB activities to constitute a material term in the tenancy agreement submitted into written evidence. While I accept the evidence that the landlord has brought it up with the tenants on several occasions I find that there is insufficient evidence to show that this is a material term of the tenancy agreement signed by the parties. Even if this were a material term, I find that the landlord has failed to show on a balance of probabilities that this has not been corrected by the tenants within a reasonable time.

The landlord provided insufficient evidence in regards to the tenant providing false information to prospective tenants or purchasers of the rental unit. Similarly, the landlord provided insufficient evidence that there is a government order that requires the rental unit to be vacated. No government order was submitted into written evidence. I find that there is insufficient evidence in support of these reasons selected.

I find that both individually and cumulatively the landlord has failed to show that there is sufficient cause to support the 1 Month Notice issued. I allow the tenants' application to cancel the 1 Month Notice. The Notice is of no force or effect. This tenancy will continue until ended in accordance with the *Act*.

Section 67 of the *Act* allows me to issue a monetary award for damage or loss. 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. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that there is little evidentiary basis in support of the landlord's claim for loss. Much of the landlord's claim includes items such as mileage attending at the rental unit, the time spent attending to the duties of a landlord and internet costs incurred while the landlord was on holidays. I find that these are simply the ordinary costs incurred in the performance of the landlord's duties. As such, I do not find that these are losses that can be claimed from the tenants. I find there is insufficient evidence in support of the landlord's claim for a monetary award. The landlord has provided little documentary evidence in support of the amounts claimed, or why the items are losses attributable to the tenants. In making a claim for a monetary award the onus is upon the applicant to show on a balance of probabilities that there has been a breach of the Act, regulations or tenancy agreement which gives rise to a loss and to show evidence of the monetary amount of the loss. I find that the landlord has not met this onus to establish a claim for a monetary award. While the landlord has submitted photographs and printouts of correspondence into written evidence, I find there is little that is substantive, relevant and persuasive. Consequently, I dismiss the landlord's application for a monetary award.

The tenants claim the total amount of \$16,778.44 for the items listed above.

Section 33 of the Act describes "emergency repairs" as those repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purposes of:

- repairing major leaks in pipes or the roof,
- damage or blocked water or sewer pipes or plumbing fixtures
- the primary heating system
- damaged or defective locks that give access to the rental unit
- the electrical systems
- in prescribed circumstances, a rental unit or residential property

A tenant may have emergency repairs made when the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

Based on the evidence provided by the parties I find that the plumbing repairs arranged by the tenants fall under the definition of emergency repairs as contemplated in the *Act*. I accept the tenants' evidence that on the evening of June 21, 2017 the plumbing in the downstairs suite backed up and caused sewage to flood the suite. I find that repairing blocked plumbing constitutes emergency repairs. I accept the tenant's evidence that they made attempts to contact the landlord to have emergency repairs performed but the landlord was unresponsive. I understand that the landlord took earlier steps in regards to the plumbing in the rental building, but I find that the situation on the night in question required an active response. I find that the tenants made reasonable attempts to contact the landlord and have emergency repairs performed. Given the nature of the emergency I find that it was reasonable for the tenants to arrange for repairs after the landlord was unresponsive. When plumbing is backed up and sewage and waste are flooding a rental suite I find that it is reasonable to request action be taken within a few hours. I do not find it reasonable to wait for the next day for repairs to be made. I find, based on the written evidence submitted by the tenants, that the costs of emergency repairs that can be attributed to the incident of June 21, 2017 to be \$602.70. I find there is insufficient evidence to show that the emergency cleaning costs of \$480.00 claimed is a cost that can be claimed under section 33 of the *Act*. Accordingly, I find that the tenants are entitled to a monetary award in the amount of \$602.70 and their claims for additional amounts are dismissed.

I accept the tenant's evidence that they have incurred losses as a result of the landlord's failure to reimburse for the costs of obtaining quotes from pest control companies, repairing the dryer and the replacement of towels damaged in the basement unit. I find the tenants' evidence to be consistent with the written evidence submitted. I find the testimony given by the tenant to be forthright and in line with what how a reasonable person would behave. I found the landlord's testimony to be less persuasive and focused on matters irrelevant to the claim such as character attacks on the tenants. I accept the tenant's evidence that there was an agreement made with the landlord where the landlord would repay the tenants for the costs of repairs and pest control assessments. I find that the cost of these items to be \$445.74. Accordingly, I issue a monetary award in the tenants' favour in that amount.

The tenant makes a claim for a monetary award for loss of quiet enjoyment pursuant to section 28 of the *Act*. That section provides in part:

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;

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means a substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

The parties have testified that there was an incident on June 21, 2017 when the plumbing in the basement suite of the rental building backed up into the living areas. The tenant has said that adequate repairs have not been made as of the date of the hearing. However, the tenants gave evidence that the basement unit was not regularly utilized by the tenants themselves. The tenant testified that the ongoing rat infestation has affected their ability to enjoy their tenancy. I find the tenant provided insufficient evidence regarding the effect the rat infestation has had on the tenancy. Similarly, I find that there is insufficient evidence that the landlord's attendance at the rental unit was frequent enough that the tenant suffered a breach of their quiet enjoyment. Based on the evidence submitted, I do not find that the landlord's conduct or failure to act has had an effect that has been so significant as to be considered a breach of the tenant's right to quiet enjoyment. I dismiss the tenants' claim under this heading.

I find that the tenants' claim for loss of the use of the premises and the loss of sub lease income to be a claim for the same loss under different headings. I find it appropriate to deal with both claimed items under the heading of a claim for the loss in the value of the tenancy.

I find that the incident of plumbing damage has resulted in a loss in the value of the tenancy for tenant. Section 67 of the *Act* allows me to issue a monetary award for damage or loss. 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. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

I accept the evidence that there was a serious plumbing issue on June 21, 2017. I accept the tenant's evidence that the bathroom of the basement suite has not been repaired as at the date of the hearing. The tenants have given evidence that despite the plumbing issue they are able to continue to reside in the main level of the rental building. The tenant testified that the lack of a functional bathroom in the basement suite prevents them from renting out the suite whether it is for a short or long-term tenancy.

I find that the rental unit was affected by the plumbing damage but not to such an extent that the tenant was unable to reside in the main unit or significantly affect their daily life. I find that the loss was confined to the basement suite which the tenant rented out to tenants. I accept the evidence of the tenants that they are unable to rent out the suite without a functioning bathroom. Under these circumstances, I find that the tenants are entitled to a monetary award that reflects the loss in the value of the tenancy agreement. Based on the foregoing, I find that an appropriate amount of damages for the tenants' loss in the value of the tenancy is \$1,800.00 as at the date of the hearing.

Section 65 (1)(f) of the *Act* also allows me to reduce the future rent by an amount equivalent to the reduction in value of a tenancy agreement. I find that the tenants are unable to use the basement suite as it does not have a functioning bathroom. Based on the tenancy agreement I find that the value of the basement suite to be \$800.00. I accept the testimony of the tenant that the basement suite bathroom remains out of order. On the basis of the evidence of the parties I determine that an order that the landlord repair the bathroom in the basement suite so that it is functional and free of issues to be appropriate.

I order that the repairs be completed by September 30, 2017.

I order that the monthly rent for this tenancy from September, 2017 and onwards, is reduced by \$800.00 from \$6,800.00 to \$6,000.00. I order that the tenants' rent will return to the normal monthly amount required by the tenancy agreement and the *Act* in the month following the completion of these repairs.

Should a dispute arise as to the extent to which the repairs ordered have been completed, I order that the rent remain at the previous month's reduced rent until such time as the landlord has applied for and obtained an order from an arbitrator appointed under the *Act* as to whether the repairs have been completed in accordance with this decision. The landlord is at liberty to apply for a determination as to the landlord's compliance with this decision once the landlord has undertaken the repairs ordered.

As this tenancy is ongoing I find it premature to make a determination regarding the disposition of the security deposit for this tenancy. The tenants' application for a return of their security deposit is dismissed with leave to reapply when the tenancy is ended.

I find there is insufficient evidence that the landlord has breached the *Act*, regulations or tenancy agreement requiring an order that they comply. As such I decline to issue a specific order that the landlord comply with the *Act*, regulations or tenancy agreement. However, I will note that the *Act* sets out the tenant's rights to quiet enjoyment as well as the restrictions on a landlord's right to enter a rental unit and the parties would be wise to conduct themselves in accordance with the provisions of the *Act*.

As I find that the tenants' application has merit the tenants are entitled to recover the \$100.00 filing fee of this application from the landlord.

Conclusion

The landlord's application is dismissed. The landlord's 1 Month Notice dated June 29, 2017 is cancelled and of no further force or effect.

This tenancy will continue until ended in accordance with the *Act*.

I issue a monetary Order in the tenants' favour in the amount of \$2,948.44 under the following terms:

Item	Amount
Emergency Plumbing Repairs	\$602.70
Losses Incurred by Tenants	\$445.74
Loss of Value of Tenancy	\$1,800.00
Filing Fee	\$100.00
TOTAL	\$2,948.44

As this tenancy is continuing, I allow the tenants to recover this \$2,948.44 award by reducing the monthly rent by that amount on the next monthly rental payment to the landlord. In the event that this is not feasible, I issue a monetary Order in the tenants' favour in the amount of \$2,948.44.

The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I order that the landlord complete repairs to the bathroom of the basement suite of the rental unit. These repairs are to be made by September 30, 2017.

I order that the monthly rent for this tenancy be reduced by \$800.00 from \$6,800.00 to \$6,000.00 from September, 2017. I order that the tenants' rent return to the normal monthly amount required by the tenancy agreement and the *Act* in the month following the completion of these repairs.

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: September 8, 2017

Residential Tenancy Branch