



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

The Application for Dispute Resolution (the “Application”) was filed by the tenants under the *Residential Tenancy Act* (the “Act”) for a monetary order in the amount of \$5,566.63 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenants and the landlord attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me during the hearing. Only the evidence relevant to my decision has been included below.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matter

At the outset of the hearing, although the landlord did not advise the undersigned of such during the hearing, the landlord’s application was cancelled at the landlord’s own request which was received by an information officer prior to the hearing. As a result, the landlord’s file number is not part of this decision as it was cancelled prior to the hearing of the tenant’s application.

Issue to be Decided

- Are the tenants entitled to money owed or for compensation for damage or loss under the Act?

Background and Evidence

During the hearing, the tenants testified that the tenancy ended by way of a mutual agreement to end the tenancy. The tenants testified that a portion of their claim for the time period of December 7-20, 2016 was for an overlapping time of date for another accommodation for the time period of December 15-20, 2016.

The tenant's monetary claim of \$5,566.63 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Short term accommodation (Dec 7-20)	\$1,500.00
2. Suite cleaning	\$283.50
3. Duvet dry cleaning	\$73.50
4. New suite rent (1/2 month)	\$1,500.00
5. Sundries/food while out of the house and in between homes	\$493.92
6. Dust masks/gloves/cleaning materials	\$50.18
7. Canada Post mail forwarding	\$327.50
8. Tenant lost wages	\$1,338.75
TOTAL	\$5,566.63

At the outset of the hearing, items 7 and 8 were dismissed as there is no remedy for those costs under the *Act*, as this tenancy was a residential tenancy and not a commercial tenancy. In addition, I find mail forwarding costs are a decision made by the tenants and are not the responsibility of the landlord.

Regarding item 1, the tenants submitted evidence of a demand letter they served the landlord with on November 27, 2016 giving the landlord one day to hire and a cleaner that the tenants demanded that they approve of the cleaner before they were flying out the next day on November 28, 2016. The landlord testified that she advised the tenants on November 27, 2016 that she had three cleaners ready to deal with dust in the rental unit based on the tenants' complaints and that the email messages between the landlord and tenants confirmed that the tenants did not approve of the cleaners. I find that as of that point, the tenants waived any right under the *Act* to compensation as the tenants interfered with the landlord's ability to properly respond to the tenants' complaints about dust and that all costs related to this application are the responsibility of the tenant as a result of the tenants interference with the landlord's ability to respond

and address to the tenants' complaints. Furthermore, I find that the tenants giving the landlord one day to respond is not only unreasonable but results in my finding of their claim for compensation after the fact to be both frivolous and an abuse of process.

Analysis

Based on the above and the evidence provided, and on a balance of probabilities, I find the following.

As the tenants' evidence supports that they only gave the landlord one day to respond to their complaint regarding dust, I find the tenants' interfered with the landlord's ability to respond and address their concerns properly. I find the tenants' demand for a one day response time to be completely unreasonable.

Therefore, **I dismiss** the tenants' Application in full **without leave to reapply** pursuant to section 62(4)(c) of the *Act* which states:

Director's authority respecting dispute resolution proceedings

62 (4) The director may dismiss all or part of an application for dispute resolution if

(c) the application or part is frivolous or an abuse of the dispute resolution process.

[My emphasis added]

I find the tenants' Application is both frivolous and an abuse of the dispute resolution process as the tenants made an unreasonable demand to have dust cleaned in one day and that the tenants would have to approve the cleaners first. In addition, the tenants have claimed for a time period that overlaps which would result in unjust enrichment for the tenants which also supports my finding that this application is both frivolous and an abuse of process.

Given the above, **I do not grant** the tenants the recovery of the cost of the filing fee.

I do not find it necessary to consider any other portions of the tenants' monetary claim as I find that the tenants breached section 33(3)(c) of the *Act* which requires the tenants to provide the landlord reasonable time to address any alleged emergency claims. I find the tenants' demand for cleaning within one day and that the tenants would have to

approve of the cleaners is both unreasonable and results in the tenants breaching the *Act* and that all costs by the tenants are based on the decision of the tenants and that the landlord is not liable for those costs.

Conclusion

The tenant's application is dismissed as it is both frivolous and an abuse of the dispute resolution process.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: October 10, 2017

Residential Tenancy Branch