



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNSD

Introduction

This hearing dealt with the tenant's 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;
- 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 this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Issue to be Decided

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 order for compensation as a result of loss during this tenancy?

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

Background, 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 arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant's testimony is as follows. The tenancy began on June 1, 2014 and ended on October 31, 2015. The tenants were obligated to pay \$1350.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$675.00 security deposit. FT testified that the home was "absolutely uninhabitable" from the outset of the tenancy. FT testified that the roof was leaking, black mould was throughout the unit, rotting carpets and a horrible smell from the mould fumes at all times. JT testified that they sent the landlord letters outlining their complaints but they were ignored.

JT testified that they seek to be compensated the majority of their rent during their tenancy in the amount of \$20,200.00. The tenants also seek the return of double their security deposit. JT testified that she sent her forwarding address by registered mail to the landlord in May of 2016 but still hasn't received the deposit. JT testified that they believe that the landlord didn't use the property for the intended purpose as noted on the 2 Month Notice to End Tenancy for Landlords Use of Property and seeks the two months' rent as compensation in accordance with Section 51 of the Act.

JT also seeks \$4500.00 for non-pecuniary damages. JT testified that she became the target of harassment and abuse from the landlord .JT testified that she was called names and referred to in racially derogatory names. JT testified that the landlord was extremely difficult to deal with and wouldn't respond to her requests and used profane and inappropriate language toward her. FT testified that the landlord assaulted him and that the only reason he dropped the charges was his wife couldn't be a witness.

The tenants are applying for the following:

1.	Failure to Repair and Maintain	\$20, 200.00
2.	Damage Deposit	1350.00
3.	Section 51 compensation	2700.00
4.	Non Pecuniary Damages	4500.00
5.	Filing Fee	100.00
6.		
	Total	\$28850.00

Counsel for the landlord made the following submissions. Counsel submits that the tenants did not provide sufficient evidence that they had notified the landlord of the alleged repairs. Counsel submits that the tenants only filed an application alleging the repairs after they were given a two month notice to end the tenancy. Counsel submits that the parties reached an agreement in Small Claims Court and part of that agreement was that the tenants received three separate payments from the landlord and that all further claims including the security deposit be abandoned. Counsel submits that the landlord did in fact use the property as stated in the notice to end the tenancy. Counsel submits that the tenants have not provided sufficient evidence to be awarded an amount for non-pecuniary damages and that they have failed to show what loss was incurred or suffered. Counsel submits that there isn't sufficient evidence to support the tenants' allegation of assault. Counsel submits that the tenants' application should be dismissed in its entirety.

Analysis

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, 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, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the tenants' application and my findings as follows:

Failure to Repair and Maintain - \$20, 200.00

The tenants testified that they sent several letters to the landlord prior to filing an application that was ignored. Counsel submits that the tenants didn't advise the landlord of these issues until the tenancy was almost at an end. Counsel submits that the tenants have not proven their claim.

JT testified that she had given several written letters to the landlord outlying the repairs needed but couldn't recall when or in what manner they were sent. JT and FT continually contradicted one another during the hearing. One would provide a version of the events and the other would disagree and provide an alternative version. Based on

the inconsistent, and what I found to be unreliable evidence, the tenants have not provided sufficient evidence for the following: to show that the landlord acted in a reckless or negligent way, the actual cost of the loss or damage suffered, if any, and that they took all reasonable steps to mitigate the loss. Based on the insufficient evidence before me, I dismiss this portion of their application.

Double the Security Deposit – \$1350.00

The tenants testified that they provided their forwarding address in writing to the landlord on May 5, 2016 by registered mail, but were unable to provide sufficient evidence to support that. The landlord testified that he never received their forwarding address and that the judge in Small Claims court suggested that if the landlord abandoned his \$41000.00 claim and paid the tenants \$1645.00 that the issue of the deposit is resolved and the future hearing between the parties was to be cancelled. JT testified that he couldn't remember what the terms or what the judge said. JT became angry when asked if he remembered what the arrangement was and instead of answering the question he decided that he would start asking questions of counsel that were not related to the claim.

Based on the documentation provided by the landlord from the Small Claims Division of the Provincial Court, I find that the issue of the security deposit was addressed and resolved, accordingly, I dismiss this portion of the tenants' application.

Section 51 Compensation – \$2700.00

Counsel questioned FT as to what he thought the landlord had done with the property after he moved out. FT became agitated and annoyed that counsel asked him the question and responded "I don't know what he did, none of my business, I have no idea what's going on with that property". Based on the tenants own testimony and the documentation provided by the landlord, I find that the property was used for its intended purpose as outlined in the Two Month Notice to End Tenancy for Landlord's Use of Property and that the tenants are not entitled to any compensation, accordingly; I dismiss this portion of the tenants' application.

Non-pecuniary damages - \$4500.00

JT testified that the harassment and racial slurs made it difficult situation for her to live at the subject property. YB denies her allegations and testified that it was just as difficult dealing with the tenants'. YB testified that FT kicked him and pushed him. The

relationship between the parties was an acrimonious one. It was clear to me from the testimony of the parties and their demeanor that the parties have clashed on numerous occasions. However, the tenants are the applicants and bear the responsibility of providing sufficient evidence as outlined above pursuant to section 67 of the Act. The tenants' have not provided sufficient evidence to satisfy any of the factors listed in Section 67 of the Act, therefore, I must dismiss this portion of their application.

The tenants have not been successful in their application.

Conclusion

The tenants' application is dismissed in its entirety 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: March 15, 2018

Residential Tenancy Branch