



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI FF MNDC

Introduction

This hearing was convened in response to applications by the tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act*;
- an Order directing the landlord to comply with section 62 of the *Act*; and
- a return of the filing fee.

Only the tenant H.Z. and their counsel for the tenants, J.M. attended the hearing. The tenants were represented at the hearing by J.M. who was given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

J.M. explained that the landlord was served with the tenants’ application for dispute resolution by way of Canada Post Registered Mail on February 9, 2018. A copy of the Canada Post receipt and tracking number were submitted as part of the tenants’ evidentiary package. Pursuant to section 88, 89 & 90 *Act* the landlord is deemed served with the tenants’ application on February 14, 2018, five days after its posting.

Further submissions provided by J.M. noted that on March 26, 2018 an amendment to the tenants’ application was placed in the landlord’s mailbox. Pursuant to sections 88 & 90 of the *Act*, the landlord is deemed served with this amendment on March 29, 2018, three days after it was placed in his mailbox.

Issue(s) to be Decided

Can the tenants recover a monetary award?

Can the tenants recover the filing fee associated with the application?

Should the landlord be directed to comply with the *Act*?

Background and Evidence

Counsel for the tenants explained that this tenancy was to begin on May 1, 2017 and was for a fixed term of 12 months, set to end on May 1, 2018. Rent was set at \$900.00 and a \$500.00 security deposit was collected at the outset of the tenancy and continues to be held by the landlord. The tenancy agreement submitted as part of the tenants evidence showed that rent was \$1,800.00 per month; however, counsel for the tenants stated that this was incorrect and that the tenants in fact paid \$900.00 per month.

Oral submissions from the tenants and their counsel explained that in September 2017, the landlord unilaterally imposed a rental increase to \$1,000.00 per month, effective November 2017. The tenants explained they feared eviction and were threatened with penalties amounting to \$3,500.00 if they did not agree to this rental increase. The tenants paid \$6,000.00 in advance rent in November 2017.

The tenants are seeking a monetary award of \$2,900.00 as follows:

Item	Amount
Overpayment of Rent	\$600.00
Failure to Repair Sink	200.00
Failure to Provide Furnishing	600.00
Return of Security Deposit	500.00
Aggravated Damages-Harassment	1,000.00
Total =	\$2,900.00

In addition to a return of rent, the tenants are seeking compensation related to the loss of use of a sink which they said that the landlord refused to repair and for a television and couch which were allegedly promised to them as part of their tenancy. The final portion of the tenants' application concerned a return of the security deposit which they feared would not be returned at the end of tenancy and was over the allowable limit. The tenants are also looking to recover aggravate damages due to the ongoing harassment they have endured at the hands of the landlord, along with the escalation of events to which they have been subject to.

The tenants explained at the hearing that they began enduring a series of threats and harassment after they complained to the landlord about a sink which did not drain. They

said that despite repeated requests to fix the sink the landlord has refused and has in fact become very aggressive and threatening towards them following their request to fix the sink. The tenants seek \$50.00 per month, for the time with which they have been without the use of the sink. The tenants are also seeking \$50.00 per month for the period of May 2017 to April 2017 for the loss of a couch and television they argued was to be included in their rent following discussions with the landlord.

As noted above, in addition to compensation for the alleged breaches of their tenancy agreement, the tenants are looking to recover aggravated damages of \$1,000.00 from the landlord. As part of their evidentiary package, the tenants submitted numerous text messages from the landlord that they argued proved the ongoing harassment and bullying to which they have been subject.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, 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. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove their entitlement to a claim for a monetary award.

The tenants have applied for a monetary award of \$2,900.00 related to alleged loss under the tenancy agreement and the *Act*. I will begin by examining the tenants' application for a return of \$600.00 related to rent and then turn my attention to the remainder of their application as it is presented in the chart displayed on page two.

Counsel for the tenants provided oral and written submissions, that the landlord had increased the tenants' rent by \$100.00 in November 2017. The tenants, fearing eviction paid the increased amount of rent and are now seeking its return. Section 42 of the *Act*, provides direction to landlords on the timing and amount of rent increases. It notes, "A landlord must not impose a rent increase for at least 12 months if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit, of if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act." This section continues by noting that, "A landlord must give a tenant notice of a rent increase at least 3 months

before the effective date of the increase.” After considering the submissions presented, I find that the landlord has failed to follow the procedure for increasing rent pursuant to section 42 and has failed to allow 12 months in the tenancy to pass, prior to increasing the rent. Furthermore, the rent was increased above the legislated, allowable amount of 3.7%. For these reasons, I order the landlord to return the overpayment of \$600.00 to the tenant.

The tenants argued that the landlord ignored their request to repair the sink and failed to provide them with a couch and a television as per an agreement reached between the parties at the start of the tenancy.

Section 32 of the *Act* reads as follows:

- (1) A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

This section continues by stating at subsection (3) that, “A tenant of a rental unit must repair damage to the rental unit or common area that is caused by the actions or neglect of the tenant or a person permitted on the residential property”

Tenant H.Z. testified that the sink had become clogged and unusable, and that their request to have the landlord attend to the matter had been met with rude and disparaging comments. Tenant H.Z. was unable to identify the source of the clog, other than to say that it did not drain. After reviewing the evidence submitted and considering tenant H.Z.’s testimony, I find that both parties failed in their duty under the *Act*. The tenant was unable to demonstrate whether the clog was caused by the actions or neglect of the tenants or due to a failing on behalf of the landlord. For these reasons, I dismiss this portion of the tenants’ application.

The tenants have also applied for \$600.00 related to a television and a couch that they argued they were not provided to them as part of the tenancy. Submissions were presented that the tenants were provided assurances by the landlord that their rent would include a television and a couch. An inspection of the tenancy agreement signed by the parties reveals no agreement by the landlord to provide a television and a couch to the tenants as part of the tenancy agreement and shows that in addition to many of the standard features of a tenancy agreement, that the landlord was to only include a desk and chairs. I find that the tenants provided insufficient evidence that the landlord

agreed to include a television and a couch as part of the terms of their tenancy agreement. For these reasons, I dismiss this portion of the tenants' application.

Submissions and evidence provided by counsel for the tenants demonstrated that the tenants were forced to pay a \$500.00 security deposit six months into their tenancy agreement. The tenants sought a return of these funds. Section 20 of the *Act* states, "A landlord must not require a security deposit at any time other than when the landlord and tenant entered into a tenancy agreement." A review of the tenancy agreement signed by the parties' shows that no security deposit was collected at the time of its signature. I find that the landlord's inaction related to the collection of a security deposit has led him to waive his right to collect one, and I order that the landlord return the \$500.00 collected halfway through the tenancy to be returned to the tenants.

The final portion of the tenants' application seeks \$1,000.00 for aggravated damages related to the manner in which they have been treated by the landlord during the tenancy. The tenants argued that they suffered harassment and humiliation and were subject to several disparaging text messages. These messages were included as part of their evidentiary package and displayed strong and aggressive language directed by the landlord to the tenants.

Residential Tenancy Policy Guideline #16 defines aggravated damages as follows; [these] are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

On a review of the text messages from the landlord, the submissions provided by the tenants and their counsel's arguments, I find that the tenants have not suffered from *significant* damage or loss and are therefore not entitled to aggravated damages. I find there is a basis for an award of nominal damages which are given under *Guideline #16* when "there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right." No letters from counsellors or doctors were provided to the hearing demonstrating that the tenants suffered from any recognized medical symptoms related to the landlord's actions, nor do I find that the landlord's rude messages extended beyond the realm of text messages. I will therefore award the tenants' \$125.00 in nominal damages, representing \$25.00 per month, for the six months that their relationship with the landlord soured.

As the tenants were partially successful in their application, they may recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a Monetary Order of \$1,325.00 in favor of the tenants as follows:

Item	Amount
Excess Rent	\$600.00
Return of Damage Deposit	500.00
Damages - nominal award	125.00
Recovery of Filing Fee	\$100.00
Total Monetary Order	\$1,325.00

The tenants are provided with a Monetary Order in the above terms and 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.

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: April 16, 2018

Residential Tenancy Branch