



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNR FFT LAT LRE MNDCT

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 Order for damage or loss under the *Act*;
- an Order restricting the landlord’s right to enter the rental unit;
- an Order allowing the tenants to change the locks;
- an Order directing the landlord to provide services or facilities required by law or the tenancy agreement;
- cancellation of the landlord’s 10 Day Notice for Unpaid Rent;
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause; and
- return of the filing fee.

Both tenants and the landlord appeared at the hearing. The landlord confirmed receipt of the tenants’ application for Dispute Resolution and evidentiary package by way of Canada Post Registered Mail. I find the landlord to have been duly served with the tenants’ application and evidentiary package in accordance with the *Act*.

Following opening remarks, the tenants said that they have vacated the rental unit and were only pursuing the portion of their application related to the application for a monetary award and a return of the filing fee.

Issue(s) to be Decided

Are the tenants entitled to a monetary award? Can they recover the filing fee?

Background and Evidence

Undisputed testimony was provided at the hearing by the tenants that this tenancy began on May 1, 2017 and ended on June 30, 2018. Rent was \$1,235.00 per month, and a security and pet deposits of \$600.00 each were paid at the outset of the tenancy. The landlord continues to hold the tenants’ security deposit, while the tenants explained

that they withheld \$600.00 from the final month's rent in satisfaction of the return of the pet deposit.

The tenants said they are seeking a monetary award of \$1,641.12. This monetary award was detailed in the tenants' monetary order worksheet as follows:

ITEM	AMOUNT
Mini Storage	\$182.70
Notarized Letters #1	56.00
Bank Cheque Fees	8.00
Registered Mail #1	30.40
Return of Filing Fee	100.00
USBs x 2 for documents sent to landlord	22.32
Loss of Quiet Enjoyment	1,200.00
Notarized Letters #2	30.00
Registered Mail #2	11.70
TOTAL -	\$1,641.12

The tenants explained that the majority of their application centered on an alleged loss of quiet enjoyment and fees incurred at a mini-storage facility. The tenants said that the remainder of their application concerned expenses related to the preparation of hearing documents.

Specifically, the tenants argued that the landlord had forced them to remove their belongings from the basement with four days' notice and had undertaken renovations to the rental home for a two week period in April 2018 which adversely affected their ability to enjoy the rental unit. In addition, the tenants described purported instances of intimidation and harassment which they suffered at the hands of the landlord. In their testimony the tenants described an incident involving the presence of a dog they had in the rental unit that led to a disintegration of their relationship with the landlord. The tenants said that following this disagreement over a dog, the landlord "insisted" on inspecting the suite for damage and demanded that the tenants remove their belongings from the basement after allegedly verbally agreeing to allow the tenants to store items

there. The tenants said that they were provided with keys to the basement by the landlord but that these keys were returned to the landlord and removal of this storage area forced them to pay for off-site storage.

The tenants said that renovations on the outside of the property and yard work which occurred for approximately 16 days in April 2018 caused them to suffer a loss of quiet enjoyment on the property. The tenants explained that their use of the yard became impossible, that noise and disturbances were constant and that tenant M.M. was unable to rest during the day because of the ongoing construction. The tenants said that M.M. runs her own business which operates during non-traditional business hours, thus requiring M.M. to sleep during the day. In addition, the tenants described M.M.'s interactions with the landlord as being particularly difficult because of symptoms she developed related to Post Traumatic Stress Disorder ("PTSD").

The landlord disputed all portion of the tenants' claim. The landlord explained that he asked the tenants to remove their items from the basement area because he required that portion of the home to store his own belongings. The landlord said that he had agreed to allow the tenants to use the basement because they required an extra area in which to put their belongings but he said that this was meant as a favour and was not part of the tenancy agreement or addendum. A copy of the tenancy agreement and addendum included in the evidentiary packages showed that rent included use of the upper area but did not include use of the basement or shop areas of the home. It does note, that "the property is shared between the tenants and the landlord."

The landlord said that any inspection of the rental unit was done in accordance with the *Act* and that the tenants were always provided with at least 24 hours' notice. The landlord argued that, in fact, he waited 21 days before entering the suite after providing the tenants with notice of his intention to inspect the rental unit.

The landlord did not dispute that renovations on the rental unit took place during the tenancy but said that they were necessary and done promptly. The landlord said that he worked on the property for approximately ten days in April 2018 and that during this time he observed regular work hours. The landlord explained that the latest he was ever on the property was on one occasion when he worked in the shop moving items until 8:45 P.M.

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 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 are seeking a Monetary Order of \$1,641.12. The tenants based the majority of their application for a monetary award (\$1,200.00) on a loss of quiet enjoyment and on expenses related to loss of a storage area. I will begin by examining the tenants' application for loss of quiet enjoyment and then turn my attention to their application for loss of a storage area.

Section 28 of the *Act* provides that a tenant is entitled to quiet enjoyment including the right to reasonable privacy and freedom from unreasonable disturbance. Residential Tenancy Policy Guideline 6 further discusses the right to quiet enjoyment and provides that:

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 tenants alleged the landlord disturbed their quiet enjoyment of the rental unit in three manners. Specifically they argued; the landlord restricted their ability to store items in the basement after having previously agreed to allow them to use the area, the landlord performed renovations to the rental unit which were ongoing for approximately 16 days and prevented them from accessing the property's yard and the landlord acted towards them in an aggressive and intimidating manner.

After reviewing the written submissions of the tenants and having considered the oral testimony of the parties, I find that the tenants have failed to demonstrate that the landlord's actions were *frequent and ongoing*. Little evidence was presented at the hearing that the scope of the renovations performed by the landlord was excessive or unreasonable. Furthermore, I find that the loss of a yard for approximately 16 days during a tenancy which lasted over one year to be reasonable. There is no indication

that the renovations performed by the landlord went beyond a reasonably expected time frame. While I appreciate that the relationship between the parties became strained towards the end of the tenancy, there is little indication that the parties did not enjoy a civil relationship prior to March/April 2018. Some evidence was presented at the hearing that the landlord acted rudely towards the tenants; however, this does not meet the description of *frequent and ongoing* disturbances as described by the *Policy Guideline*. For these reasons, I dismiss the portion of the tenants' application related to loss of quiet enjoyment.

The second portion of the tenants' application concerned a loss of storage and the related expenses. The landlord acknowledged that he had instructed the tenants to remove their items from the basement area after initially allowing them to store some items in that portion of the rental unit. The landlord argued that the tenants were permitted to put items in the basement because he was seeking to accommodate them; however, he indicated that no portion of the tenancy agreement or addendum provided the tenants with access to the basement.

Section 27 of the *Act* examines the issue of services which are terminated by a landlord. It states in section 27(1) as follows, "A landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or providing service is a material term of the tenancy agreement." I find that little evidence was provided indicating that storage was essential to the tenants' use of the rental unit, and a review of the tenancy agreement shows that use of the basement was not a material term of the tenancy agreement.

Section 27(2) reads as follows, "A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service of the facility.

After examining the terms of the tenancy agreement, the *Act* and having considered the evidence and testimony of both parties, I find sufficient evidence was provided by the tenants demonstrating that the landlord failed to provide them with 30 days' written notice of the termination or restriction. While storage was not a term of the tenancy agreement, I find that the landlord entered into an oral contract with the tenants when he provided them with access to the basement. The landlord should therefore have provided the tenants with 30 days' written notice of the termination of use of basement,

rather than the four days which he provided. The tenants are therefore entitled to a return of the storage fees that they incurred.

The final portion of the tenants' application concerns notary fees, along with bank cheque fees, and costs associated with registered mail. My abilities to award compensation are restricted by section 67 of the *Act* which are described above and limited to claims, where damage/loss has stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. I therefore have no ability to return the costs associated with preparation for a hearing and decline to award the tenants a return of notary, bank or registered mail fees.

As the tenants were partially successful in their application, they pay, pursuant to section 72 of the *Act*, recover the \$100.00 filing fee from the landlord.

Conclusion

The tenants are provided with a monetary award of \$282.70 representing a return of their filing fee and storage costs. 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: July 4, 2018

Residential Tenancy Branch