



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDLS FFL MNDCT MNSD

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- recovery of the filing fee for this application pursuant to section 72.

The tenants applied for:

- a monetary order for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- recovery of the security deposit for this tenancy pursuant to section 38.

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 landlord JSJ (the “landlord”) confirmed she represented both landlords named in the tenants’ application. The tenant NM primarily spoke on behalf of both co-tenants (the “tenant”).

As both parties were present service of documents was confirmed. The landlord confirmed receipt of the tenant’s application for dispute resolution dated December 7, 2017 and evidence on or about that date. The tenant confirmed receipt of the landlord’s application for dispute resolution dated July 3, 2018 and evidence on or about that date. Based on the undisputed evidence of the parties I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the parties testified that the security deposit for this tenancy has been dealt with and the tenants withdrew that portion of their application.

Issue(s) to be Decided

Is either party entitled to the monetary award sought?

Are the tenants entitled to a return of the security deposit?

Is the landlord entitled to recover the filing fee for their application from the tenants?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in September, 2016 and ended in November, 2017. The monthly rent was \$1,400.00. The rental unit is the basement suite of a detached home and the landlords occupy the main floor. No condition inspection report was prepared at either the start or the end of the tenancy.

The landlord seeks a monetary award of \$1,705.86 for the cost of cleaning and repairs after the tenant vacated the rental unit. The landlord submitted into written evidence some photographs of the suite and the invoices and receipts for repair costs. The tenant disputes the landlord's claim and submits that they cleaned the rental unit when the tenancy ended.

The tenants seek a monetary award of \$3,736.17 for the following items:

Item	Amount
Replacement of Phone	\$331.52
Loss of Quiet Enjoyment	\$2,800.00
Medication	\$22.94
Moving Expenses	\$481.71
Filing Fee	\$100.00
TOTAL	\$3,736.17

The tenant testified that there was an altercation with the landlord's son, the named respondent CSJ, on September 1, 2017 where he assaulted the tenants causing bodily harm and destroying personal property, including a cell phone. The tenant submitted into written evidence witness statements, the police report and charge documents arising from the incident, photographs of the destroyed property and screenshots of their replacement costs.

The tenant testified that since the incident of September 1, 2017 the landlord continued to harass and intimidate the tenants for the duration of the tenancy. The tenant described aggressive behaviour and interactions, incidents where the landlords entered the rental premises without proper notice and the constant looming threat of violence. The tenant submitted into written evidence medical notes and witness statements to demonstrate the impact the landlord's behaviour had on the tenants' health and peace of mind. The landlord disputes that their conduct was as intrusive as the tenants describe, said that some of the actions were required or exaggerated and dispute the tenants' claim.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find that there is insufficient evidence in support of the landlords' claim for damages. In the absence of a condition inspection report prepared at the start of the tenancy in accordance with the *Act*, I find that there is insufficient evidence of the condition of the rental unit at the outset. I find that there is insufficient evidence showing that any damages to the rental unit were caused by the tenants. Furthermore, I find that the landlord's submissions of some photographs and cleaning invoices to be of limited value in determining that the tenants are the cause of any losses. I dismiss the landlord's application accordingly.

I accept the undisputed evidence that there was an altercation between the tenants and the landlord's son on September 1, 2017. I accept the evidence that the tenant's phone was broken as a result of the assault by the landlord's son. I accept the tenant's evidence that the replacement costs for the cell phone destroyed is \$331.52. I further accept that as a result of the attack the tenant incurred some medical expenses for pain medication in the amount of \$22.94. Accordingly, I issue a monetary award for those amounts.

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 tenant seeks a monetary award of \$2,800.00, the equivalent of the full rent paid since the September 1, 2017 incident to the end of the tenancy. I find that there is insufficient evidence in support of the full amount claimed. I accept the evidence that the altercation of September 1, 2017 was a turning point in the tenancy. I accept that after the incident the tenants found it uneasy to continue living in the rental unit as there was the constant threat of further violence. However, the evidence provided is that the tenants were able to continue residing in the rental unit and make use of its facilities for the duration of the tenancy. I accept the evidence submitted that the tenants had some pre-existing medical conditions such as anxiety exacerbated by the incident and continued behaviour of the landlords. I find that there is sufficient evidence that the tenants suffered some loss of quiet enjoyment due to the incident of September 1, 2017 and the landlords' behaviour thereafter. Under the circumstances I find that a monetary award in the amount of \$500.00, approximately 15% of the monthly rent for each of the two months after the September incident to be appropriate.

I find that there is insufficient evidence in support of the tenants' claim for moving costs. While the tenant submits that they would not have chosen to end the tenancy but for the landlords' behaviour I find insufficient evidence in support of the tenants' claim. The documentary evidence submitted shows that Notices to End Tenancy were issued and the parties engaged in some discussion prior to this tenancy ending. While I accept that the uncomfortable tenancy situation may have contributed to the tenants coming to the decision to end the tenancy, I find there is insufficient evidence that the moving costs were incurred as a direct result of a violation on the part of the landlord. Consequently, I dismiss this portion of the tenants' claim.

As the tenants' claim was substantially successful the tenants may recover the filing fee for their application from the landlord.

Conclusion

The landlords' application is dismissed in its entirety without leave to reapply.

I issue a monetary Order in the tenants' favour for \$954.46 under the following terms:

Item	Amount
Replacement of Phone	\$331.52
Loss of Quiet Enjoyment	\$500.00
Medication	\$22.94
Filing Fee	\$100.00
TOTAL	\$954.46

The landlords must be served with this Order as soon as possible. Should the landlords 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 25, 2018

Residential Tenancy Branch