



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT (Tenants' Application)
 MNDCL, FFL (Landlord's Application)

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution, filed on February 27, 2018, the Tenant requested compensation pursuant to section 51 of the *Residential Tenancy Act* and to recover the filing fee. In the Landlord's Application for Dispute Resolution, filed on March 12, 2018, the Landlord requested monetary compensation from the Tenants relating to increased water usage and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on August 28, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

During the hearing the Landlords referenced historical water utility invoices. The Tenants confirmed receipt of these invoices; however, that evidence was not available to me during the hearing. I continued with the hearing and permitted the Landlords to upload the evidence following the hearing. I confirm that on September 10, 2018 the Landlords uploaded the requested water utility invoices. The Landlord also issued additional evidence (in the form of photos) which I have not considered as I did not give the Landlord permission to introduce this additional evidence.

The parties agreed that all evidence that each party provided had been exchanged. No other issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the

respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlords pursuant to section 51 of the *Act*?
2. Are the Landlords entitled to monetary compensation from the Tenants?
3. Should either party recover the filing fee?

Background and Evidence

The Tenant, E.O, testified that this one year fixed term tenancy began March 1, 2017.

E.O. confirmed that all the utilities were included including the water, sewer and garbage.

The Tenants received a 2 Month Notice to End Tenancy for Landlord's use issued on February 16, 2018 with an effective date of April 30, 2018 (the "Notice").

The Tenants accepted the Landlords' notice to end the teancy and gave the Landlord 10 days' notice of their intention to end the tenancy early pursuant to section 50(1)(a) of the *Act* by letter dated February 17, 2018 (a copy of this letter was provided in evidence.) This letter also informed the Landlord that the Landlords were required to pay them \$900.00 as compensation for the Notice. The letter also included the Tenants' forwarding address.

The Tenants vacated the rental unit on February 28, 2018. The Tenants confirmed that the Landlord did not provide the Tenants the \$900.00 as required by section 51(1) of the *Act*.

The Landlord, T.W., applied for dispute resolution on March 12, 2018.

The Tenants stated that the Landlord returned their security, less agreed upon deductions.

In response to the Tenants' claims and in support of his claim the Landlord, T.W., testified as follows.

He confirmed that he did not pay the Tenants the \$900.00 as required by the *Act*.

The Landlord confirmed that the \$666.00 claimed in compensation related to losses he alleges arose from a running toilet in the rental unit which was known to the Tenants but not brought to his attention.

The water utility invoices were provided in evidence and supported the \$666.00 claimed by the Landlord as an increase in the water bill at the time the toilet was alleged to have been running.

The Landlord also provided an email dated March 13, 2018 from a financial analyst in the city in which the rental unit was located; the writer notes:

"My supervisor has informed me that the meter reading history is what we are able to provide. Three times higher use than last year for this time period combined with constant water flow through the meter is why the meter reader suggested to investigate for plumbing issues."

The Landlord stated that on January 9, 2018, the municipal water meter reader came to the sidewalk and noticed that the water meter was going very fast. He called attention to the Landlord's girlfriend, the other named Landlord on the Application, J.H., who was there at the time. J.H. then entered the rental unit (without giving notice to the Tenants as she deemed this to be a potential plumbing emergency). She looked around the rental unit and discovered the leaky toilet flap. She immediately replaced the flap which resolved the issue.

The Landlord stated that J.H. informed the Tenants and then got a new toilet and vanity installed (for aesthetic reasons as he claimed the toilet was otherwise functioning).

The Landlord stated that shortly after the bill arrived he spoke with the Tenant E.O. about the increased water usage. E.O. apologized and said he would "help out" with the increased cost.

In response to the Landlord's claim the Tenant, E.O., stated that while he was aware that the toilet was running, they didn't recognize the toilet running continuously would cause an increase in water usage. He did acknowledge that he had to manually close the flap

on occasion and then described the water as going “ape sh*t”. When I asked him to explain this comment he then claimed that he did not even notice it was running.

E.O. stated that he does not recall talking to the Landlord about contributing to the cost of the increased water usage, and that in any case “there were no guarantees and nothing set in stone”.

Analysis

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case the Landlords issued a Notice to End Tenancy pursuant to section 49 of the *Act*. Section 51 of the *Act* provides as follows:

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

As such I find the Tenants are entitled to the sum of **\$900.00** representing one month's rent pursuant to sections 49 and 51 of the *Act*.

The Landlord seeks monetary compensation for increased water usage due to a running toilet.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I accept the Landlord's evidence that the running toilet caused a considerable increase in the water usage at the rental unit. I am also persuaded by the utility bills and email from the municipality provided in evidence. While the water utility was included in the rent, I find that the overage as a direct result of the Tenants not rectifying the running toilet or bringing this issue to the Landlords' attention for repair.

The Tenant E.O. testified that he was aware the toilet was running, but did not realize it would cause such an increase in usage. Although he tried to resile from his colourful testimony that the water went "ape sh*t", I find that this comment confirms the Landlord's position that the Tenants were aware the water was running, and that it was running to such an extent that the cost was considerable.

I also accept the Landlord's testimony that he spoke to the Tenant E.O. about the usage and E.O. initially agreed to contribute to the increased cost. E.O.'s testimony was that he could not recall such a conversation but that in any case "nothing was set in stone". This comments suggests to me that E.O. agreed to contribute to the cost, but when it wasn't reduced to writing believed he was not obligated to follow through on the agreement.

I therefore find the Landlord has proven his claim for **\$666.00** and I award him related compensation from the Tenants.

As the parties have enjoyed divided success, I find they should each bear the cost of their filing fee.

Conclusion

The Tenants' claim for compensation pursuant to section 51 is granted. They are awarded the sum of **\$900.00**.

The Landlord's claim for **\$666.00** for the increased water utility is granted.

Both parties shall bear the cost of their own filing fee.

The sums awarded to each party are offset such that the Tenants are entitled to a Monetary Order in the amount of **\$234.00**. This Order must be served on the Landlords and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: September 12, 2018

Residential Tenancy Branch