



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL
 MNDCT, MNRT, FFT

Introduction

This hearing dealt with the adjourned cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Landlord’s Application for Dispute Resolution was made on June 13, 2018. The Landlord applied for a monetary order for unpaid rent, and to recover the filing fee. The Tenants’ Application for Dispute Resolution was made on July 23, 2018. The Tenants applied a monetary order for losses due to the tenancy, the recovery of costs associated with emergency repairs, and the return of their filing fee.

Both the Landlord, the Property Manager and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all the evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to recover the filing fee for her application?
- Are the Tenants entitled to a monetary order for losses due to the tenancy?

- Are the Tenants entitled to a monetary order to recover the costs associated with emergency repairs to the rental unit?
- Are the Tenants entitled to recover the filing fee for their application?

Background and Evidence

Both parties testified that the tenancy began on February 1, 2017, as a month to month tenancy agreement. Rent in the amount of \$1,100.00 was to be paid by the first day of each month and at the outset of the tenancy, the Tenants paid a \$550.00 security deposit and a \$550.00 pet damage deposit. The Tenants provided a copy of the tenancy agreement into documentary evidence.

Both parties also testified that the Tenants issued a notice to end their tenancy on May 14, 2018, with an effective date of June 15, 2018. The parties also agreed that the Tenants moved out of the rental unit on June 6, 2018, and that they had not paid the rent for June 2018. Both the Landlord and the Tenants agreed that the security deposit and pet damage deposit had been returned the Tenants in accordance with the Act.

The Landlord testified that she was unable to re-rent the rental unit for June 2018, due to the Tenants short notice. The Landlord is requesting a monetary order for the loss of rental income for June 2018.

The Tenants testified that they gave the Landlord 30 days notice to end their tenancy and do not feel that they should have to pay rent for the month of June due to the poor condition of the rental unit. The Tenants testified that they intentionally withheld the rent for June 2018, and gave short notice to end the tenancy, due to concern for their physical and mental health while living in the rental unit. The Tenant testified that there were major problems with the rental unit the entire time they lived there and that they suffered a major loss of quiet enjoyment due to the Landlord not keeping the property in a suitable state of repair.

The Tenants testified that they suffered financial losses due to the extremely high heating cost of the rental property. The Tenant testified that they believe the high heating cost was a result of the rental property not being properly insulated. The Tenants testified that the insulation had been removed or destroyed due to a rodent and squirrel infestation in the rental property. The Tenants are requesting to be compensated \$348.00 in additional heating cost due to the need to use space heaters during the winter months. The Tenants testified that the pipes had frozen in the rental

unit in January 2018, due to the poor insulation in the rental property. The Tenants testified that the Landlord had acknowledged the need for repairs to the insulation in January 2018; however, the repairs could not be completed until the spring of that year.

Both parties agreed that they had been in negotiations regarding a possible reduction in rent for the winter months of 2018, due to the needed repairs to the insulation. The parties also agreed that they were unable to come to an agreement to how much of a rent reduction would be awarded to the Tenant. The Tenants provided an email string between the Property Manager and themselves, four copies of heating bills, and the receipt for the purchase of a space heater into documentary evidence.

The Tenants also testified that they had a loss of quiet enjoyment of the rental property due to the rodent infestation, lack of heating and the continued disruptions for realty showing of the property was it up for sale during for most of their tenancy. The Tenants are requesting \$17,600.00 in compensation due to the loss of quiet enjoyment. The Tenants provided a detailed statement of the timeline of their tenancy and their interaction with the Property Manager into documentary evidence.

Additionally, The Tenants are requesting \$1,200.00 in emergency repair labour cost, for them to deal with placing traps and removing the dead rodents from the property due to a rodent infestation in the rental unit. The Tenants testified that for months they had to place and clean out rat and mouse traps on the rental property. The Tenants testified that they emailed the property Manager in February 2018 and advised her of the rodent infestation and that she did nothing to fix the problem. The Tenants provided 26 pictures of the rental property, and an email string between the Property Manager and themselves, dated February 18, 2018, into documentary evidence.

The Property Manager testified that she received the Tenants email, dated February 18, 2018, and arranged to attend the rental unit to assess the problem. The Property Manager testified that during her visit, and in the email, the Tenants had only advised her that they thought there was a "packrat" nesting in the home. The Property Manager testified that at that time she was not aware of an infestation problem and that she was focused on the Tenants report of a suspected packrat nesting on the rental property. The Property Manager testified that she provided the Tenants with a large rodent trap, to see if they could catch the suspected packrat. Both the Landlord and the Property Manager testified that to their knowledge, no packrat or rodent was ever caught.

The Landlord and her Property Manager testified that they actioned all request for repairs that they had received from the Tenants during the tenancy. The Landlord also

testified that she currently has new renters living in the rental property and that she has not received any complaints from them regarding heating problems or an infestation on the rental property. Additionally, the Landlord testified that she had a local pest control representative visited the home in June 2018 and that the report she received from that company stated that there was evidence of mice droppings but no evidence of an infestation. The Landlord provided the pest control report into documentary evidence.

When asked the Tenants testified that they did not submit a formal written request for repairs or complain about their lack of quiet enjoyment to the Property Manager while they were living there. The Tenants testified that they had not formally complained as they were concerned that a complaint would hurt their tenancy and they may be evicted or get a bad reference form this Landlord.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the parties entered into a month to month term tenancy (periodic tenancy), beginning on February 1, 2017, in accordance with the *Act*.

Section 45(1) of the *Act* states that a tenant can end a periodic tenancy agreement by giving the Landlord at least one full rental period's written notice that they intended to end the tenancy.

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

I find that the Tenants issued their notice to end their tenancy to the Landlord on May 14, 2018. Consequently, I find that this tenancy could not have ended in accordance with the *Act* until June 30, 2018. Therefore, I find that the Tenants were in breach of section 45 when they failed to issue their notice in accordance with the *Act*.

I accept the testimony of both parties that the Tenants moved out of the rental unit on June 6, 2018, and that the Tenants did not pay their rent for June 2018.

Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find that the Tenants were in breach of section 45 of the *Act* when they ended their tenancy without giving sufficient notice. I accept the Landlord’s testimony that she was unable to re-rent the unit for June 2018 due to the Tenants short notice. I find that the Landlord has suffered a loss of rental income for the month of June 2018, due to the Tenant’s breach. Therefore, I award the Landlord the requested amount of \$1,100.00 in rent for June 2018.

In the Tenants application, they have requested to be compensated in the amount of \$348.00 for additional heating cost due to the need to use space heaters in the rental unit. I accept the testimony of both parties that there was an acknowledged need for repairs to the insulation in the rental unit as of January 2018 and that those repairs could not be conducted until the spring. Although I find it understandable that this type of repair would have to wait until the spring to be completed, I also find the Tenants were deprived of the use of part of the rental premises through no fault of their own. Even though there has been no negligence on the part of the Landlord, I find that the Tenants did suffer a loss and are entitled to damages, due to the delay in conducting the needed repairs. I also find that the Tenants have provided sufficient evidence to prove that they suffered a loss and the value of that loss. Therefore, I award the

Tenant's the requested amount of \$348.00 in compensation for additional heating costs due to the delay in conducting the needed repairs to the insulation in the rental unit.

As for the Tenants request for \$1,200.00 in labour cost for emergency repairs for dealing with the infestation in the rental unit. Section 33 of the *Act* defines what can be considered an emergency repair.

Emergency repairs

- 33 (1)** In this section, "**emergency repairs**" means repairs that are
- (a) urgent,
 - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
 - (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

I find that the Tenants claim for emergency repairs, for the labour cost involved in setting and clean up rodent traps, do not qualify as an emergency repair. Additionally, I find that the Tenants have not provided sufficient evidence to prove that they suffered a loss or what the value of that loss was. Therefore, I dismiss the Tenants' claim for \$1,200.00 in labour costs for emergency repairs to the rental unit.

In regard to the Tenants' final claim for the reimbursement of all of their rent for the entire term of their tenancy, due to the loss of quiet enjoyment of the rental unit. I have carefully reviewed all of the Tenants' testimony and documentary evidence that I have before me, and I find that the Tenants have not provided me with sufficient evidence to show that the Landlord breached any part of the *Act*, during their tenancy. I also note that at no time, other than the already determined issue regarding the heat did the Tenants advised the Landlord in writing that they were unhappy with the condition of the rental unit. Therefore, In the absence of evidence to show that the Landlord was in breach of the *Act*, I must dismiss the Tenants' claim for \$17,600.00 in compensation due to the loss of quiet enjoyment of the rental unit.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in her application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for her application.

I award the Landlord a monetary order in the amount of \$852.00; consisting of \$1100.00 in rent for June 2018, and 100.00 for the recovery of the filing fee paid by the Landlord for her application, less the \$348.00 awarded to the Tenants in the recovery of additional hearing costs.

Conclusion

I find for the Landlord under sections 67 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$852.00**. The Landlord is provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants 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.

I dismiss the Tenants' application 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: October 25, 2018

Residential Tenancy Branch