



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNDCL-S, MNDL-S, MNRL-S, FFL

Tenants: MNDCT, MNSD, FFT

Introduction

On October 30, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to request a Monetary Order for damages and unpaid rent, and to be compensated for the cost of the filing fee.

On January 18, 2019, the Tenants submitted an Application for Dispute Resolution under the Act. The Tenants requested a Monetary Order for damages, for the return of the security deposit, and to be compensated for the cost of the filing fee. The Tenants’ Application was crossed with the Landlord’s Application and the matter was set for a participatory hearing via conference call.

Issues to be Decided

Landlord:

Should the Landlord receive a Monetary Order for damages, in accordance with Section 67 of the Act?

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with Section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Tenants:

Should the Tenants receive a Monetary Order for damages, in accordance with Section 67 of the Act?

Should the Tenants receive a Monetary Order for the return of the security deposit, in accordance with Section 38 and 67 of the Act?

Should the Tenants be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord and the Tenant agreed on the following terms of the tenancy:

The fixed-term tenancy began on November 1, 2015 and continued on as a month-to-month tenancy until October 14, 2018. The rent started out as \$1,600.00 and was raised to \$1,716.00. The Landlord collected both a security deposit and a pet damage deposit in the amount of \$800.00 each.

The Landlord stated that she did not conduct a move-in inspection at the beginning of the tenancy. The Landlord stated that she met with the Tenants on October 14, 2018 and inspected the rental unit on her own, while the Tenants stayed outside. The Landlord stated that she completed a move-out inspection report but did not keep it. The Tenants stated they let the Landlord walk through the rental unit and disagreed with most of the Landlord's concerns. The Tenants stated that they did not receive a copy of a Condition Inspection report.

Landlord's Monetary Claim:

The Landlord testified that she served a hand-written letter to end the tenancy, dated July 18, 2018, to the Tenants. On the letter it stated that the Landlord would be residing in the rental unit and that the tenancy would be terminated as of December 1, 2018.

The Landlord stated that, on October 1, 2018, the Tenants gave her notice that they intended to move out on October 14, 2018. The Landlord said that the Tenants did not pay rent for October or November 2018 and that she is claiming the two months of unpaid rent as a loss, in the amount of \$3,432.00. The Landlord admitted that she moved into the rental unit on October 15, 2018.

The Landlord stated that the rear door of the rental unit was damaged by the Tenants when they had to break into the rental unit. The Landlord provided pictures of the door and an invoice to replace the door, in the amount of \$1,396.00.

The Landlord testified that the Tenants used a chemical ice melt on the sidewalks and, as a result, the concrete was pitted and turned to mush. The Landlord stated she specifically asked the Tenants not to use the chemical in the Tenancy Agreement. The Landlord provided pictures that provided limited evidence that there was damage and no pictures of what the sidewalks

looked like prior to the tenancy. The Landlord did not submit an estimate or invoice for the work that may be required. The Landlord is claiming \$1,000.00 to cover the damage.

The Landlord stated that the hardwood floors of both the living room and the dining room were scratched and blamed it on the Tenant's dog. The Landlord provided some pictures of the scratches and provided a verbal estimate that it would cost about \$500.00 to repair.

Tenants' response and monetary claim:

The Tenants testified that they began to look for a new place to live once they received the Landlord's notice to end tenancy. When the Tenants found a new rental unit, they gave the Landlord fourteen days notice and moved out of the rental unit on October 14, 2018.

The Tenants acknowledged that the door was damaged as a result of their actions. The Tenant stated it was a sixty-year old door and not in great condition. The Tenants had a handy-man fix the door with a metal plate and it worked fine for the length of their tenancy. The Tenants stated that the Landlord is attempting to replace the damaged door with a better door and the Tenants don't agree with the amount that the Landlord is claiming.

The Tenants stated that they did use some chemical ice remover on the concrete sidewalk and that there is no damage as a result. The Tenants stated that the concrete stairs are old and unsafe due to frost heaving. The Tenants claim that the condition of the sidewalk or stairs have not changed since they moved into the rental unit.

The Tenants acknowledged that the felt from some of their chairs had come off and scratched the hardwood floors in two spots. They stated that their pet did not cause the damage.

The Tenants testified that the Landlord did not compensate them a full one month's rent for ending the tenancy. The Tenants stated that they did not pay the October 2018 rent up until their departure on October 14, 2018 and are claiming the balance of one month's rent in the amount of \$941.00.

When the Tenants moved into the rental unit, they proposed to the Landlord that they would pay for half of a new stove if the Landlord would pay for the other half. The Landlord agreed, and the Tenants arranged for a new stove. The Tenants are claiming the cost of half of the new stove, in the amount of \$339.36, as a loss because the Landlord ended their tenancy early and they did not get long-term use of the stove.

The Tenants claimed the amount of one months rent, in the amount of \$1716.00, as compensation for the loss of the laundry facility. Laundry was included as part of their rent and the Tenants stated that the Landlord took control of the laundry room when she moved into the basement unit of the residential property in August 2016. Although, they were still able to do

their laundry, the Tenants stated that the Landlord made it difficult to do so and it was only on the Landlord's schedule.

The Tenants stated that the Landlord was volatile, threatening and abusive towards them during the last month-and-a-half of the tenancy. The Tenants stated there was a loss of quiet enjoyment for them and claim one month's rent in compensation, in the amount of \$1,716.00.

The Tenants submitted a gas bill that they received after they moved out. The arrangement with the Landlord was that the bill would be split 50/50. The Tenant are claiming \$146.35 for half the bill.

Analysis

Section 49(3) of the Act states that a Landlord may end a tenancy in respect of a rental unit if the Landlord intends in good faith to occupy the rental unit. In this case, I find that the Landlord initiated the end of the tenancy with her written notice, dated July 18, 2018, in accordance with Section 49 of the Act, and with the effective date of December 1, 2018.

Section 51(1) of the Act authorizes Tenants who receive a Notice to End Tenancy under Section 49 to receive one month's rent from the Landlord. As the Tenants lived rent-free in the rental unit for the first 14 days of October 2018, I find that the Landlord owes the Tenants the balance of one month's rent in the amount of \$752.16 ($\$1,410.40 \text{ rent}/30 = \47.01 per day . $16 \text{ days} \times \$47.01 = \752.16), in accordance with Section 51 of the Act.

To address the Landlord's claim that the Tenants did not give proper notice to end their tenancy and as a result, owes the Landlord two months of rent, I refer the Landlord to Section 50 of the Act. The section states that if a Landlord gives a Tenant notice to end a periodic tenancy under Section 49, the Tenant may end the tenancy early by giving the Landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the Landlord's notice, and paying the Landlord, on the date the Tenant's notice is given, the proportion of the rent due to the effective date of the Tenant's notice. Based on the above, I find that the Tenants gave proper notice to the Landlord, and I dismiss this part of the Landlord's claim where she requests compensation for unpaid rent for the October and November 2018.

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 the responsible 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 Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 7(2) of the Act that states a Landlord or Tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act or their Tenancy Agreement must do whatever is reasonable to minimize the damage or loss.

I accept the undisputed evidence from the Landlord that the Tenants were responsible for the majority of the damage to the door and that the Tenants paid for the door to be fixed and that it worked for the entire time of the tenancy. I find that Landlord has failed to provide sufficient evidence to verify the actual monetary amount of the loss or how she attempted to mitigate her losses by having the door repaired or attempting to obtain other quotes for less expensive doors. As a result, I award the Landlord nominal damages for the door in the amount of \$300.00.

I accept the undisputed evidence from the Landlord that the Tenants used chemical ice melt on the sidewalk in breach of the Tenancy Agreement. However, I find that the Landlord failed to show that she suffered a monetary loss as a result of the Tenants' actions. The Landlord provided pictures that did not show any specific damage or prove that the sidewalk looked like it did as a result of chemical ice melt. Further, the Landlord did not provide any documentation regarding the condition of the stairs/sidewalk at the beginning of the tenancy compared to the end of the tenancy, nor did she verify the cost of any potential repairs. For these reasons, I dismiss this part of the Landlord's claim.

I accept the Landlord's undisputed evidence that the Tenants were responsible for the scratches on the living room and dining room floor. I find that the damages were minor, and that the Landlord failed to provide sufficient evidence of the cost to repair the damage or that she attempted to obtain professional quotes to mitigate the costs. In this case, I award the Landlord nominal damages in the amount of \$200.00.

The Tenants claimed, and the Landlord agreed, that they entered into an agreement with the Landlord to share the cost of a new stove. Both parties understood that it was the Tenants initiative to replace the working stove of the Landlord's and the Tenants used the new stove for the time of their tenancy. I find that the Tenants failed to provide sufficient evidence of a monetary loss due to the Landlord breaching the Act or the Tenancy Agreement. For these reasons, I dismiss this part of the Tenants' claim.

The Tenants stated that they lost the facilities of laundry when the Landlord moved in to the lower unit; however, both parties agreed that the Tenants continued to do their laundry within the residential property. I find that the Tenants proved that doing their laundry was less convenient when the Landlord moved in to the lower unit, but not that there was a breach of the Tenancy Agreement or a loss of service for the Tenants. I dismiss this part of the Tenants' claim.

The Tenants testified that they suffered a loss of quiet enjoyment due to the Landlord's behavior during the last six weeks of the tenancy. I accept that the relationship became strained and that

this caused anxiety and stress for the Tenants. I find that the Tenants still had access to their entire rental unit and that they failed to provide sufficient evidence that their right to quiet enjoyment was breached, pursuant to Section 28 of the Act, to such an extent that a monetary award would be justified. As a result, I dismiss this part of the Tenants' claim.

Both parties agreed that the Landlord owed half of the gas bill. I award the Tenants their claim of \$146.35 for half of the last bill for gas in relation to this tenancy.

As both parties were partially successful with their claims and both parties applied for compensation of the filing fee, I do not make any awards to either party.

The Landlord successfully established a monetary claim in the amount of \$500.00. I authorize the Landlord to claim this amount from the security deposit and order the Landlord to return the balance of the security deposit, and the pet damage deposit to the Tenants, in the amount of \$1,100.00.

The Tenants successfully established a monetary claim in the amount of \$898.51. See tables below:

Items for Monetary claim for Landlord:	Amount
Damages to the Door to Landlord	\$300.00
Damages to hardwood floors	200.00
Pet damage deposit	-800.00
Security deposit	-800.00
Balance of deposits to return to Tenants	-\$1,100.00

Items for Monetary claim for Tenants	Amount
One-half month's rent compensation	\$752.16
Hydro Bill – one half	146.35
Total Monetary Award for Tenants	\$898.51

Based on these determinations, I grant the Tenants a Monetary Order for the combination of the balance of their deposits, and their monetary claim, for a total amount of **\$1,998.51**.

Conclusion

I grant the Tenants a Monetary Order for the amount of \$1,998.51, in accordance with Section 67 of the Act. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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: February 26, 2019

Residential Tenancy Branch