



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- an order authorizing the tenant the recovery of the filing fee for this application from the landlord pursuant to section 72.

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 acknowledged receipt of evidence submitted by the tenant. The landlord did not submit any documentation for this hearing. The landlord was represented by a licensed property manager NS.

Issue to be Decided

Are the tenants entitled to a monetary award for compensation arising out of this tenancy?
Are the tenants entitled to the recovery of the filing fee?

Background, Evidence

VE gave the following testimony on behalf of the tenants. The one year fixed term tenancy began on June 1, 2017 but ended early on February 3, 2018. The tenants were obligated to pay \$2250.00 per month in rent and at the outset of the tenancy the tenants paid a \$1125.00 security deposit and \$1125.00 pet deposit which has already been returned to the tenants. VE testified that the home was unsuitable for occupation. VE testified that through their entire tenancy they had issues with water, rats, spiders, mold, and broken appliances. VE testified that the condition of the home was so poor, the tenants had to clean, paint and repair many items. VE testified that the landlord had let this home fall into such disrepair that she hired her own home inspector. VE testified that on January 29, 2018 the report was done and the inspector found the home to be uninhabitable.

The tenants are applying for the following:

1.	Cleaning	\$200.00
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2.	Grass seed	22.97
3.	Paint and supplies	148.60
4.	Labour for painting	1000.00
5.	Calculations of Energy Freezer	277.60
6.	Water	135.00
7.	Home Inspection	420.00
8.	Canada Post	56.96
9.	ICBC	66.00
10.	Dumping Fees	11.00
11.	Gas	20.00
12.	McDonalds	44.57
13.	Stop Payment on Cheques	43.50
14.	2 Months Compensation	4500.00
15.	8 Month Rent Rebate of 50% of Rent Paid	9000.00
16.	Filing Fee	100.00
	Total	\$16002.00

The representative for the landlord gave the following testimony. NS testified that the landlord is agreeable cover the cost for the supplies for painting and the stop payment fees on the cheques and one month's electricity cost for the deep freezer. NS testified that many of the alleged claims were done without the landlords' permission and that the landlord was only informed after the tenants had already undertaken them. NS testified that the tenants' home inspection was never made available to the landlord until they were served notice of this hearing. NS testified that despite not having any proof to support the tenants' allegations, the landlords provided one month's free rent for the month of February 2018 to the tenants. NS testified that the tenants moved out in early February on their own volition.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I address the tenants claim and my findings as follows.

Cleaning - \$200.00

The tenant testified that the unit was dirty when they moved in and required eight hours of cleaning at \$25.00 per hour. The agent testified that the tenant sent the landlord a text after they had allegedly clean the unit but did not ask for any compensation until 18 months later when they filed this application. I find that the tenants did not provide the landlord an opportunity to address the issue. In addition, the tenants were unable to provide sufficient evidence to show the scope of work and that amount of time needed to clean the unit. Based on the insufficient evidence before me, I dismiss this portion of the tenants claim.

Grass Seed - \$22.97

The agent testified that the tenant sent a text to the landlord after they had already purchased the grass seed and did not seek compensation until 18 months later when they filed this application. The tenant testified that she had two dogs and the grass needed seeding. The tenant did not provide sufficient evidence to show that the grass required the seeding and that she gave the landlords an opportunity to address the issue, accordingly; I dismiss this portion of their application.

Paint supplies- \$148.60

The agent testified that the landlord agrees to pay for this cost; accordingly, I find that the tenants are entitled to \$148.60.

Paint Labour - \$1000.00

The tenant testified that when she asked the landlord if she could paint the suite and they said yes, she stated "I thought they were going to pay for it". The agent testified that the landlord agreed to cover the cost of the supplies if the tenants did the work on their own. The agent testified that there was no agreement to compensate the tenants for their time to paint. The tenants have not provided sufficient evidence that they had an agreement to be compensated for painting the suite. In addition, the tenants have not provided sufficient evidence to show that the scope of work was equivalent to 40 hours of labour at \$25.00 per hour; accordingly, I dismiss this portion of the tenants' application.

Deep Freezer Energy Consumption - \$277.60

The tenant testified that they didn't ask to have a deep freezer in their unit and that they should not have to pay for the electricity to keep it plugged in. The agent testified that he agrees that the landlords are responsible for one month's consumption of energy as they had left some items in the deep freezer but those items were removed after one month. The agent testified that once it was empty after the initial month, the tenants could have easily unplugged the deep freezer. The agent testified that the unit came with the deep freezer just like any other appliance. I find that the tenants are entitled to one month's energy consumption but not the entire 8 months that they are seeking. I find that the tenants are entitled to \$34.70.

Water – \$135.00

The tenant testified that on December 1, 2017 they didn't have any running water. The tenant testified that after some investigation she found that the water bill had not been paid. The agent testified that water was not part of the tenancy agreement. In the tenants own documentation it clearly shows that water was not included as part of the tenancy agreement, accordingly; I dismiss this portion of their application.

Home Inspection – \$420.00

The tenant testified that she had the home inspection done at her own cost and believes the landlord should pay for it. The agent testified that the tenant hired the company of her choosing without consulting the landlord and would not provide a copy of the report unless she was financially compensated beyond the cost of the actual report. The agent testified that the tenants did not provide a copy of the report until they served the documents for this hearing. I find that this was a cost that the tenant chose to incur and as noted in other claims, did not allow the landlord a reasonable time to respond or discuss options. The tenant took it upon herself to hire this company and therefore must bear this cost. I find that the tenant is not entitled to the recovery of this cost and I therefore dismiss this portion of the claim.

Stop Payment of Cheque - \$43.20

The agent advised that the landlords' would pay for this cost; accordingly, I find that the tenants are entitled to \$43.20.

Canada Post, ICBC, Landfill, Petro, McDonalds, 2 Months Compensation, 50% rent rebate for 8 months of tenancy - \$13742.03

The majority of the tenants claim is based on their belief that the home was uninhabitable and that they had to vacate as directed by the home inspector. The home inspection was done on January 29, 2018. The tenants have relied on this document to justify that they had to insure a non-winter vehicle to use it for moving, buying their friends meals to help them move, change of address cost, and running items to the dump that were damaged by mold. In addition the tenants believe that "since we have to go to court, we're entitled to two months' rent as compensation". The tenants also feel that a fifty percent rebate of rent paid is appropriate.

The agent disputes this claim. The agent testified that the landlords took the tenants word on good faith about the inspection and advised that they could have the unit rent free for the month of February 2018. The agent testified that the tenants moved out at a date of their choosing during the month. The agent testified that they have already received that month as compensation and should not be entitled to anything further. Furthermore, the agent pointed out that the inspection report outlined that the unit was dirty and was being not properly ventilated

by the tenants. The agent also pointed out that the cause of the sewer water in the crawl space was a result of a loose toilet that was not reported to the landlord.

Having reviewed the tenants own home inspectors report, I make the following observations. The report does outline some deficiencies in the home and the suggested remedies, however, there is not any suggestion or statement that the tenants' must immediately vacate as testified by VE. In addition, it was unclear what accreditation this home inspector or the company has as much of the report is done on a visual only basis as noted on their inspection. The primary issue was the loose toilet base which was discovered during the inspection. The tenants gave notice that they were moving out that same day the inspection was done. Section 45 of the Act addresses the issue before me as follows:

Tenant's notice

45 (2) A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation **within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.**

In the tenants own testimony she testified that she gave the landlord notice on January 29, 2018 that she would be moving out immediately. I find that the tenant failed to provide an opportunity to the landlord to address any and all issues that she is relying on for the basis of her move out. In addition, the tenant refused to provide a copy of the report to the landlord to justify her reasons for moving. I find that the tenant has not provided sufficient evidence that the landlord was negligent or reckless or that she demonstrated reasonable steps to mitigate the damage, accordingly; I dismiss the claim for \$13742.03 as these were costs she incurred as a result of her own actions.

As the tenants have been successful in some of their claims, they are entitled to the recovery of the \$100.00 filing fee.

Conclusion

The tenants have established a claim for \$326.80. I grant the tenants an order under section 67 for the balance due of \$326.80. This order may be filed in the 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 25, 2019

Residential Tenancy Branch