



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL –S, MNDCL –S, MNSD, MNDCT, FFL, FFT

Introduction

This proceeding dealt with monetary cross applications. The landlord applied for a Monetary Order for unpaid utilities, compensation for damage and cleaning and other losses; and, authorization to retain the tenants' security deposit. The tenants applied for a Monetary Order for return of double the security deposit and compensation for loss of quiet enjoyment.

Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The hearing was held over two dates and an Interim Decision was issued on January 10, 2019 and should be read in conjunction with this decision.

It should be noted that I was provided a considerable amount of documentary evidence and hours of testimony, all of which I have considered in making my decision; however, with a view to brevity in writing this decision I have only summarized the parties' respective positions and referred to the most relevant evidence.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenants for damage, cleaning, utilities and other damages or loss in the amounts claimed?
2. Have the tenants established an entitlement to return of double the security deposit and compensation for loss of quiet enjoyment?
3. Disposition of the security deposit.

Background and Evidence

The tenancy started on October 1, 2016. The tenants paid a security deposit of \$675.00. The rent was set at \$1,400.00 per month less a \$50.00 credit for performing yard maintenance, for a net monthly obligation of \$1,350.00. The tenancy ended on August 31, 2018.

The landlord did not prepare a move-in inspection report with the tenants. According to the landlord she did not bring the move-in inspection report with her when she inspected the unit with the tenants and the tenants told her to prepare the report without them and just put check marks next to everything on the

report. The landlord stated that she did that and then filed the document without giving a copy to the tenants. The tenants denied saying that to the landlord about completing the report without them but did say the unit looked lovely when they viewed the unit. Rather, the tenants stated that they wanted the landlord to perform a move-in inspection and complete a report but none was ever presented to them until it was served with the landlord's evidence package for this proceeding.

The parties met at the property for purposes of doing the move-out inspection on September 1, 2018. The landlord had a condition inspection report with her but the tenants left the property only minutes after the inspection started. According to the tenants, the landlord's son was acting aggressively and since they were with their children they left. The landlord denied that her son was acting aggressively at the move-out inspection but the landlord mentioned that the tenants had seen her son get into an argument with another tenant living at the property (the landlord's daughter) and the tenants intervened in that instance. The landlord proceeded to do the move-out inspection report after the tenants left. The landlord sent a copy of the move-out inspection report with the landlord's evidence package and upon review of the report the tenants disagreed with the landlord's assessment of the property.

The tenants provided their forwarding address to the landlord in writing on September 1, 2018. The landlord filed her Application claiming against the tenants' deposit on September 7, 2018.

Landlord's Application

Below, I have summarized the landlord's claims against the tenants and the tenants' responses.

Bathroom vanity and sink replacement -- \$301.28

The landlord submitted that the tenants broke the bathroom sink during the tenancy. The landlord seeks to recover the cost to purchase a replacement bathroom vanity and sink. The landlord provided receipts for the purchase of the new vanity and sink and photographs of the damaged sink. The landlord did not charge for labour to replace the sink.

The landlord testified that the damaged vanity and sink was installed in 2015 or 2016. The landlord testified that initially the tenants reported to the landlord that a toothbrush holder fell into the sink and then they changed their story to say it was a medication bottle that fell into the sink. The landlord does not believe the tenant's explanation as she tested those theories and such things did not break the sink. Rather, the landlord had to take a hammer to the sink to recreate the type of damage caused to the sink.

The tenants testified that the sink broke after a plastic toothbrush cup fell into the sink. The tenants stated it was not a substantial fall or distance and were of the position the sink broke easily because it had a pre-existing crack and was not structurally sound. The tenants are of the position they are not responsible for the sink damage due to pre-existing damage and ordinary use of the sink by them.

The tenants submitted the landlord had been inconsistent with her statements as to when the sink/vanity was installed. The tenants stated that at one point the landlord explained that a previous tenant had installed it and then her son installed it. The landlord explained that a previous tenant did install the sink originally but that her son re-installed it when new flooring was laid but that he would not have re-installed the sink had it been cracked.

Clean furnace ducts -- \$687.75

The landlord had the furnace ducts power vacuumed during the tenancy and seeks to recover the cost to do so from the tenants.

The landlord testified that she cleaned the ducts in response to the tenant's complaints that they were experiencing second hand smoke coming through the ducts from other tenants residing in the other rental units on the property.

The landlord also testified that the landlord ordinarily cleans the ducts every 1 to 1.5 years and the last time the ducts had been cleaned was 2 years prior. The landlord was of the position that the tenants are responsible for this expense because the duct cleaner did not find signs of smoke or soot in the ducts.

I dismissed this claim during the hearing for reasons provided in the analysis section of the decision and it was unnecessary to hear a response from the tenants.

Clean, service and purge hot water tank -- \$408.95 + \$52.50

The landlord had the hot water tank inspected, cleaned and purged during the tenancy and seeks to recover such costs from the tenants.

The landlord received a complaint from the tenants that the water was discoloured and too hot. The landlord had the water tested and the analysis confirmed the water was safe to drink but discoloured. The landlord determined that the appropriate response to address the discolouration was to purge the hot water tank.

The landlord could not provide a feasible explanation as to why the tenants are responsible for paying the inspection, servicing and purging of the hot water tank other than to point to the fact they had made the complaint about the discoloured and very hot water.

I dismissed this claim during the hearing for reasons provided in the analysis section of the decision without hearing a response from the tenants.

Replacement curtains panels - \$11.88 + \$11.88 + \$11.88 + \$11.88

The landlord submitted that the blinds were missing in the master bedroom at the end of the tenancy and the landlord seeks to recover the cost of new curtains.

The landlord submitted that the blinds in the smaller bedroom had bent slats at the end of the tenancy and the landlord seeks to recover the cost to install new curtains she purchased to replace the bent blinds.

The tenants submitted that there never were blinds or curtains in the master bedroom at the start of the tenancy, only a curtain rod. The tenants testified that they put up their own curtains and took with them at the end of the tenancy. The tenants pointed to photographs of the rental unit when it was advertised for rent and a curtain rod is visible but there are no blinds or curtains.

The tenants submitted that the blinds in the smaller bedroom were already bent at the start of the tenancy. The landlord acknowledged that the blinds were bent on one side at the start of the tenancy but stated that they were bent on both sides at the end of the tenancy.

Replace closet rod holder, closet glide track, faucet aerator and heat register -- \$22.42 + \$30.14 + \$10.26

The landlord submitted that the closet rod holder was found to be broken and taped in place at the end of the tenancy, and the closet door track was damaged at the end of the tenancy. In addition, the faucet aerator was missing and the heat register in the bathroom was missing the bottom portion. The landlord seeks to recover the cost to purchase replacement items from the tenants.

The tenants denied breaking the closet rod holder or taping it. The tenants testified the closet door was installed improperly causing the glide/track to wear out prematurely. The tenants stated that they replaced the faucet aerator multiple times during the tenancy because the water was so extremely hot it melted the plastic and they gave up buying any more aerators. The tenants acknowledged taping the heat register to the floor in the bathroom in an effort to try to stop the infiltration of cigarette smoke but they denied removing the bottom portion of the register.

Unpaid water bill -- \$721.27

The landlord submitted that the water bill was in the tenant's name during the tenancy and they were responsible for paying the water bill for their unit. In September 2018 the landlord when to the City after her incoming tenant reported an issue to her. The landlord determined the tenants had stopped paying the water bill with their last partial payment being in April 2017. The landlord had to pay the outstanding amount of \$721.27 to bring the account into good standing so that the new tenant could get the water bill in his name.

The tenants testified that they made regular payments to the water bill up to the last quarter of their tenancy and there is no way they owed \$721.27. The tenants acknowledged they probably owed somewhere close to \$100.00 for the last couple of months of tenancy. The tenants were of the position the landlord failed to provide enough evidence that the charges relate to their tenancy or their consumption. The tenants submitted that it is possible their account included usage for the common hot water tank and common laundry machines that were also used by tenants of two other rental units on the property.

The landlord acknowledged that there was an issue in the past with the water for the hot water tank and the laundry machines being included on a tenant's water bill but the landlord has addressed that issue by paying that water bill. According to the landlord the unit that provides the water for the hot water tank and laundry machine is not the tenant's unit.

Landlord's labour for cleaning, painting, repair -- \$724.21

The landlord submitted that she spent 58.25 hours cleaning the rental unit, painting the unit and making repairs for which she seeks to hold the tenants responsible. The landlord provided a listing of the number of hours she spent at the rental unit in September 2018 after the tenancy ended; however, there was no

breakdown as to the tasks she undertook during those times. The landlord applied the minimum wage in effect at the time to her hours in arriving at the amount claimed.

The landlord submitted that a fair amount of cleaning was required, including the kitchen cabinets, window frames and baseboards. There was also crayon on the woodwork that had to be removed.

As for painting, the landlord submitted that the tenants had painted areas of the rental unit and got paint on the trim and baseboards which had to be repainted white. In addition, the landlord had to touch up where the tenants hung artwork and where the walls were bumped by furniture. The landlord stated that she painted the unit approximately one year before the tenancy started.

In addition, the landlord seeks compensation for her time spent making the miscellaneous repairs she described previously in her claims.

The tenants testified that they spent days cleaning the rental unit and left it immaculately clean. The tenants took the position that any painting or repairs required were not the tenants' responsibility as it would have been the result of wear and tear.

Tenants' application

Double security deposit -- \$1,350.00

The tenants seek return of double the security deposit on the basis the landlord did not have grounds to withhold it or make a claim against it. The tenant submitted that since the unit was left clean and undamaged the landlord was obligated to return the deposit to them within 15 days.

After reviewing section 38 of the Act during the hearing, the tenant withdrew the request for doubling of the security deposit.

Loss of use and enjoyment – \$4,657.50

The tenants seek compensation equivalent to 15% of their monthly rent for 23 months of their 24 month tenancy. The tenant's request pertains to two complaints: second hand smoke infiltration into the rental unit from other tenants on the property and scalding hot water coming from the common hot water tank.

1. Second hand smoke

The tenants submitted that approximately one month after their tenancy started they complained to the landlord that they were noticing smoke coming in the hall way and bathroom. In response, the landlord gave the tenants in the two other rental units notices to not smoke in their units. The tenants submitted that they continued to experience the smell of smoke in their unit and complained to the landlord again in

November or December 2016 and in response the landlord put up notices to instruct tenants to not smoke in their units and to smoke in a designated area.

The tenant submitted that they observed the tenant living next door (the landlord's daughter) go in and out of her unit with a lit cigarette. Further, the two men living in the unit below them both smoked and even though they would smoke outside they left their door open and the smoke would come back in the house. The tenant testified that she did ask the men living below to close their door when they smoke outside.

The tenants continued to experience smoke smells and complained to the landlord against in March 2017 to inform the landlord the situation was unbearable but the landlord stated she could not do much more about it.

The tenants submitted that they purchased a second air purifier in May 2017, kept their windows closed, taped the ducts and just put up with it.

The tenant testified that the situation improved in the warmer months and then worsened in the winter when the central heat was on. In February 2018 the tenants made another complaint to the landlord, this time more formal and in writing. In response, the landlord cleaned the heating ducts. The tenant stated the duct cleaning did not help but the situation improved in April 2018 when the warmer weather returned and the heat was off.

The tenant explained that living in a smoke free environment was very important to them because, at the start of the tenancy they had a young child and the tenant was pregnant, also the male tenant's father had recently died. The tenant stated that when they viewed the unit before renting it they saw the next door tenant smoking on the deck and thought the unit would not be suitable for that reason but they decided to rent it anyways after emphasizing to the landlord that it was important to them to be in a smoke free environment.

The landlord testified that she did speak with the other tenants on the property about smoking outside and they complied with her demand as far as she was aware; however, the landlord acknowledged that her daughter may have smoked inside when the landlord is not at the property.

The landlord submitted that she heard from the other tenants at the property that people were smoking marijuana on the deck of the rental unit and the windows were open.

The landlord does not believe the tenants were experiencing the smell of smoke in their unit since the duct cleaner told her there was no evidence of soot in the ducts and smoking inside would leave soot in the ducts. The tenants pointed out that the duct cleaners findings were not noted on the documentary evidence presented by the landlord and the landlord has relied upon hearsay only.

2. Hot water

In addition to smoke infiltration, the tenants noticed that the hot water was extremely hot. For the tenants it became more of a concern in January 2017 when their toddler started turning on the faucets himself so they had to supervise their toddler when using the faucet. Also, multiple aerators melted. The tenants stated they complained to the landlords and the landlords indicated they would look into it. The tenants

acknowledged the landlord's son, a plumber, tried making some adjustments under their sink but that was ineffective.

In May 2018 the tenants notified the landlord the water was hot and discoloured which the tenant learned frothed city that it was likely rust inside the hot water tank. The tenant complained to the landlord and took water samples in June 2018. The landlord did not provide the tenants with the water test results but did have the hot water tank purged in May or June 2018.

The tenants tested the water temperature with a meat thermometer which registered 170 degrees and the tenants showed the landlord how hot the water was. The tenants stated the landlord's response was that the water tank had to be set at a high temperature so that there would be enough hot water for three rental units. The tenants suggested there should be three tanks for three units and the landlord stated she would not install three new tanks.

The landlord submitted that the tenants did show her a reading of 168 degrees on a meat thermometer but the hot water tank was set at 140 degrees and when her son, the plumber tested the temperature in the lines he obtained a reading of 130 to 132 degrees. Nevertheless, the landlord put the hot water tank down to 120 degrees.

The landlord was not willing to install three tanks since the current system of having one tank for multiple units has been working for several years without complaints from any other tenant.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons with respect to the Applications before me.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The burden of proof is based on the balance of probabilities. It is important to point out that where a party provides a version of events in one way, and the other party provides a different but equally probably version of events, without further evidence, the claim will fail for the party with the burden of proof.

Landlord's application

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 also provide that reasonable wear and tear is not considered

damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant, or a person permitted on the property by the tenant, due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

Section 21 of the Residential Tenancy Regulations provide that in a dispute resolution proceeding, a condition inspection report prepared in accordance with the Regulations is the best evidence as to the condition of a rental unit unless there is a preponderance of evidence to the contrary.

The regulations provide that the landlord dis to prepare the condition inspection report with the tenants during the inspection and present the report to the tenants for them to agree or disagree with the landlord's assessment and make comments appropriately.

In this case, the landlord did not prepare the move-in inspection report with the tenants as required under the Regulations. Accordingly, I have not given the move-in inspection report much evidentiary weight and I have relied more heavily on the photographs of the rental unit at the start of the tenancy.

As for the move-out inspection report, the tenants left the inspection before the report was completed and I was provided disputed testimony concerning the behavior of the landlord's son at the move-out inspection. However, the landlord acknowledged that her son had been in dispute with another tenant (the landlord's daughter) at another time at the property and the tenants intervened in that instance. As such, I accept the tenants may have had a reasonable basis to believe the landlord's son was or had a propensity to act aggressively in deciding to leave the inspection early. Therefore, I have relied on the photographs of the rental unit taken at the end of the tenancy more than the move-out inspection report.

Bathroom vanity and sink

It is undisputed that the bathroom sink was damaged so extensively that the sink required replacement. The parties were in dispute as to what caused the sink to break.

Upon review of the photographs, and hearing from both parties, I find it unlikely that a falling plastic cup would have created a significant hole in the porcelain sink. If the sink was so cracked that a light item such as a plastic cup could break it, I am of the view the tenants would have reported the crack and requested a repair especially when I consider they raised other issues to the landlord's attention (smell of smoke and hot water) during the tenancy. Therefore, I do not accept that the sink broke due to a pre-existing crack or structural damage as put forth by the tenants and I find the landlord has satisfied me, on a balance of probabilities, that the tenants are responsible for breaking the sink.

The sink was fairly new when it was damaged during the tenancy and the landlord is seeking the cost to purchase a new vanity and sink, but the landlord did not charge for labour to remove and install a new sink that I am able to ascertain. I find the landlord's claim for this matter to be reasonable in its totality and I grant the landlords request to recover \$301.28 from the tenants.

Duct cleaning and hot water tank servicing and purging

A landlord is required to perform routine maintenance at a rental property at reasonable intervals as part of a landlord's statutory obligation under section 32 of the Act to repair and maintain a residential property. A tenant is only required to make or pay for repairs where the repair is necessary due to the

tenant damaging the property by way of their actions or neglect, or those of persons permitted on the property by the tenant.

Residential Tenancy Policy guideline 1 provides that duct cleaning is a landlord responsibility. Under “Furnaces” the policy guideline provides, in part:

1. The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.

[My emphasis added]

Policy guideline 1 does not specifically mention “hot water tanks”; however, under “major appliances” the policy guideline states:

3. The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

The landlord did not present any evidence to suggest the tenants damaged the hot water tank.

In light of the above, I make no award to the landlord for compensation to have the hot water tank served, cleaned and/or purged and I make no award for performing a routine maintenance task of cleaning the heating ducts.

Replacement curtains

I was provided disputed testimony that the rental unit had blinds and/or curtains in the master bedroom at the start of the tenancy. I have reviewed the photographs of the master bedroom window taken at the start of the tenancy very carefully and, although hard to see, I find there were blinds in the window of the master bedroom at the start of the tenancy. This appears consistent with photographs of the blind brackets still in place at the end of tenancy and the move-in inspection report. Since the blinds were missing at the end of the tenancy, I find the tenants responsible to pay for providing replacement window coverings and I find the landlord's request for compensation for inexpensive curtain panels that cost \$23.76 (\$11.88 x 2) to be reasonable.

As for replacement curtains in the second bedroom, I find I am less convinced the tenants are liable to pay for replacement window coverings. While the landlord's photographs show a blind that is significantly damaged at the end of the tenancy, the photograph she took at the start of the tenancy showed the blinds had a fair amount of bent slats already. Therefore, I am of the view it is unreasonable to expect the tenants to pay for new window coverings when the blinds provided to them were already in need of repair or replacement at the start of the tenancy and I make no award for replacement of the second bedroom blinds.

Replacement of closet rod holder, closet door track, aerator and heat register

The landlord seeks compensation from the tenants to replace the above described items.

The tenants denied breaking the closet rod holder or taping it; however, I note that the rod is taped in place using the same or similar tape the tenants used to tape down the heat registers. Accordingly, I find on the balance of probabilities, that the tenants broke the rod holder and taped it back into place. However, when I look at the receipts the landlord put into evidence I cannot determine which item purchased represents the new closet rod holder as many items were purchased and the descriptions on the receipts are not obvious with respect to the rod holder. As such, it is unclear to me as to what the landlord's loss is with respect to this item and I make no award.

The tenants explained the closet door track was damaged as a result of the closet doors not being installed correctly at the start of the tenancy and that repeated wear from the incorrect installation resulted in the damage to the track. It is nearly impossible for me to determine what caused the track to fail based on the disputed evidence before me. Since the landlord has the burden of proof and the tenants provided a plausible explanation, I find I am not persuaded that the tenants are responsible for this damage.

It was undisputed that an aerator was missing at the end of the tenancy; however, I heard that the tenants had replaced the aerator multiple times and blamed the very hot water as the reason for this. Included in the tenant's evidence were two photographs showing two different aerators on the kitchen faucet. On the balance of probabilities, I find I am satisfied that the tenants had replaced the aerator multiple times during the tenancy and, while the disputed evidence concerning very hot water is not conclusive, I am not convinced the tenants are responsible to pay for another aerator.

The tenants denied taking the bottom portion off the heat register in the bathroom. There is no photographic evidence to demonstrate the bottom portion of the heat register was in place at the start of the tenancy or missing at the end of the tenancy. The move-in inspection report and the move-out inspection report is silent with respect to the condition of the heat register. Therefore, I find it is unclear to me whether the bottom part of the register was in place at the start of the tenancy or missing at the end of the tenancy and I am unsatisfied the tenants are liable to pay for a replacement heat register.

Water bill

The tenancy agreement provides that water is not included in rent. Nor, is garbage collection which is also a component of the utility bill issued by the city. The parties were not in dispute that the tenants were required to pay the city utility bill. What was in dispute was the amount owing to the City when the tenancy ended.

The City utility bill identifies the rental unit address on the document provided by the landlord, dated September 30, 2018. It shows a "previous bill amount" of \$721.27. The tenants acknowledge they likely owe some of this, to the tune of approximately \$100.00, but claim they paid their bill regularly except for the last quarter. The tenants did not provide copies of any of their previous utility bills from the City or evidence to demonstrate the payments they made, such as bank statements, receipts, etc. I also find it hard to believe that they could not have obtained a history from the City for the period of their tenancy since the account was in their name. Therefore, I find on the balance of probabilities, that the "previous bill amount" is attributable to the tenants and consumption during their tenancy and I award the amount claimed to the landlord.

Landlord's labor to clean, paint and repair

Upon review of the photographs provided by the landlord, I find there is some evidence that some additional cleaning was required, but not a great amount. I also see scuffs and marks on the trim and baseboard which appear to be beyond wear and tear, and I have found the tenants responsible for the closet rod holder replacement and replacement of the bathroom vanity but no other repairs. Accordingly, I find the landlord entitled to some compensation for her labour to rectify these issues. However, I have also found the landlord did not establish an entitlement to be compensated for other repairs, such as the blinds in the smaller bedroom, replacing the aerator and closet door track. I also note that in the landlord's written submissions she points to having to do touch ups in places the tenants hung artwork which is considered wear and tear under policy guideline 1.

When I look at the landlord's listing of time spent at the rental unit after the tenancy ended, the landlord provided the total number of hours she was at the rental unit in a particular day but did not breakdown the tasks she was performing while she was there. As such, I find it cannot attribute the landlord's time to a particular task for which the tenants are responsible. Therefore, I find the landlord has not demonstrated an entitlement to the compensation she seeks for all of her time spent at the rental unit after the tenancy ended.

Nevertheless, in recognition that there was some cleaning, painting of trim, and a few repairs the tenants are responsible for, I provide the landlord a nominal award of \$100.00.

Filing fee and Security Deposit

The landlord's application had some merit and I award the landlord recovery of one-half of the filing fee paid by the landlord, or \$50.00.

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the amounts awarded to the landlord with this decision.

I calculate the amount payable to the landlord to be as follows:

Damage to bathroom vanity/sink	\$301.28	
Missing window coverings in master bedroom	23.76	
Unpaid city utility bills	701.27	
Landlord's labour to clean and repair	100.00	
Filing fee (one-half)		50.00
Less: security deposit	<u>(675.00)</u>	
Net award to landlord	\$501.31	

Tenant's application

The tenants seek compensation for 23 of the 24 months of their tenancy for loss of quiet enjoyment.

Under section 28 of the Act, a tenant is entitled to quiet enjoyment and quiet enjoyment includes freedom from unreasonable disturbance and significant interference. It is important to note that in order to find a breach of quiet enjoyment; the tenants must experience an "unreasonable" disturbance, not just a disturbance and "significant" interference, not just an interference. Residential Tenancy Policy Guideline

6 provides information and policy statements with respect to a tenant's right to quiet enjoyment. It provides, in part:

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 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 entitlement to 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.

[My emphasis underlined]

It was undisputed the tenants made a number of complaints to the landlords with respect to smelling cigarette smoke, and the landlords did take some action, including issuing notices to the tenants on the property; but, according to the tenants, the issue would return. It was also undisputed that the tenants had complained about the water temperature and the landlord did respond to those concerns, although the tenants were of the position the landlord's responses were ineffective or inadequate. Accordingly to the tenants they eventually just lived with the situations, having felt defeated.

In making their monetary claim for a period of time that was almost as long as their entire tenancy, I would expect a situation where the second hand smoke and inconvenience from the overly hot water was frequent and on-going; however, I note that in making their formal complaint in February 2018 the tenants wrote: "We like living here and for the most part enjoyed our tenancy, aside from the sporadic complaints of second hand smoke [my emphasis underlined]" The tenants also wrote in their formal complaint: "We noticed that it is definitely worse when the weather outside is cold or heavily raining." Based on their complaint in February 2018 I find I am not satisfied that the issue of smoke was constant, frequent or on-going. Nor, did the tenants raise the issue of the hot water in the formal complaint.

Also of consideration in making my decision is that the tenants did not file an Application for Dispute Resolution during their tenancy to seek remedies to the issue of smoke or very hot water. A tenant is at liberty to seek repair orders or orders for compliance against a landlord by filing an Application for Dispute Resolution and possible remedies will be explored where a loss of quiet enjoyment is demonstrated or a repair necessary. For whatever reason, the tenants did not avail themselves to this remedy. In my view, a reasonable person suffering from unreasonable disturbance or significant interference over many months would attempt to find a remedy while the tenancy was still in existence rather than wait until after the tenancy is over and then seek monetary compensation.

Further, the tenant testified that when viewing the rental unit they observed the tenant in the neighbouring unit smoking on the deck and the tenants had significant reservations the rental unit was suitable for them. They decided to rent the unit anyways with knowledge that the residential property was not smoke-free and, at least to some extent, it would appear they accepted the risk of being exposed to second hand smoke from other tenants smoking outside.

In light of all of the above, I find I am not satisfied that the tenants were suffering significant interference or unreasonable disturbance by frequent and on-going disturbance for 23 of the 24 months of their tenancy or that they took reasonable action to mitigate their losses. Therefore, I deny the tenant's request for compensation in the amount claimed.

I make no award for recovery of the filing fee for the tenant's application and the tenant's application is dismissed in its entirety.

Conclusion

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of \$501.31 to serve and enforce upon the tenants.

The tenants' application is dismissed 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: March 27, 2019

Residential Tenancy Branch