# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes:

MNDL-S, MNDCL-S, MNRL-S, FFL, CNR, CNC, FFT, ERP, RO, OLC, LRE

Introduction

A hearing was convened on January 15, 2019 in response to cross applications.

The Landlords filed an Application for Dispute Resolution, in which the Landlords applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, for a monetary Order for damage; to keep all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Tenants filed an Application for Dispute Resolution, in which the Tenants applied to cancel a One Month Notice to End Tenancy for Cause; for an Order requiring the Landlord to make repairs to the rental unit; for an Order requiring the Landlords to comply with the *Residential Tenancy Act (Act*) or the tenancy agreement; for an Order limiting or setting conditions on the Landlords' right to enter the rental unit; and to recover the fee for filing an Application for Dispute Resolution.

On December 08, 2018 the Tenants filed an Amendment to an Application for Dispute Resolution, in which they applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent and for compensation for loss of quiet enjoyment.

Service of documents was addressed in the interim decision of January 16, 2019.

There was insufficient time to conclude the hearing on January 15, 2018 and that hearing was, therefore, adjourned. The hearing was reconvened on March 04, 2019 and was concluded on that date.

At both hearings the parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Preliminary Matter #1

The Tenants' application to set aside the One Month Notice to End Tenancy for Cause that was served on November 27, 2018; the Tenants' application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent that was served on December 04, 2018; and the Tenants' application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent that was served on January 01, 2019 were addressed in my interim decision of January 16, 2019.

Preliminary Matter #2

As outlined in my interim decision of January 16, 2019, the Tenants' application for an Order requiring the Landlord to make repairs to the rental unit; for an Order requiring the Landlords to comply with the *Residential Tenancy Act (Act*) or the tenancy agreement; for an Order limiting or setting conditions on the Landlords' right to enter the rental unit; and for compensation for loss of quiet enjoyment as it relates to anything other than service of the Notices to End Tenancy have been severed and will not be considered at these proceedings.

Preliminary Matter #3

At the start of the hearing on March 04, 2019 the Landlords withdrew the application for rent for December of 2018 and January of 2019, as rent has now been paid for those months.

Preliminary Matter #4

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure stipulates that an Applicant's evidence must be received by the Respondent not less than 14 days before the hearing. In these circumstances all evidence was to be received by the Respondent not less than 14 days prior to the start of the proceedings on January 15, 2019.
Rule 3.15 of the Residential Tenancy Branch Rules of Procedure stipulates that a Respondent's evidence must be received by the Applicant not less than 7 days before the hearing. In these circumstances all evidence was to be received by the Applicant not less than 7 days prior to the start of the proceedings on January 15, 2019.

An adjournment that arises from having insufficient time to conclude the issues in dispute does not, in my view, afford the parties an opportunity to submit additional evidence and I did not authorize either party to do so.

Issue(s) to be Decided in this Final Decision

Are the Landlords entitled to compensation for damage to the rental unit, to compensation for unpaid rent, and to keep all or part of the security deposit?
Are the Tenants entitled to for loss of quiet enjoyment as it relates to service of the Notices to End Tenancy?

Background and Evidence

The Landlords and the Tenants agree that:

- the tenancy began on October 01, 2012;
- the Tenants are still living in the rental unit; and
- the Tenants paid a security deposit of $700.00.

The female Landlord stated that a condition inspection report was completed at the start of the tenancy, although she cannot find a copy of it. The female Tenant stated that a condition inspection report was not completed at the start of the tenancy.

The Landlords are seeking compensation for repairing damage to the rental unit, including holes in the walls, damage to the floor where the Tenants installed a pole; damage to closet doors, and damage to window coverings.

The female Tenant stated that the Tenants are aware of their obligation to leave the rental unit clean and undamaged at the end of the tenancy.

The Landlords are seeking compensation, in the amount of $1,000.00, for repairing the deck.

The female Landlord stated that the deck is unsafe and needs to be repaired immediately. She stated that the Tenants erected a tarp on the deck, which caused the deck to rot prematurely, and that their dogs chewed the stairs leading to the deck. The male Landlord stated that the Tenants installed lag bolts on the deck when they erected the deck and that the tarp trapped water, which caused the deck to rot.

The female Tenant stated that the tarp was erected on November 14, 2018 and was removed on December 20, 2018.

The female Landlord stated that the tarp was erected in the summer and it was removed in December of 2018. She stated that none of the evidence that was accepted for these proceedings establishes when the tarp was erected.

The male Tenant stated that the deck is rotting in many places and that the rot is not isolated to the area where the tarp was erected. He stated that their dogs did not chew the stairs and any damage to the stairs was caused by dogs walking up and down the stairs.

The female Tenant stated that in addition to their two dogs there have been 4 large dogs on the property since the start of their tenancy. She stated that the deck is not blocked off and all of the dogs went up and down those stairs.

The female Landlord stated that in addition to the Tenants' two dogs there have been 4 large dogs on the property since the start of this tenancy. She stated that she does not know if all of the dogs went up and down those stairs.

The male Tenant stated that the deck is over ten years old and that the age of the deck is directly related to the state of disrepair. The male Landlord stated that the deck in 6.5 to 7 years old.

The Landlords are seeking compensation of $500.00 for replacing a lawn mower and $150.00 for replacing a weed eater.

The Landlords contend that a new lawn mower and weed eater was provided in the summer of 2016 and that neither of them are currently working. The male Landlord stated that the equipment was to be stored under the deck and he speculates they are not working because they were left out in the rain by the Tenants.

The female Tenant stated that the occupant of the lower rental unit purchased a lawn mower in 2016 and that the Landlords have not provided them with a new lawn mower, although they did repair their old one in 2015. The male Tenant stated that a new weed eater was provided in the summer of 2016; that the Tenants only used it on one occasion; that it was stored under the deck; and that he does not know if it currently works.

The Landlords and the Tenants agree that the Tenants and the occupants of the lower rental unit were jointly responsible for maintaining the yard.

The female Landlord stated that the person who lived in the lower unit until September of 2018 told her that she never used the lawn mower or the weed eater. The male Tenant stated that the person who lived in the lower unit until September of 2018 mowed the lawn more frequently than the Tenants.

The Landlords are seeking compensation of $400.00 for replacing a large umbrella.

The female Landlord stated that the umbrella was provided to the Tenants when the tenancy began; the occupant of the lower rental unit is currently using it for shelter; the umbrella has holes in it and needs to be replaced; and she thinks the Tenants had a responsibility to ensure the umbrella was properly cared for.

The Tenants agree that the umbrella was provided to them when the tenancy began; they used it every summer; the occupant of the lower rental unit is currently using it for shelter; the umbrella is still in reasonable condition, although it is dirty; and the umbrella does not have any holes.

The Landlords are seeking compensation of $100.00 for gas used when they travelled to the rental unit to pick up rent.

Analysis

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 28 of the *Residential Tenancy Act (Act*) grants tenants the right to the quiet enjoyment of the rental unit, which includes the right to reasonable privacy; to freedom from unreasonable disturbance; to exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the *Act*; and to the use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline #6 reads, in part, that:

> 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.

I find that landlords have the right to serve notices to end tenancy if they believe there are grounds to end a tenancy. A subsequent finding by a Residential Tenancy Branch Arbitrator that the landlord did not have grounds to end the tenancy does not, in and of itself, constitute a breach of a tenant's right to quiet enjoyment. In these circumstances I am satisfied that the Landlords reasonably believed they had grounds to end the tenancy when the Ten Day Notice to End Tenancy was served on December 04, 2018 and when the One Month Notice to End Tenancy was served on November 27, 2018. I therefore find that the Tenants right to the quiet enjoyment of the rental unit was not breached as a result of being served with these Notices.

As the Landlords were aware that the Tenants had paid the rent before the Landlords served the Ten Day Notice to End Tenancy for Unpaid Rent on January 02, 2019, I find that the Landlords knew, or should have known, that they did not have the right to end the tenancy by serving this Notice to End Tenancy. Regardless of the Landlords' intent, I find that serving this Notice breached the Tenants right to the quiet enjoyment of the rental unit, as they had to file an Application for Dispute Resolution to dispute the Notice, which is both time consuming and stressful for many people.

I therefore find that the Tenants are entitled to compensation of $100.00 for this breach of the quiet enjoyment of their rental unit.

Section 37(2)(a) of the *Act* requires tenants to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, when they vacate a rental unit.

I find that the Landlords' claims for repairing holes in the walls, damage to the floor where the Tenants installed a pole; damage to closet doors, and damage to window coverings were made prematurely and they will not, therefore, be considered at these proceedings. I find these claims are premature as the Tenants have until the end of the tenancy to repair any damage caused to these areas. In the event the damage is not

repaired at the end of the tenancy the Landlords retain the right to file another Application for Dispute Resolution seeking compensation for these damages.

I find that the Landlords have submitted insufficient evidence to establish that the tarp erected by the Tenants caused a substantial amount of damage to the deck. In reaching this conclusion I was influenced, in part, by the absence of evidence that corroborates the Landlords' submission that the tarp was in place for several months or that refutes the Tenants' submission that it was up for approximately 5 weeks. In the absence of evidence that establishes the tarp was in place for an extended period of time, I cannot conclude that the tarp damaged the deck.

Although the photographs accepted as evidence clearly establish the deck is in a state of disrepair, they simply do not establish that the decay is a result of the tarp. Although it is possible that the tarp damaged the deck it is equally possible that the deck has simply deteriorated due to normal wear and tear.

On the basis of the undisputed evidence I find that there were a total of 6 different dogs living on this residential property at various times during the tenancy, only two of which belonged to the Tenants. On the basis of the undisputed evidence that all of the dogs had access to the deck and that they accessed the deck, I find that the Landlord has submitted insufficient evidence to establish that the Tenants' dogs were solely responsible for damaging the stairs leading to the deck.

As the Landlord has failed to establish that the Tenants damaged the deck by erecting a tarp or that their dogs were solely responsible for any damage caused to the stairs leading to the deck, I find that the Tenants are not responsible for repairing the deck. I therefore dismiss the Landlord's application for compensation for repairing the deck.

On the basis of the undisputed evidence I find that the Tenants and the occupant of the lower rental unit were jointly responsible for maintaining the yard. I therefore find that they both had the right to use the lawn mower and the weed eater that was provided with the residential property.

As both parties had the right to use the lawn mower and the weed eater I find that the Landlords have submitted insufficient evidence to establish that the Tenants were the ones that damaged the lawn mower and the weed eater. As the Landlords have failed to establish that the Tenants damaged these items, I dismiss the Landlord's application for compensation for repairing or replacing those items.

In adjudicating this matter I have placed no weight on the female Landlord's testimony that the person who lived in the lower unit until September of 2018 told her that she never used the lawn mower or the weed eater. I find this hearsay evidence is less compelling than the testimony of the male Tenant, who stated that the person who lived in the lower unit until September of 2018 mowed the lawn more frequently than the Tenants. I find his evidence more compelling as I have not heard directly from the occupant of the lower unit and do not, therefore, have the ability to assess her credibility.

On the basis of the undisputed evidence I find that the Tenants were provided with a large umbrella when this tenancy began. I find that the Landlords have submitted insufficient evidence to establish that the umbrella has been damaged beyond normal wear and tear. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a photograph, that corroborates the Landlords' submission that the umbrella is damaged and needs to be replaced or that refutes the Tenants' submission that the umbrella is dirty, but in fair condition. As the Landlords have failed to establish that the umbrella is damaged beyond normal wear and tear, I dismiss their claim for replacing the umbrella.

I find that any gas the Landlords used to pick up rent is a cost of doing business that must be absorbed by the Landlords. The Tenants are not obligated to compensate the Landlords for any costs associated with the Landlords opting to conduct their business remotely. I therefore dismiss the Landlords' claim for gas costs.

As the Landlords have not established a monetary claim, I find that they have not yet established a right to keep any portion of the security deposit.

I find that the Landlords have failed to establish the merit of their Application for Dispute Resolution and I dismiss their claim to recover the fee for filing an Application for Dispute Resolution.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Tenants have established a monetary claim, in the amount of $200.00, in compensation for the loss of quiet enjoyment associated to being served with a Ten Day

Notice to End Tenancy for Unpaid Rent on January 02, 2019 and for the cost of filing an Application for Dispute Resolution.

Pursuant to section 72(2) of the *Act,* I authorize the Tenants to retain $200.00 from one monthly rent payment in full satisfaction of this monetary claim.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 04, 2019

Residential Tenancy Branch