



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT MNSD (tenant); FFL MNDCL-S MNDL-S (landlord)**

Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for the landlord to return the security deposit pursuant to section 38; and
- Reimbursement of the filing fee pursuant to section 72.

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*; and
- Authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and provided affirmed testimony. Each party had the opportunity to make submissions, present documentary evidence, call witnesses and cross examine the other party.

Each party acknowledged receipt of the other party's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service of these documents or of the evidence. I find each party served the other in accordance with the *Act*.

The tenants called the witness DC who attended and provided affirmed evidence. The landlord had an opportunity to cross-examine the witness.

Issue(s) to be Decided

Are the tenants entitled to the following:

- A monetary order for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- An order for the landlord to return double the security deposit pursuant to section 38; and
- Reimbursement of the filing fee pursuant to section 72.

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*; and
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

The parties agreed they entered into a one-year fixed term tenancy commencing July 1, 2018; the tenants vacated at the end of September 2018. Rent was \$2,095.00 monthly payable on the first of the month. At the beginning of the tenancy, the tenants provided a security deposit in the amount of \$1,047.50 which the landlord holds. The tenants have not provided authority to the landlord to retain any of this amount. The tenants provided the landlord their forwarding address at the end of the tenancy.

The tenants submitted a copy of the tenancy agreement.

During the hearing, the landlord acknowledged owing the tenants double the security deposit pursuant to section 38 of the *Act*. The landlord also acknowledged owing the tenants \$200.00 for the return of the deposit for unit's fob and had attempted to return the fob deposit to the tenants. In summary, the landlord agreed to a monetary award of **\$2,295.00** in the tenants' favour as follows:

ITEM	AMOUNT
Security deposit	\$1,047.50
Doubling of security deposit	\$1,047.50
Repayment of FOB deposit	\$200.00
TOTAL	\$2,295.00

The parties agreed there were insects called "silverfish" in the unit during the tenancy. The tenants stated the silverfish were an increasing problem which the landlord failed to resolve; this amounted to a breach of a material term and they vacated the unit after the landlord failed to fix the problem. The tenants claim damages set out below and the return of their security deposit. The landlord stated that the tenants had no reason to vacate the unit; she requested rent for one month and damages/compensation as set out below.

The tenants stated they found silverfish in the unit about two weeks after they moved in on July 1, 2018. At first, they found small white bugs. Then, on July 15, 2018, they found a "big colony".

On July 16, 2018, the tenants notified the landlord of the presence of the silverfish by email; they submitted a copy of the email. The landlord replied and acknowledged the

presence of the insects in the unit; she requested that the tenants pay for the pest control. The tenants disagreed. On August 1, 2018 pesticide application by a company took place in the unit and the strata paid the invoice.

After the pesticide spraying, the tenants stated they swept up the dead insects every day. However, they testified that the pesticide company sprayed the pesticide on the exterior of the base boards only; the pesticide did not reach the insects living in the walls. They observed that the quantity of silverfish quickly returned to the condition prior to the pesticide spraying, and soon the numbers were greater than ever. The tenants stated that the insects became increasingly disturbing. They testified that the silverfish would drop onto them out of the ceiling vents. The female tenant was upset and unable to sleep in the bedroom because of the number of insects seemed greater in that room. They testified there was no way they could continue living there with that many silverfish. The tenants also expressed dismay knowing that the insects were laying eggs in their possessions and furniture.

The tenants submitted photographs and videos of the insects moving about a kitchen cupboard and under furniture, as well as dozens floating dead in water for disposal.

The tenants testified they communicated with the strata regarding the need for a second pesticide treatment; the strata stated it would be ineffective because of the suspicion there was a water leak in the walls of the unit which was the source of the insect problem. The tenants emailed the landlord with an update on August 12, 2018 and left messages on her cell phone; they did not hear from the landlord from then until September 17, 2018.

The strata advised the tenants to get a home inspection. The tenants sent an email to the landlord on August 22, 2018 about the continuing problem with the insects and requested the home inspection; the landlord did not reply. The tenants retained the home inspector and paid for the inspection themselves.

The tenants submitted copies of email correspondence dated August 23, 2018 with the landlord including a final request that she deal effectively with the insects as well as wet walls and black mold by September 10, 2018 or they would consider the tenancy at an end for breach of material term. The email of August 23, 2018 stated in part as follows [as written, including underlining]:

As we mentioned in our previous email, we have contacted [strata] to see if a second treatment of pesticide for this unit's persistent silverfish problem would be appropriate. [Strata] consulted the extermination company and they stated that they do not treat entire units, only floors and (if appropriate) specific fixtures such as vents. He said that if the silverfish are coming out of the bathroom ceiling vents and are in the cupboards on the wall beside the bathroom, then the problem is likely larger than can be handled by pesticide treatment and relates to water damage behind the walls of the bathroom. We did not mention the black mold we found in the bathroom to him – he came to this conclusion on his own. Since more extermination is unlikely to solve anything, [strata] suggested that we bring in a building inspector to assess the probability water damage causing both the black mold and the silverfish (silverfish thrive in damp environments and feed off damp drywall, such as in our bathroom).

These mold and silverfish issues have not gone away with our previous treatments of pesticide spray, and our re-caulking the bathtub, seeing as the mold goes deeper into the walls. We are eager to address these issues as mentioned before, and we request that you arrange for a building inspector to assess the unit for water damage before September 1st [2018]. We can and will arrange for an inspector on our own, if you indicate you will reimburse us for it.

We expect an inspector to come in preferably before September 3 [2018], and action on his recommendations to be taken before September 10th. We consider this a reasonable timeline to fix this problem, in light of the fact we have raised these issues previously, and the black mold we found may constitute an ongoing health risk. If this matter is not dealt with within this timeline, before September 10, 2018, we will see this as a breach of a material term of our tenancy agreement (ie: failure to provide a habitable suite), and we will end our tenancy on that date, pursuant to section 45(3) [of the Act].

The landlord did not respond to this email. The tenants wrote again on August 29, 2018 and confirmed they would move out if the landlord did not address the tenants' complaints. They also informed the landlord in the email they would retain the home inspector themselves and would deduct the cost from their rent.

The tenants testified the landlord did not respond to this email. Having not heard anything from the landlord, the tenants informed her by email on September 11, 2018

that they were vacating the unit September 30, 2018; they started looking for another place to live. The email starts in part as follows:

It is now past September 10, 2018 and we have not heard from you at all, by email or phone. You have not responded to our request to engage a home inspector, or to remediate what we believe is moisture damage in the bathroom area, or to address the root cause of the silverfish infestation. We continue to find multiple dead silverfish each day, and live ones in our pantry, and on our walls. The home inspector we hired and paid \$210 for said he thought it was likely there was a slow leak somewhere behind the bathroom tiles, and that's where the silverfish are breeding.

Per our email of August 23, 2018, this lack of any communication or effort to fix the issues we have brought to your attention for Unit [...] means we now consider our tenancy ended, for break of a material term of the lease (to provide a habitable apartment).

The landlord did not respond to this email.

The landlord contacted the tenants on September 17, 2019; she testified she did not respond to the tenants' calls and emails earlier as she was out of the country from August 15, 2018 until September 15, 2018; as well, she stated she had been unwell. The landlord wrote the tenants an email on September 20, 2018 which stated that "I will try speed up to solve the issue for you ASAP from now on".

However, by this time, the tenants had made plans to move out. The tenants vacated September 30, 2018; they stated the silverfish had laid eggs in their possessions that contained wood or cloth, such as their bed and furniture. Accordingly, they took to the dump for disposal any of their possessions and furniture that contained cloth or wood.

The tenants stated that the landlord was aware of the presence of silverfish in the unit at the time she rented it to the tenants. Based on this assertion, they claim return of the \$200.00 strata move-in fee.

During the tenancy, the tenants testified they contacted the previous tenant, DC; DC told them that he had found silverfish in the unit during his 3-year tenancy, that it was an increasing problem because of water spillage and flooding, and that he had informed the landlord of the situation.

Called as a witness for the tenants at the hearing, DC testified he told the landlord several times in his tenancy about the presence of silverfish; he read an email he had sent to the landlord on September 11, 2017 informing her of “lots of silverfish”, water seeping in to the unit, and mold growing. DC testified the landlord did not address these concerns during his tenancy. DC stated his cat was eating the insects and controlling the numbers to some extent. The landlord denied receipt of this information from DC about the presence of silverfish and said she had not received the email.

The tenants acknowledged they owe rent in the amount of \$210.00 for September 2018; this is the amount they incurred for the cost paid to a home inspector in August 2018 to inspect for mold and insects; they deducted the expense from the rent without the landlord’s permission.

The tenants claimed the following as expenses for reimbursement by the landlord:

ITEM	AMOUNT
Mattress and box spring	\$742.85
Bookcase	\$55.00
Dresser	\$60.00
Couch and chair	\$250
Rug	\$120.00
Dump fees	\$60.00
Insect control chemical	\$29.94
Reimbursement of \$200.00 move in strata fee	\$200.00
Home inspection report	\$210.00
TOTAL	\$1,727.79

The tenants submitted a receipt dated August 26, 2013 for the purchase of their mattress and box spring in the amount of \$742.85.

The tenants did not submit receipt for the bookcase, dresser, couch/chair and rug, as they had purchased the items used online. They submitted evidence of the cost as stated above through copies of email correspondence with sellers and estimates from online stores.

The tenants submitted two receipts for dump fees in the total amount of \$60.00 and for the insecticide for \$29.94 dated September 20, 2018.

The tenants submitted a receipt dated September 26, 2018 for \$200.00 for the strata move-in fee. As stated, the tenants request reimbursement of the strata fee as the landlord was award of the silverfish in the unit and failed to inform the tenants of the situation before they moved in.

The tenants testified regarding the home inspection for which they paid \$210.00 as discussed above.

The landlord denied she is responsible to reimburse the tenants for any of the claimed expenses.

The landlord claimed the following expenses and losses for reimbursement by the tenants:

ITEM	AMOUNT
Balance of rent for September 2018	\$210.00
One month rent – October 2018	\$2,095.00
Kitchen faucet - replacement	\$120.00
2 light bulbs	\$25.00
Door – repainting	\$150.00
Oven tray and heat cover attachment	\$25.00
Cleaning	\$120.00
Inspection fee - leaking	\$184.00
Health treatments “due to tenants’ actions and words”	\$1,240.00

TOTAL	\$4,169.00

The parties agreed that the tenants' outstanding rent for September 2018 was \$210.00.

The landlord stated the tenants are responsible for breaking a fixed term tenancy agreement without notice and she claimed reimbursement of one month's rent.

The parties conducted a condition inspection on moving in and moving out. The tenants submitted the report as evidence. The report on moving in indicates no damage relevant to either party's claim except for "sticky marks" on the window.

The report on moving out stated the balcony needed cleaning, there was a "sticky mark" (noted on moving in), and the oven needed more cleaning. The report indicated the landlord intended to deduct \$265.00 for light bulbs and cleaning. One of the tenants signed the report with a note objecting to any hold back of their security deposit for any reason. The report does not mention the kitchen faucet, repainting, missing light bulbs or missing items for which the landlord claimed reimbursement at the hearing.

The landlord submitted a photo of an oven door and floor as evidence of cleaning needed. The landlord submitted a photo of a "broken heat board" and "broken oven tray". The landlord claimed she hired cleaners for the unit and claimed \$120.00 as reimbursement for her expenses in this regard. The landlord submitted no receipts with respect to any of the items claimed.

The tenants testified they left the unit reasonably clean and the landlord's claims for compensation are baseless.

The landlord stated she incurred an expense of \$184.00 to investigate the tenants' claims about moisture, mold and silverfish. The landlord submitted a copy of the invoice dated September 24, 2018 as well as an accompanying report stating there was no elevated moisture levels. The tenants did not agree to paying for this report and had decided to move out at this time.

The landlord submitted a physician's note dated November 14, 2018 which stated she had a depressive disorder. She submitted receipts for counselling and medication in the

amount of \$1,240.00. The landlord claims reimbursement of her health expenses from the tenants for the stress she underwent because of the tenants' unfounded complaints.

The landlord submitted a copy of a notice from a pesticide company dated October 9, 2018, which stated that the company treated the unit for pesticides after the tenants left. The landlord stated this was evidence that she was committed to acting on the presence of the insects.

Analysis

Claims for Damages

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the person who incurred the damage or loss in the same position as if the damage or loss had not occurred. The person claiming compensation must establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. Everything reasonable was done to reduce or minimize (mitigate) the amount of the loss or damage as required under section 7(2) of the *Act*.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Fixed Term Tenancy

A tenant may end a fixed term tenancy only in certain circumstances. Section 45 of the *Act* states in part as follows (emphasis added):

(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.

(4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].

I find that the notice provided by the tenants by email dated August 16, 2018 complied with section 52 of the Act.

I have considered the presence of silverfish insects in the numbers described by the tenants and as evidenced by photographs and videos, I find the unit was infested with silverfish insects beginning mid-July 2018 and continuing until they vacated at the end of September 2018. I find the presence of large numbers of insects during this period seriously undermined the tenants' right to quiet enjoyment of the unit.

I find the tenants notified the landlord in writing of the presence of the insects and notified her that they considered this a material breach on August 16, 2018. I find the tenants provided adequate notice of their intention to vacate the unit if the landlord did not remedy the breach by September 11, 2018, which I find to be a reasonable period of time for responsive and effective action by the landlord. Having reviewed the timeline of events, the testimony of the parties, and the correspondence between them, I find the landlord had an obligation to deal with the silverfish and failed to do so in an effective and timely manner within a reasonable time.

I find the tenants have established on a preponderance of evidence that they have met the burden of proof to establish that a material breach occurred, that they notified the landlord, and the landlord failed to respond in a reasonable time. I find the tenants have met the requirements of section 45(3)

Tenants' claims

I will deal with each of the tenants' claims in turn.

I accept the tenants' evidence and testimony that they disposed of furniture for which they paid the amounts they claimed. However, the bed was five years old at the time they vacated the unit. The remainder of the furniture was of indeterminate age and

value. Nevertheless, I find the tenants have met the burden of proof for a loss which I find to be \$700.00. Accordingly, I award the tenants the sum of \$700.00 for the loss of the furniture (mattress/box spring, bookcase, dresser, couch/chair, and rug).

The tenants have submitted an invoice in support of their claim for \$60.00 for dump fees. In view of the evidence submitted and testimony provided, I find the tenants have met the burden of proof with respect to this claim. I therefore grant the tenants a monetary award in the amount of \$60.00 for the dump fees.

The tenants have submitted an invoice in support of their claim for \$29.94 for a pesticide. In view of the evidence submitted and testimony provided, I find the tenants have met the burden of proof with respect to this claim. I therefore grant the tenants a monetary award in the amount of \$29.94 for the purchase of a pesticide.

Based on the witness DC's testimony and the evidence of the parties, I find the landlord was aware of the presence of silverfish in the unit prior to the beginning of the tenancy. I find the landlord failed to be forthcoming and candid with the tenants about the presence of the insects. I find the landlord failed to inform the tenants of a significant condition in the unit, that is, the presence of silverfish, and that the tenants would not have rented the unit if they were fully informed.

I accept the tenants' testimony that they were anticipating remaining in the unit for one year and were not anticipating the expense of moving again, including move-in fees elsewhere. In view of the evidence submitted and testimony provided, I find the tenants have met the burden of proof with respect to this claim. I therefore grant the tenants a monetary award in the amount of \$200.00 for reimbursement of the move-in strata fees.

The tenants have submitted an exchange of emails with the landlord in support of their claim for \$210.00 for a home inspection report. I accept the tenants' testimony that they consulted with the strata in the absence of any response from the landlord about what to do regarding the insects. I find it was reasonable of the tenants to engage the services of an inspector to ascertain the source of the insect infestation in the absence of the landlord. I find the cost to be reasonable in the circumstances. Considering the evidence of the parties, I find the tenants have met the burden of proof with respect to this claim. I therefore grant the tenants a monetary award in the amount of \$210.00 for reimbursement of the inspection cost.

In summary, I grant the tenants a monetary award as follows:

ITEM	AMOUNT
Furniture	\$700.00
Dump fees	\$60.00
Insect control chemical	\$29.94
Reimbursement of move-in strata fee	\$200.00
Home inspection report	\$210.00
TOTAL	\$1,199.94

As mentioned above, the landlord agreed to a monetary award for the return of double the security deposit and the fob deposit in the amount of **\$2,295.00**. I therefore grant the tenants a monetary award as follows:

ITEM	AMOUNT
Monetary award agreed upon by landlord	\$2,295.00
Monetary award (above)	\$1,199.94
Monetary Order Tenants	\$3,494.94

Landlord's claims

Section 26(1) of the Act provides as follows:

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. I find the landlord is entitled to the balance of rent for that month in the amount of \$210.00.*

In consideration of the evidence of the parties, I find the landlord has met the burden of proving her claim to the outstanding rent in the amount of \$120.00. I grant the landlord a monetary award in this amount.

I find the landlord has failed to meet the burden of proof with respect to all aspects of the remainder of her claims.

As stated above, I have found the tenants properly vacated the unit pursuant to breach of a material term under section 45(3). Therefore, I dismiss the landlord's claim to one month's rent without leave to reapply.

Under section 37(2) of the *Act*, the tenants must leave a rental unit *reasonably clean*. After listening to the testimony of the parties, reviewing the condition inspection report, and viewing the photographs, I accept the tenants' evidence that they left the premises reasonably clean. I therefore dismiss the landlord's claims for reimbursement of cleaning expenses without leave to reapply.

I have considered the parties' evidence, the lack of receipts, and the contents of the inspection report. I therefore find the landlord had failed to establish she has incurred the expenses claimed for the faucet, light bulbs, repainting, and items. I dismiss all these claims without leave to reapply.

I find the tenants are not responsible to reimburse the landlord for the inspection fee of \$184.00. They did not agree to pay for this inspection and had provided notice to the landlord they were vacating the unit. I therefore find the landlord has not met the burden of proof and I dismiss this aspect of the landlord's claim without leave to reapply.

I find the evidence submitted by the landlord does not establish a connection between the landlord's health and medical expenses, and the tenancy or the actions of the tenants. Considering the evidence of the parties and their testimony, I find the landlord has not met the burden of proof with respect to this aspect of her claim. I therefore dismiss this part of the claim without leave to reapply.

In summary, I award the landlord the sum of **\$210.00** for outstanding rent and dismiss all other claims by the landlord without leave to reapply.

As the tenants have been successful in their claim, I award the tenants reimbursement of the filing fee in the amount of \$100.00 for a total of **\$3,594.94**.

In summary, I award the tenants a monetary order as follows:

ITEM	AMOUNT
Monetary award tenants	\$3,594.94
(Monetary award landlord)	(\$210.00)
Monetary Order Tenants	\$3,384.94

Conclusion

The tenants are granted a monetary order in the amount of **\$3,384.94**. The landlord is ordered to pay this sum forthwith. The landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: March 08, 2019

Residential Tenancy Branch