Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDCT DRI OLC LRE RP RR FFT

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice), pursuant to section 47 of the *Act*;
- a Monetary Order for damage or compensation pursuant to section 67 of the Act;
- dispute of a rent increase pursuant to section 41 of the *Act*;
- an Order for the landlord to comply with the Act, regulations and/or tenancy agreement pursuant to section 62 of the *Act*;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70 of the *Act*;
- an Order for the landlord to make repairs to the rental unit or property, pursuant to section 32 of the *Act*;
- an Order to reduce the rent for repairs, services, or facilities agreed upon but not provided; and
- recovery of the filing fee pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenants' Notice of Dispute Resolution Proceeding package and the tenants' evidence. The tenants confirmed receipt of the landlord's evidence package. As such, I find that the documents for this hearing were served in accordance with the *Act*.

Preliminary Issue – Amendment to Tenants' Application

At the outset of the hearing, the tenants stated that they were ending their tenancy and vacating the rental unit by 1:00 p.m. on March 31, 2019. As such, the tenants withdrew their application to dispute the landlord's notice to end tenancy. Further to this, as the tenancy was ending, I find that the tenants' claims for disputing a rent increase, restricting the landlord's access, an order for the landlord to comply with the Act, and an order for the landlord to make repairs are moot, and therefore dismissed without leave to reapply.

Accordingly, the only claims by the tenants considered at this hearing were:

- a Monetary Order for damage or compensation pursuant to section 67 of the Act;
- an Order to reduce the rent for repairs, services, or facilities agreed upon but not provided; and
- recovery of the filing fee pursuant to section 72 of the *Act*.

In accordance with section 55 of the *Act*, given the tenants withdrew their application to dispute the landlord's notice to end tenancy, I have provided the landlord with an Order of Possession for the date and time the tenants stated to be vacated from the rental premises.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for damage or compensation if it is determined that the landlord contravened the *Act*, regulations and/or tenancy agreement?

Were the tenants entitled to a reduction in rent for repairs, services, or facilities not provided?

Are the tenants entitled to recover the cost of the filing fee from the landlord?

Background and Evidence

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

A written tenancy agreement was submitted into evidence, which provided the following terms pertaining to this tenancy:

- This tenancy began March 1, 2015 as a fixed-term tenancy, with a scheduled end date of February 28, 2016, and monthly rent of $1,300.00 payable on the first of the month. At the end of the fixed-term the tenancy converted to a month-to-month agreement.
- At the beginning of the tenancy, the tenants paid a security deposit of $650.00.
- The rental property is a detached house. The tenants' rental unit consisted of the upper level of the house. The lower level contained a separate rental unit.

The tenants testified that they gave notice to the landlord to end their tenancy and stated that they would be vacating the rental property.

The tenants submitted a Monetary Order Worksheet setting out their monetary claims itemized as follows:

Item #	Description	Amount
1	Water use costs	$300.00
2	Dishwasher repairs	$301.56
3	Pool pump repair	$119.02
4	Pool liner repair	$546.00
5	Pool chemicals and treatments	$639.63
6	Lost dog costs (cost of dog, bylaw fines for dog at large)	$1,424.25
7	New pool pump	$248.99
8	Rent reduction for landlord failure to maintain pool ($150.00 x 41 months)	$6,150.00
9	Return of 5 days' rent due to delayed move-in at beginning of tenancy in March 2015	$209.68
10	Breach of Quiet Enjoyment $1,350.00 x 2 months	$2,700.00
11	Landlord's use of electricity billed to tenants	$250.00
12	Rent reduction for loss of use of pool and lack of fencing	$487.50
	Total Monetary Claim for Damages	**$13,376.63**

The tenants claimed that it was their understanding the pool was an included facility of the tenancy, therefore they argued that the landlord was responsible for all the costs of maintaining the pool over the course of their four-year tenancy. The tenants submitted invoices and receipts into evidence in support of their claimed amounts for repairs and maintenance costs that they paid during the tenancy.

The landlord disputed the tenants claims and stated that he had told the tenants he planned to fill in the pool when they came to view the rental unit prior to the beginning of the tenancy. The landlord claimed that the tenants requested that he leave the pool functioning so that they could use it. The landlord claimed he agreed to this on the condition that the tenants would maintain it.

Both parties confirmed that the landlord asked for the tenants to pay $300.00 towards a water bill, and that the tenants paid the requested amount.

The tenants claimed that they paid for the costs to repair the dishwasher as a result of a clogged hose, and labour costs to detect that the dishwasher had a defective pump. The tenants submitted three invoices to support their claim for $301.56. The landlord acknowledged that the tenants paid for these costs. The landlord claimed that he installed a new dishwasher in 2014 and that the tenants had clogged the dishwasher with food and broken glass. The landlord claimed that the dishwasher repairs were a result of the tenants' damage and negligence as opposed to normal wear and tear, and that they were responsible for the cost of repairs.

The tenants claimed that as there was no fence when they moved in, they incurred bylaw fines as a result of their dog running loose, which they are seeking to recover from the landlord. The tenants are also seeking to recover the cost of the dog as the dog ended up running away in 2017 and was not found or returned. The tenants submitted payment receipts as evidence of these costs.

The tenants claimed that their move-in to the rental unit scheduled for March 1, 2015 was delayed by 5 days due to renovations being completed, therefore they are seeking to recover 5 days of rent paid. The landlord countered that the tenants were given keys and occupancy of the rental unit when the tenancy agreement was signed on February 15, 2015 and that no rent was charged to the tenants for the latter half of the month of February 2015. No evidence to these claims was submitted by either party.

The tenants claimed that the "harassing behaviour of the landlord over the course of tenancy" constituted a breach of quiet enjoyment, for which the tenants sought compensation of $2,700.00, equivalent to two months' rent. The tenants claimed that there was an incident on January 17, 2019 in which the landlord threatened them and that a police report was filed. The landlord countered that on January 25, 2019 Tenant R.T. threatened him at a fitness centre, resulting in the police being called and a police

report filed. The landlord submitted an "incident form" completed by the fitness centre staff detailing the incident. I note that neither party submitted a copy of any police report into evidence.

The tenants claimed that the landlord accessed an electricity plug at the rental unit for the purposes of plugging in his trailer over the course of several months. The tenants submitted a photograph as evidence in support of their testimony. The written tenancy agreement confirms that the tenants are responsible for the payment of electricity costs at their rental unit. The tenants did not submit any electricity bills into evidence to support their estimated cost of this electricity usage.

Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to 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. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

Where the claiming party has not met each of the above-noted four elements, the burden of proof has not been met and the claim fails.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events in another way, without further evidence the party with the burden of proof has not met the onus to prove their version of events. In this matter, the tenants the bear the burden of proof as they are the claimants.

The tenants' claims are addressed as set out on the Monetary Order worksheet submitted into evidence by the tenants.

Item #1

Tenants claimed that in February 2017, the landlord demanded that they pay for water used for the pool. The landlord claimed that the water bill was excessively high and that the tenants told him that there was a leak in the pool. The tenants argued that water service was included in their tenancy agreement, which is confirmed in the written tenancy agreement submitted for this hearing. However, the tenants never filed a dispute about the landlord's request for payment, but rather paid the $300.00 for the water use.

The tenants had every opportunity to file an application for dispute resolution if they felt that the request was in violation of their tenancy agreement, but they did not do so. Rather they paid the amount requested by the landlord.

Therefore, based on the testimony and evidence before me, on a balance of probabilities, I find that the tenants' actions to pay the amount requested by the landlord for the excess water bill cost – in spite of the fact that water was included in their tenancy agreement – constituted the tenants' acceptance of the landlord's request to pay the $300.00 water bill, and signalled their acceptance of this cost as a result of their assumed responsibility for the pool.

The doctrine of estoppel is a legal concept that limits or restricts a party from relying on its full legal rights, under certain circumstances. Black's Law Dictionary, 6th edition, explains, in part:

> *"Estoppel" means that the party is prevented by his own acts from claiming a right to detriment of other party who was entitled to rely on such conduct and has acted accordingly…An inconsistent position, attitude or course of conduct may not be adopted to loss or injury of another.*

Therefore, I find that the tenants are estopped from relying on the inclusion of water in their tenancy agreement, based upon their agreement to pay the landlord for the water bill cost at the time it was incurred and given that they enjoyed the use of the pool. I find that these actions of the tenants were compounded by the fact that they waited two years, until deciding to end their tenancy, to take any action to dispute the landlord's

request to pay the water bill. Therefore, I do not find that the landlord contravened the *Act* by asking the tenants to pay for the water costs of $300.00.

Given the above, I find that the tenants have not satisfied **all** elements of the test for compensation in relation to this claim. I find that the tenants' claim has no merit due to insufficient evidentiary proof that the monetary loss stemmed directly from a violation of the agreement or a contravention of the *Act* by the landlord of failing to provide a service included with the tenancy. Therefore, the tenants' claim to recover the cost of the water bill on these grounds must be dismissed without leave to reapply.

Items #3, #4, #5, #7, #8, and #12

The tenants provided verbal testimony that there was a verbal agreement between them and the landlord that the pool was included in the rent of the tenancy. However, the landlord disputed this claim, and the tenants failed to submit any other evidence to support their claim. The landlord submitted evidence, including witness testimony at the hearing, a signed witness statement submitted into documentary evidence, a copy of the advertisement for the rental unit, and a copy of the written tenancy agreement, in support of his testimony to dispute the tenants' testimony that there was a verbal agreement for the pool to be included in the cost of the monthly rent of the tenancy agreement. Further to this, the landlord also included a copy of text message communication between him and the tenant, dated November 29, 2016, in which he responds to the tenants' message regarding the cost of $520.00 to find and repair leaks in the pool vinyl. The landlord's response stated, in part:

> *"…You and [name of occupant in lower level rental unit] are responsible for the pool. I'm not paying for any part of anything to do with the pool. I have to collect $300.00 for all the extra water from you guys…"*

As such, based on the evidence and testimony before me, on a balance of probabilities, I find that the tenants failed to present sufficient evidence to meet the burden of proof for their claim that there was a verbal agreement with the landlord to include the cost of the pool maintenance and repairs in the tenancy agreement. Therefore, I find that the tenants enjoyed the use of the pool based on their assumed responsibility for the use of the pool.

Given the above, I find that the tenants have not satisfied **all** elements of the test for compensation in relation to this claim. I find that the tenants' claim has no merit due to insufficient evidentiary proof that the monetary loss stemmed directly from a violation of

the agreement or a contravention of the *Act* by the landlord of failing to provide a facility included with the tenancy. Therefore, the tenants' claim for a rent reduction and recovery of the maintenance and repair costs on these grounds must be dismissed without leave to reapply.

Specifically, regarding Item #12, the tenants' claim for a rent reduction for the fencing, I note that the tenants stated in their own written submissions that "there was never any fencing" separating their yard and the neighbouring yard. As such, the tenants erected a fence for their stated reason of the safety and security of their children and dog. The tenants did not submit any evidence, such as a copy of written communication with the landlord regarding permission to erect the fence, or any agreement that the landlord would erect a fence. The landlord removed the fence in January 2019, as the landlord claimed that permission was not provided to the tenants to erect the fence. I refer to Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises, which explains the following responsibility of the tenant regarding fencing, in part, as follows:

> …
> *4. The tenant must obtain the consent of the landlord prior to erecting fixtures, including a fence.*
> *5. Where a fence, or other fixture, is erected by the tenant for his or her benefit, unless there is an agreement to the contrary, the tenant is responsible for the maintenance of the fence or other fixture.*
> …

As such, I find, through the tenants' own evidence, that there was no fencing separating the yards when they began their tenancy. Therefore, based on the testimony and evidence before me, on a balance of probabilities, I find that the tenants failed to present sufficient evidence in support of their claim that the fence was erected with the permission of the landlord, as this was disputed by the landlord, or that a fence was an original facility included with the tenancy.

Given the above, I find that the tenants have not satisfied **all** elements of the test for compensation in relation to this claim. I find that the tenants' claim has no merit due to insufficient evidentiary proof that the monetary loss stemmed directly from a violation of the agreement or a contravention of the *Act* by the landlord of failing to provide a facility included with the tenancy. Therefore, the tenants' claim for a rent reduction on these grounds must be dismissed without leave to reapply.

Item #2
Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises, which explains the following responsibilities of both the landlord and the tenant regarding major appliances, in part, as follows:

…

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.*

As the tenants moved into the rental unit in March 2015, the dishwasher at that time was at least one year old and had presumably been used by the previous occupants of the rental unit for at least a year. The invoice dated August 15, 2016 submitted by the tenants for the cost of clearing the drain hose does not refer to any broken glass or food clogging the drain. The description of the service/repair work noted the following, in part:

Checked and cleaned the drain pump and drain hose…

I find that the landlord did not submit sufficient evidence to support his claim that the repairs were required as a result of damage caused by the tenants, as the dishwasher drain line could have been clogged from the use of previous tenants. Given the requirements under Policy Guideline #1, I find that the landlord is responsible for the repair invoice dated August 15, 2016 in the amount of $104.16.

The invoice dated June 8, 2017 included a description of the service/repair work, as follows, in part:

- *checked and tested dishwasher*
- *found drain line clogged up*
- *cleaned and unclogged drain line*
- *tested dishwasher, okay*

I find that given the dishwasher drain pump and drain hose was cleaned during the service on August 15, 2016, I find that the re-clogging of the drain hose over the course of one year is beyond reasonable wear and tear, and therefore, the tenants are

responsible to bear the cost of the repairs to clean and unclog the drain line for this invoice.

The third dishwasher repair invoice, dated October 12, 2107 included a description of the service/repair work, as follows, in part:

- *checked and tested dishwasher*
- *found water pump defective*
- *needs a new pump or dishwasher*

The landlord's submitted "second opinion" on the cause of the dishwasher malfunction stated the following:

> *Checked and found wash pump and drain pump seized. Drain line clogged by food residue and broken glass. Needs to replace drain pump and wash motor.*

I find that the evidence submitted by the landlord confirms the tenants submitted invoice which sets out that the issue is a defective pump. Although the drain line may have been clogged, there is nothing in the technician's statement to indicate that this caused the pump to seize or stop working. As such, I find that the landlord did not submit sufficient evidence to support his claim that the malfunctioning of the dishwasher was a result of damage caused by the tenants, as the dishwasher pump may have seized due to wear and tear or a defect. Given the requirements under Policy Guideline #1, I find that the landlord is responsible for the repair invoice dated October 12, 2017 in the amount of $99.75.

In summary, based on the testimony and evidence before me, on a balance of probabilities, I find that the tenants provided sufficient evidence to meet the burden of proof regarding their claims on two of the invoices submitted for the dishwasher repair costs. Therefore, the tenants are entitled to compensation in the amount of $203.91 ($104.16 + $99.75).

Item #6

The tenants own evidence confirmed that there was no fence present at the beginning of the tenancy separating the yards. Therefore, there is an expectation that the tenants would have acted in accordance with the existing conditions of the yard to exercise reasonable precautions to maintain the care and control of their pet dog, by keeping the dog on a leash or in a kennel, given the absence of a fence. As such, based on the

testimony and evidence before me, on a balance of probabilities, I find that tenants have failed to meet the burden of proof that their losses stemmed directly from the other party's contravention of the *Act* or tenancy agreement, as the tenants failed to take reasonable precautions to maintain the care and control of their dog. Therefore, the tenants' claim on these grounds must be dismissed without leave to reapply.

Item #9

The tenants claimed that their move-in at the beginning of their tenancy in 2015 was delayed by 5 days, however this was disputed by the landlord. The tenants presented no documentary or other witness statement evidence in support of their claim.

Therefore, based on the testimony and evidence before me, on a balance of probabilities, I find that the tenants failed to present sufficient evidence to meet the burden of proof for their claim that the landlord contravened the tenancy agreement by preventing them from moving in on the date agreed to in the terms of the tenancy agreement.

As such, I find that the tenants have not satisfied **all** elements of the test for compensation in relation to this claim. I find that the tenants' claim has no merit due to insufficient evidentiary proof that they are entitled to monetary compensation due to a contravention of the tenancy agreement by the landlord. Therefore, the tenants' claim for compensation on these grounds must be dismissed without leave to reapply.

Item #10

The tenants sought compensation of two months' rent, $2,700.00 for breach of quiet enjoyment due to allegedly being threatened and harassed by the landlord. Both parties claimed to have been threatened by the other party. Although both parties claimed that police reports were available regarding these threats, neither party submitted a police report into evidence. If a police report existed, the tenants could have requested a copy of the report to be submitted into evidence for this hearing, however they failed to do so. The landlord submitted an "incident report" completed by staff at a fitness centre where the landlord was allegedly threatened by Tenant R.T. The tenants failed to submit any third-party witness statements or police reports or any evidence other than their own testimony regarding the threats and harassment.

Therefore, based on the testimony and evidence before me, on a balance of probabilities, I find that the tenants failed to present sufficient evidence to meet the

burden of proof for their claim that the landlord's action constituted a breach of their quiet enjoyment.

As such, I find that the tenants have not satisfied **all** elements of the test for compensation in relation to this claim. I find that the tenants' claim has no merit due to insufficient evidentiary proof that they are entitled to monetary compensation due to a contravention of the *Act* by the landlord for breach of quiet enjoyment. Therefore, the tenants' claim for compensation on these grounds must be dismissed without leave to reapply.

Item #11

The tenants submitted photographic evidence of the landlord's trailer parked at the neighbouring driveway and plugged in to access the tenants' electricity. The tenants were responsible for electricity costs as set out in the tenancy agreement. This was not disputed by the landlord. The tenants provided an estimate of $250.00 for the cost of this electricity use over the course of eight months. The landlord failed to provide any evidence to counter the tenants estimate for this cost or submit any evidence that the tenants were compensated for this use of electricity. Therefore, based on the testimony and evidence before me, on a balance of probabilities, I find that the tenants submitted sufficient evidence to meet the burden of proof to support their claim that the landlord's contravention of section 28(c) of the *Act* resulted in the tenants incurring a monetary loss in the form of electricity costs used by the landlord.

In determining the amount of the monetary loss, I refer to Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss, which address the criteria for awarding nominal damages as follows:

> *An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.*
>
> *An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:*
>
> - *"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

Although the tenants were unable to provide evidence such as electricity bills to establish that there was a significant loss, I find that the tenants established that there was an infraction of their legal right to the exclusion possession of the electricity outlets and use, by the landlord, and therefore they are entitled to their claim based on a nominal damages award of $250.00.

Summary

As the tenants only met with partial success in their Application, I find that the tenants are entitled to recover only half of the filing fee from the landlord, in the amount of $50.00.

A summary of the tenants' entitlement to compensation damages/loss is provided as follows:

Item	**Amount**
Dishwasher repairs	$203.91
Landlord's use of electricity billed to tenants	$250.00
Recovery of one-half of the Application filing fee	$50.00
Total Monetary Award to Tenants for Damages Claim	**$503.91**

As such, I issue a Monetary Order in the tenants' favour of $503.91.

Conclusion

I issue a Monetary Order in the tenants' favour against the landlord in the amount of $503.91.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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: April 12, 2019

Residential Tenancy Branch