



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT RR FFT

Introduction

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

- 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 pursuant to section 65 of the *Act*; and
- recovery of the filing fee pursuant to section 72 of the *Act*.

The tenants attended at the date and time set for the hearing of this matter. The landlords did not attend this hearing, although I left the teleconference hearing connection open until 10:30 a.m. in order to enable the landlords to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding documents for this Application. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

As only the tenants attended the hearing, I asked the tenants to confirm that they had served the landlords with the Notice of Dispute Resolution Proceeding for this hearing. The tenants testified that the three named landlords were each individually served with the tenants' Notice of Dispute Resolution Proceeding package and evidence by Canada Post registered mail on March 1, 2019 to the landlords' address for service provided in the tenancy agreement. During the hearing, the tenants provided the registered mail tracking numbers, which I have noted on the cover sheet of this Decision.

Therefore, I find that the landlords were served with the notice of this hearing and the tenants' evidence in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are 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?

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. The tenants testified to the following details pertaining to this tenancy:

- This fixed-term tenancy began March 1, 2017 with a scheduled end date of March 1, 2019. At the end of the fixed term, the tenancy converted to a month-to-month tenancy.
- The tenants ended the tenancy and moved out on March 31, 2019.
- Monthly rent of \$2,500.00 was payable on the first of the month.
- At the beginning of the tenancy, the tenants paid a security deposit of \$1,250.00 which continues to be held by the landlords.
- The rental property consisted of three separate rental units within a large detached house. The tenants' rental unit consisted of four bedrooms and two and a half bathrooms, on two levels.

The tenants sought compensation for losses of \$4,500.00 which included a claim for \$1,500.00 for the cost of purchasing security cameras due to concerns that the neighbouring occupants had broken into their vehicle and a claim of \$3,000.00 for their time spent cleaning up water due to a roof leak (120 hours at \$25.00 per hour).

The tenants also sought a rent reduction of \$5,700.00 due to a lack of adequate heat in the rental unit and the roof leak which led to mold in one of the bathrooms, making it unusable.

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.

The tenants' heads of claims are addressed below as set out by the tenants in the Application for Dispute Resolution.

Compensation for Loss of \$4,500.00

The tenants testified that it was their belief that the occupants of the other rental unit in the rental property broke into their vehicle. In response, the tenants purchased security cameras at a cost of \$1,500.00. The tenants did not submit any police reports or documentary evidence to support their allegations. As explained above, compensation for loss under the *Act* requires that the claimant provide sufficient evidence to meet the burden of proof for their claim that the other party, which is the landlord in this matter, contravened the *Act*, regulations or tenancy agreement.

Based on the testimony and evidence before me, on a balance of probabilities, I find that the tenants failed to provide sufficient evidence to establish that it was the landlords' contravention of the *Act*, regulations or tenancy agreement that resulted in

their monetary loss, as the tenants submitted no evidence, such as a police report, to confirm that the neighbouring occupants broke into their vehicles.

Given the above, I find that the tenants have not satisfied **all** elements of the test for compensation in relation to this claim as they failed to meet the burden of proof for their claim that the landlords contravened the *Act*, regulations or tenancy agreement. Therefore, the tenants' claim to recover the cost of the security cameras must be dismissed without leave to reapply.

The tenants testified that at the end of September 2017 the roof began to leak resulting in water ingress and mold issues in one of their bathrooms. The tenants claimed that for the next 16 months they spent an estimated 15 minutes per day dealing with the clean up of water, for which they are seeking compensation for their time at a rate of \$25.00 per hour.

The tenants submitted photographic evidence of the water leak, a copy of a text message sent to the landlords in December 2018 about the leak, and a copy of a formal letter sent to the landlords December 8, 2018 requesting to have the problem addressed.

However, the tenants acknowledged that they never applied for dispute resolution for emergency repairs during the 16 months in which they claim they were affected by the roof leak. The tenants stated that they were worried about jeopardizing their tenancy, and also that the landlords had indicated that they were going to address the problem. Rather the tenants have waited until the end of their tenancy to seek compensation for enduring an issue that could have been rectified during the tenancy had they sought dispute resolution to compel the landlords to make the necessary repairs.

As such, based on the testimony and evidence before me, on a balance of probabilities, I find that the tenants have only provided sufficient evidence to establish that the landlords contravened sections 32 and 33 of the *Act* by failing to repair the roof leak after being requested by the tenants through a letter dated December 8, 2018 to perform repairs.

Compensation is established by the evidence provided, however, in this situation, establishing a value of the damage or loss is not straightforward.

Therefore, in determining the amount of the monetary loss, I refer to Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss, which addresses 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.*

The tenants only provided a general estimate of the time they spent cleaning, and they failed to provide specific evidence such as a log of the actual time spent, or include a record of the days in which it rained, causing the roof to leak. However, I find that the photographic evidence submitted by the tenants established that there was time spent cleaning as towels were used to soak up water and buckets need to be emptied, due to the landlords' infraction of the *Act*. Therefore, I find the tenants are entitled to a nominal damages award of \$100.00 per month for the months of December 2018, January 2019, February 2019 and March 2019, for a total of \$400.00 as it would be reasonable to assume that there were a number of rainy days during that period.

Rent Reduction of \$5,700.00

The tenants testified that the gas fireplace in the main living room/kitchen area “shattered” on December 20, 2017, and for the remainder of their tenancy they had to rely on electric heaters as the gas fireplace was the only source of heat for that section of the home, which included two of the bedrooms. The tenants acknowledged that they came to an arrangement with the landlords to stop paying utilities of \$150.00 as of March 2018 as compensation for the use of electric heat. As well, in the tenants written submission, they state that they stopped paying rent as of November 2018 as an ultimatum to the landlords regarding their request for repairs to the gas fireplace and for repairs to the bathroom, which became unusable due to mold forming as a result of the roof leak.

Again, the tenants had every opportunity to file an application for dispute resolution to seek necessary repairs or reduced rent at any point during the 16 months they claimed

to have endured a lack of adequate heat and limited use of one of their bathrooms if they felt that services/facilities pertaining to the rental unit were not provided, in violation of the *Act* or their tenancy agreement. However, the tenants did not do so, rather they came to an agreement with the landlords to reduce the portion of their monthly rent paid for utilities of \$150.00. Ultimately, the tenants decided to withhold their full rent payment of \$2,500.00 as of November 2018.

Therefore, based on the testimony and evidence before me, on a balance of probabilities, I find that the tenants' actions in coming to an agreement with the landlords for a reduction in their rent for utilities and ultimately withholding their full rent, rather than filing an application for dispute resolution, constituted the tenants' acceptance of the reduced services/facilities.

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 entitlement to a further rent reduction, based upon their agreement with the landlords for a reduction in rent for utilities and based on the withholding of the full amount of their rent as of November 2018. I find that these actions of the tenants were compounded by the fact that they waited over 16 months, until deciding to end their tenancy, to take any action to dispute the issues of inadequate heat and lack of usability of one of the bathrooms.

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 they took reasonable efforts to mitigate their loss by filing an application for dispute resolution to address the inadequate heat and mold in the bathroom, at any point during the tenancy. Further, I have found the tenants estopped from now seeking a reduction of rent as a result of the actions to agree to a rent reduction for the utilities and for a withholding of rent. Therefore, the tenants' claim to retroactively reduce the rent on these grounds must be dismissed without leave to reapply.

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 landlords, in the amount of \$50.00.

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

Item	Amount
Nominal award for compensation for time spent cleaning due to roof leak	\$400.00
Recovery of one-half of the Application filing fee	\$50.00
Total Monetary Award to Tenants for Damages Claim	\$450.00

As such, I issue a Monetary Order in the tenants' favour of \$450.00.

Conclusion

I issue a Monetary Order in the tenants' favour against the landlords in the amount of \$450.00.

The tenants are provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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 18, 2019

Residential Tenancy Branch