



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNRT FFT

Introduction

Further to my March 28, 2018 interim decision, this hearing was reconvened to hear the merits of the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. A monetary order pursuant to section 67 for compensation due to damage or loss per section 7;
2. A monetary order pursuant to section 67 for reimbursement of the cost of emergency repairs made by the tenant per section 33;
3. Recovery of the filing fee for this application from the landlord pursuant to section 72.

Both the tenants and the landlord attended the hearing. The tenant AD represented both tenants ("tenant"), while the landlord was represented by counsel, MB ("landlord").

No new evidence was allowed. I've considered all testimony and only note here the relevant documentary evidence referenced by the parties in the hearing.

Issue(s) to be Decided

- Are the tenants entitled to a monetary order for damages, loss or reimbursement for emergency repairs made?
- Can the tenants recover the filing fee for this application?

Background and Evidence

The tenants filed a monetary order worksheet for their compensation claim.

1	Padlocks	\$35.22
2	Photocopies	\$31.90
3	First 15 days, no pool	\$2,960.00
4	Pool chemicals	\$237.40
5	6 days, no heat	\$319.98
6	2 months @ \$200.00/ month pool maintenance	\$162.60
7	Pool stairs	\$63.08
8	Title search – get landlord's address	\$12.08
9	Stationary supplies	\$25.21
10	Loss of quiet enjoyment	\$13,200.00
11	Natural gas – bill in tenant's name	\$14.86
12	Loan – breach of contract	\$13,085.12
13	Filing fee	\$100.00
14	Loss of work for co-tenant's appointments	\$2,510.64
15	Counselling sessions	\$199.00
16	Loss of use of fireplace September 1 – Nov 17	\$125.00
	Total monetary order claim	\$33,082.09

The
tenant
provide
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following testimony. He and the co-tenant moved to this rental unit for the co-tenant's health, borrowing a high interest loan in order to do so. The inability to use the pool during the winter months, together with the difficult dealings with the landlord has caused the tenants to suffer stress and anxiety, requiring counselling for the co-tenant. The tenant had to take days off from work to drive the co-tenant to counselling appointments, causing further financial problems for the pair. The tenants submit that they would not have moved to the rental unit had they known the outdoor pool would not be heated for use during the winter.

The tenant testified the landlord lied to him about purchasing pool chemicals; refused to reimburse the tenant for items bought for the rental unit and gave contradictory statements about using the shed. The landlord also threatened to evict the tenant and sent his friend to ply the tenants with alcohol in an attempt to convince them to move out. The tenant seeks reimbursement of rent for six months (#10), claiming the landlord doesn't adhere to the tenancy agreement.

The tenant testified his estimate of pool maintenance is based on obtaining quotes from different places (#6). He provided an estimate from a professional swimming pool

maintenance company; maintenance at four times per month is \$266.70 and once a month is \$88.00 per month. The tenant says his time should be compensated at \$200.00 per month.

The tenant testified he had to obtain a title search to obtain the landlord's address after the property manager quit (#8). The landlord refused to provide his address, making it impossible to serve him with the notice of dispute resolution.

On Monday, November 11, the tenants discovered there was a problem with the furnace and they had no heat for six days while the landlord had the furnace fixed. The landlord supplied the tenants with heaters; however the tenants claim the heaters were not in working condition. The tenants seek reimbursement of rent for the six days without heat.

The landlord acknowledged the tenant's costs for padlocks (#1) and the pool stairs (#7) and the natural gas fee (#11) and agreed to compensate the tenants for these items.

The landlord submits the tenants have submitted overlapping claims for rent reimbursement in claims #3 and #10. The landlord submits the claim for the loan taken out by the tenants (#12) is not the landlord's responsibility, citing the doctrine of privity of contract which provides that a contract cannot confer rights or impose upon any person who is not a party to the contract.

The landlord submits the tenant chose to take time off work to drive the co-tenant to counselling sessions preferring to miss work than hire a taxi for her (#14). The landlord is not responsible for paying for the co-tenant's counselling sessions (#15), citing privity of contract once again.

Analysis

Pursuant to section 7 of the *Act*, a landlord who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the tenant for the damage or loss that results. Pursuant to section 67, if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

To determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the *Act*, regulation or tenancy agreement or (if applicable) the amount of money the *Act* says the non-compliant party has to pay. The amount arrived at must be for compensation only and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

Policy Guideline PG-16 sets out the test to determine whether a party seeking compensation would be successful. The party seeking compensation must prove the following 4 items (4 point test):

- 1) a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- 2) loss or damage has resulted from this non-compliance;
- 3) the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- 4) the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

- Claims related to outdoor pool facility

The interim decision dated March 28, 2018 found that the use of an outdoor heated swimming pool during the winter months is a not a term of the tenancy agreement. As such, the landlord is not responsible for the tenant's alleged injury related to not having a heated outdoor pool during the winter months. I dismiss without leave to reapply the tenant's following claims for compensation: 15 days of no access to pool (#3); loss of wages for transport to counselling (#14); counselling (#15). There is no evidence of any contract between the landlord and the tenant related to a loan or financing the rental unit; this portion of the tenant's claim is also dismissed without leave to reapply (#12).

I find pool maintenance is included in the tenancy agreement and is the landlord's responsibility. The tenant has provided undisputed evidence to show he purchased pool chemicals (#4). I award the tenants compensation in the amount of **\$237.40**.

Although the tenant provided a maximum monthly estimate of \$266.70 for professional pool maintenance, he is not a professional and did not document his time maintaining the pool. I decline to award compensation and the claim is dismissed without leave to reapply (#6).

- Claim related to quiet enjoyment

Pursuant to section 28 of the *Act*, a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find the tenant did not provide sufficient evidence to show the landlord has breached section 28 of the *Act*. The landlord is exercising his responsibility to maintain the premises per section 32 of the *Act*. This portion of the tenants' claim (#10) is dismissed without leave to reapply.

- Claims related to rent reduction for loss of heat and fireplace facility

The landlord supplied heaters and sought tradespeople to fix the furnace. Six days is a reasonable period to have this work done. I find the landlord has complied with the tenancy agreement and *Act* and I decline to award compensation and dismiss this claim (#6) without leave to reapply.

I find a working fireplace is a term of the tenancy agreement. For the loss of the fireplace for September 1 – November 17, I find the tenants' perceived value for this period of two and a half months is reasonable. I award the tenants **\$125.00**. (#16)

- Claims related to filing for dispute resolution

Section 13(2)(e) requires the tenancy agreement include the address for service and telephone number of the landlord or the landlord's agent. The landlord does not dispute that the tenancy agreement did not provide an address for him or his agent once the property manager quit. I award the tenants **\$12.08** as compensation for having to take the additional step of a title search to commence their application. (#8)

Section 72 allows the director to award fees paid in accordance with section 59(2)(c). Photocopy fees and stationary supplies are not recoverable pursuant to section 72 and I decline to award items (#2) and (#9) and dismiss the claim without leave to reapply.

As the tenants' claim was only partially successful, I decline to award the filing fee.

- Claims acknowledged by landlord

The landlord acknowledged the need to compensate the tenant for padlocks (#1) and the pool stairs (#7) and the natural gas fee (#11). I award the tenants compensation in the amounts of \$35.22 + \$63.08 + \$14.86 for a total of **\$113.16**.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **\$487.64**.

	Item	Amount
1	Padlocks	\$35.22
4	Pool chemicals	\$237.40
7	Pool stairs	\$63.08
8	Title search	\$12.08

11	Natural gas	\$14.86
16	Loss of use of fireplace	\$125.00
	Total	\$487.64

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 24, 2019

Residential Tenancy Branch