



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL-S, FFL
 MNDCT, MNSD, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Landlords’ Application for Dispute Resolution was made on January 24, 2019. The Landlord applied for a monetary order for losses due to the tenancy, a monetary order for unpaid rent, permission to retain the security deposit and to recover their filing fee. The Tenants’ Application for Dispute Resolution was made on April 10, 2019. The Tenants applied for a monetary order for losses due to the tenancy, the return of their security deposit and the return of their filing fee.

Both the Landlords and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlords were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary matter

During the hearing, the Landlords requested to amend their application; the Landlords withdrew their claim for the recovery of an unpaid internet bill of \$300.00 and requested to reduce their claim for the unpaid hydro bill to \$296.91, for the period between November 14 and December 22, 2018. The Tenants did not object to the amendments to the Landlords’ claim.

I find it is appropriate to allow the Landlords' request to amend their application.

Issues to be Decided

- Are the Landlords entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to monetary for unpaid rent?
- Are the Landlords entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?
- Are the Landlords entitled to recover the cost of the filing fee?
- Are the Tenants entitled to the return of their security deposit?
- Are the Tenants entitled to monetary compensation for damages under the *Act*?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The parties agreed that the tenancy began on September 1, 2018, as a seven-month fixed term tenancy. The parties agreed that rent in the amount of \$2,200.00 was to be paid by the first day of each month, and at the outset of the tenancy, the Tenants paid a \$1,100.00 security deposit. The Landlord submitted a copy of the tenancy agreement and into documentary evidence.

The Tenants testified that on December 17, 2018, they found mould in the rental unit. The Tenants testified that they notified the Landlord right away as they were concerned for their health.

The Landlord testified that they received the Tenants text regarding the mould and were very concerned, however, they lived several hours away and would not be able to attend the rental unit until the next weekend, on December 22, 2018.

The Tenants testified that the Landlords had advised them that they would come by to assess the mould problem and that they understood the Landlords would not arrive until the following weekend. The Tenants testified that due to the health concerns around the mould, and that the Landlords would have to do extensive repairs to address the problem they felt that they could no longer safely live in the rental unit.

The Landlords agreed that they advised the Tenants that they would need to cut holes in the walls to investigate the extent of the mould problem, but that they did not feel that the rental unit was unsafe to live in.

The Tenants testified that they had communicated their concerns to the Landlord and they believed that the reply they received from the Landlord was a mutual agreement between them to end their tenancy early. The Tenants also testified that the Landlord was sending them listings for other available rental units in the area and that they felt pressure to vacate the rental unit so the Landlords could make their repairs without them in the way.

The Landlords testified that she never expected the Tenants just to leave, they thought the Tenants might want to leave during the short repair period but that they thought the Tenants would come back and complete the full term of their tenancy agreement. The Landlords testified that as soon as the Tenants left, they started advertising the rental unit as available; however, they were unable to secure a new renter for the period between January to March 2019.

Both parties agreed that the Tenants had moved out of the rental unit as of December 22, 2018. The Tenants are claiming for the prorated recovery of their rent paid between December 22, 2018, to December 31, 2018, as they believe that the Landlords had pressured them to leave and they should not have to pay rent for a period of time that did not live in the rental unit.

The Landlords testified that they had not pressured the Tenants to leave and that they had not agreed to the early end of the tenancy agreement. The Landlords are claiming for the recovery of their lost rental income for January, February and March 2019.

The Tenants testified that they are claiming for two months worth of storage locker rental fees, in the amount of \$315.77. The Tenants testified that they had to settle for a much smaller rental unit as there was not much available on such short notice and that they had to put many of their personal possessions into storage, while they looked for a bigger place to rent. The Tenants testified that the Landlords had pressured them to leave so they feel they should be compensated for the extra storage fees they had to pay.

The Tenants testified that they are also claiming for \$75.00 in parking fees as they had to leave one of their vehicles parked for a couple of weeks in a paid parking lot as they had nowhere to store it while they waited for their new rental to become available.

The Tenants testified that they are also claiming for \$125.00 in moving cost. The Tenants testified that the Landlords had pressured them to leave so they feel they should be compensated for their moving costs for boxes, tape and gas.

The Landlords testified that they should not be responsible for the Tenants storage cost, parking fees, or moving costs as they had never asked the Tenants to leave and they could have remained in their tenancy.

Both the Landlords and the Tenants agreed that the hydro bill for the period between November 15, 2018, to December 22, 2018, had not been paid, by the Tenants, in accordance with their tenancy agreement. The Tenants agreed that they owe the Landlord the outstanding hydro bill in the amount of \$296.91.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the parties entered into a seven-month fixed term tenancy, beginning on September 1, 2018, in accordance with the *Act*.

I accept the agreed upon testimony and the documentary evidence submitted by both parties, and I find that the Tenants texted the Landlords advising them that they would be ending their tenancy due to the presence of mould in the rental unit and that the Tenants moved out of the rental unit as of December 22, 2018.

Section 45(2)(b) of the *Act* states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement.

Tenant's notice

45(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.

I find that this tenancy could not have ended in accordance with the *Act* until March 31, 2019, and that the Tenants failed to comply with the *Act* when they ended their tenancy early by moving out of the rental unit, on December 22, 2018.

I acknowledge the Tenants claim that they moved out on December 22, 2018, as they had felt pressured by the Landlords to leave, and that they believed that they had a mutual agreement with the Landlords that the tenancy would have to end due to the presence of mould in the rental unit and the needed repairs. However, I find that the Tenants have not provided sufficient evidence to prove that they had an agreement with the Landlords to end their tenancy early or that the Landlords had pressured them to vacate the rental unit.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

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

In this case, I find that the Tenant’s breach of section 45 of the *Act* resulted in a loss of rental income to the Landlords and that the Landlords have provided sufficient evidence to prove the value of that loss. I also find that the Landlords acted reasonably to minimize their damages or losses due to the Tenant’s breach when they made attempts to try and re-rent the rental unit. Therefore, I find that the Landlords have proven their entitlement to the recovery of their lost rental income for January, February and March

2019. I award the Landlords \$6,600.00 in lost rental income, and I grant permission to the Landlords to retain the security deposit for this tenancy in partial satisfaction of this award.

Additionally, I accept the agreed upon testimony of the parties, that the Tenants owe the Landlords \$296.91 for the outstanding hydro bill for the period between November 15, 2018, to December 22, 2018. Accordingly, I award the Landlords \$296.91 for the recovery of the outstanding hydro bill for this tenancy.

BC Hydro bill	\$476.62
days in billing period	61
Daily Rate	\$7.81
Days in rental unit	38
Total due	\$296.91

As for the Tenants' claim for the prorated recovery of their paid rent for December 2018, between December 22 to December 31, 2018. As I had already determined that the Tenants were in breach of the *Act* when they moved out of the rental unit before the date specified in the tenancy agreement, I find that the Tenants are not entitled to the recovery of their rent for the requested period. As such, I dismiss this portion of the Tenants' claim in its entirety.

The Tenants have also claimed for \$125.00 in moving costs, \$315.77 in storage locker fees and \$75.00 in parking fees. Again, as I had already determined that the Tenants were in breach of the *Act* when they moved out of the rental unit before the date specified in the tenancy agreement, I find that the Tenants are not entitled to the recovery of their moving costs, storage locker fees or their parking fees. Accordingly, I dismiss these portions of the Tenants' claim in their entirety.

Finally, with respect to the Tenants' claim for \$25.00 in costs associated with mailing their Notification of Hearing documents and evidence to the Landlords, the Tenants were advised in the hearing that there are no provisions in the *Act* which provide compensation for these requested costs. As such, I dismiss this portion of the Tenants' claim in its entirety.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords have been successful in their application, I find that the Landlords are entitled to recover their \$100.00 filing fee.

As the Tenants have not been successful in their application, I decline to award the Tenants the recovery of their \$100.00 filing fee.

Conclusion

The Tenants' application is dismissed, without leave to reapply.

I grant the Landlords a **Monetary Order** in the amount of **\$5,896.91**. The Landlords are provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants 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: May 15, 2019

Residential Tenancy Branch