Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $21,189.00 pursuant to section 67; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

All parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenants were assisted by a translator. On the first hearing day, the landlord had the assistance of an agent.

The tenants testified, and the landlord confirmed, that the tenants served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord testified, and the tenants confirmed, that the landlord served the tenants with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issue(s) to be Decided

Are the tenants entitled to:

- a monetary order for compensation for damage or loss in the amount of $21,189.00; and
- recover their filing fee for this application?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a series of written, one year, fixed term tenancy agreements to rent the rental unit, a coach house on the rental property where the landlord also resided. The utilities were shared between the rental unit and the landlord's home. The relevant terms of the tenancy agreements are as follows:

1) The first tenancy agreement started July 1, 2016. Monthly rent was $1,200.00 plus 50% utilities and was payable on the first of each month. The tenancy included access to storage. The tenants paid the landlord a security deposit of $600.00 and a pet damage deposit of $600.00 (the "**First Tenancy Agreement"**).
2) The second tenancy agreement started July 1, 2017. Monthly rent was $1,250.00 plus 50% utilities and was payable on the first of each month. This tenancy did not include access to storage (the "**Second Tenancy Agreement"**).
3) The third tenancy agreement started July 1, 2018. Monthly rent was $1,300.00 plus 45% utilities (or consumption by meter if installed) and was payable on the first of each month. This tenancy did not include access to storage (the "**Third Tenancy Agreement**").

The tenants ended the tenancy on December 1, 2018.

The landlord returned the deposits to the tenants in December 2018.

1. <u>End of Tenancy</u>

A point of contention between the parties during the tenancy was the amount of utilities that the tenants were responsible for paying under the tenancy agreements. The tenants thought that 50% was too high. The landlord disagreed. She suggested that an independent meter be installed on the rental unit and that the tenants could pay electrical in accordance with whatever the meter reading was. This option was reflected in the Third Tenancy Agreement.

The tenants testified that the landlord told them to install the meter themselves. The landlord denies this. In any event, the tenants went to city hall to look into the procedure to have a hydro meter installed, and there they discovered that the rental unit was "unapproved". In their written submissions, the tenants wrote that "the city counselor

was surprised that there is a coach house on [the rental property]. The counselors also told us that even if the landlord applies for a separate hydro meter, first she needs to legalize the coach house."

The tenants testified that an inspector attended the rental unit, and advised them that they should vacate the rental unit as soon as possible. They claim that the inspector advised them that the rental unit was dangerous.

The landlord does not deny that the coach house is unauthorized. However, she does deny that it is unsafe.

The tenants entered documents from the municipality obtained by a freedom of information request into evidence where the rental unit is located regarding the rental unit. They do not contain any confirmation of a recommendation from a city employee that the tenants vacate the rental unit or that it was dangerous (although they do include a letter from the tenants in which they make such an assertion). These documents provide a chronology of contact between the tenants and the municipality, as follows:

- October 30, 2018 - Letter from tenants:

  Dear Mr. [city employee]:
  I just found out the coach house I live in was built without proper permits. When I check with engineering department they showed me that it was a garage only and concerned about the electrical and safety of structure. I am listing the issues we covered.
  These are the issues we are facing:
  - Too much on the electricity bill
  - The electricity going off. We can't use our many appliance at the same time.
  - First floor is always cold and the attic (bedroom) is always too hot.
  - The only entrance to our coach house is slippery gravel slope. It's extremely dangerous.
  - The landlady has inspected our house just for one time in 2.5 years (even smoke detector)

  Thank you for your kind attention to this important matter.
  We eagerly await your response
- November 14, 2018 - File Notes:

  [City employee 1] contacted [tenant] regarding her decision on notice to vacate premises. Confirmed she would leave by DECEMBER 1st, 2018.
- November 14, 2018 - File Notes:

  [City employee 1] sent letter for editing -to SUP
- November 19, 2018 - File Notes:

  Complainant came to counter today Monday Nov 19 to find out if there is any update on this file. I told him that [City employee 2] would update him.

He will call on Wednesday to speak to either [City employee 2] or [City employee 3]. I gave him the file number only.

- November 27, 2018 - File Notes:
  [Tenant] called to find out what is going on. She spoke to [City employee 1] but so far nothing has been done. Please update complainant.
- January 19, 2019 - File Notes:
  [City employee 1] unable to reach [tenant]
- January 31, 2019 - File Notes:
  [City employee 1] inspected the “unapproved coach house” and noted that the modified garage or Accessory Structure was unoccupied (tenants had vacated December 1/2018) and the building had been modified to function as living quarters (fridge, stove, bathroom etc.). City records indicated that no secondary suite or coach house was “tagged on the property.” [redacted]

On November 28, 2019, the tenants sent a letter to the landlord stating that they were “verbally advised” by a city inspector to “evacuate the coach house as a precaution and safety measure as soon as possible” and that “against [their] will and as a safety measure, [they] decided to evacuate the unit.” The tenants cited the following reasons for ending the tenancy:

1. Verbal advice of the city inspector;
2. Inability to heat up the rental unit in winter time;
3. Inability to pay 45% of heat and hydro bills;
4. Unsafe gravelled, rocky and steep entrance to the rental unit; and
5. Inability to power-wash the porch due to low water pressure.

2. Damages Claimed

The tenants submitted a monetary order worksheet which sets out their claim for damages as follows:

A. Electrical Overcharge	$1,189.00
B. Rent Overcharge	$1,200.00
C. Moldy Storage	$800.00
D. Poor quality of living in illegal unit	$10,000.00
E. Forced unplanned move-out (safety)	$8,000.00
Total	**$21,189.00**

A. Electrical Overcharge

The tenants claim that between December 1, 2016 and December 1, 2018 they paid $2,098.00 in hydro costs. They submitted a chart recording these payments. They did not enter into evidence any copies of underlying documents (such as hydro invoices, or copies of payment record) supporting this amount. The tenants claim that they would have paid $900.00 for hydro if they were living in another location. They did not provide any documentary support for this assertion.

The tenants seek damages for the difference between what they did pay ($2,098.00) and what they say they should have paid ($900.00).

The tenants did not suggest that the amount they paid was not the correct percentage of hydro under the tenancy agreements (that is, 50% or 45%, as per the tenancy agreements). Rather, they suggested that this ratio was too high, based on their consumption.

The landlord argued that the tenants were not overcharged for the hydro, and that they paid their share of hydro in accordance with the tenancy agreement.

B. Rent Overcharge

The tenants' rent increased from $1,200.00 under the First Tenancy Agreement to $1,250.00 under the Second Tenancy Agreement, and then to $1,300.00 under the Third Tenancy Agreement. They argue that they never had proper notice of these increases, and that the amounts of these increases are not permitted under the Act. The seek the return of $50 per month for the term of the Second Tenancy Agreement ($600.00) and $100 per month for July 1, 2018 to December 1, 2018, the months they paid rent under the Third Tenancy Agreement ($500.00).

The landlord testified that she gave notice of a rent increase from $1,250.00 to $1,300.00 by delivering a hand-written letter to the tenants dated March 24, 2018, notifying them of the increase. It states:

> I would like to remind you that our one year Tenancy Agreement Contract will be terminated at the end of June this year (2018).
>
> If we want to renew the agreement (Item 3 in the Addendum) [sic]. I am going to increase the rent by $50.00, so it will be $1,300.00 starting July 2018.

This letter was entered into evidence by the landlord. The tenants testified that they did not receive this letter.

C. Moldy Storage

The use of a storage area was included in the First Tenancy Agreement. It was not included in subsequent agreements. The tenants testified that they stored a carpet that was gifted to them worth $800.00 in this area, and that while it was in the storage area it became moldy. They testified that the carpet could not be cleaned and an expert told them that it could not be fixed. They seek reimbursement for the full value of the carpet.

The tenants did not enter any documentary evidence as to the value of the carpet, or as to whether the carpet could be cleaned or repairs (i.e. evidence that corroborates what they testified they were told by an expert).

The landlord denies that the carpet became moldy in the storage area and, if it did, that the tenants are not entitled to compensation as it was a gift and they paid no money for it.

D. Poor Quality of Living

The tenants seek $10,000.00 in compensation for the poor quality of living in the rental unit. This claim related to:

(i) The entrance to the rental unit;
(ii) Two repairs taking too long to be made;
(iii) Insufficient water pressure; and
(iv) Periodic voltage changes in the unit;

(i) Entrance

In their written submissions, the tenants stated that at the beginning of the tenancy:

> This only entrance was not ideal, but it had just been made and the gravel was not loose! Over time, the gravel started getting loose (due to rain, snow & other weather conditions), and some of our guests, neighbors and us fell down while trying to climb it and enter the deck area in front of our main door.

The tenants submitted into evidence a letter they sent to the landlord regarding this issue dated September 9, 2018. In it, they asked “for some repairs that represent safety issues” including “first and most important is the ramp that gives us access to our home

this can easily be remedied. This has become an issue on several occasions both to guests and us. The ramp is very dark and slippery and poses a danger." The letter also contained a required that a motion light be installed on the side of the house. Beyond the installation of the motion light, the letter did not set out what repairs the tenants sought to be made to the ramp. The tenants requested that these repairs be completed within 30 days.

They testified that the landlord refused to fix the problem. The tenants called a neighbour as a witness. He testified that he suggested to the landlord, at the tenants request, that a light be installed on the outside of the rental unit so that visitors could see where they were walking at night. He testified that the tenants were prepared to pay for the installation. He testified that the landlord got angry with him for suggesting this. He also testified that he offered to do repairs on the rental unit for free, but that the landlord refused, telling him that she "would not fix it" and that if the tenants "don't like it, they can get out". He testified that he believed the landlord "just wanted [the tenants] out".

The landlord denied that what the witness said was true. She testified that the entrance to the rental unit is safe, and submitted photographs of the entrance into evidence which show a gravel driveway on a moderate slope. There are a few small branches off to the side of the driveway. The tenants also submitted a photo of the driveway, which show the condition to be similar.

(ii) Repairs

The tenants stated that, in the summertime, the ceiling fan started shaking and making noises. They testified that it took the landlord 17 days to fix the fan.

The tenants also testified that, on one occasion, it took the landlord 12 days to fix the smoke detector.

The tenants did not submit any documentary evidence in support of these claims.

The landlord denies there were long wait times before repairs were made.

She entered a partial text message chain into evidence wherein the tenants message the landlord on July 13 (the year is not specified) asking that the fan be fixed. The landlord replies that same day, and states that she can come over the following evening to repair. The tenants were unavailable, and the parties attempt to schedule a time. In

the final message (dated July 25) the landlord writes that she is waiting tenants to offer a date that works. The tenants' reply is not included.

The landlord also entered into evidence a partial text message chain about the repair of the fire alarm. All of the text messages included in the chain appear to have been sent on August 20 (the year is not specified). However, the first text message in the chain is not included, so I cannot tell when the tenants' initial complaint was made.

(iii) Water Pressure

The tenants testified that due to the low water pressure they were unable to power wash the deck. The testified that the landlord attempted to fix the issue, but was unable to.

The landlord did not deny this portion of the tenants' claim.

(iv) Voltage Change

In their written submissions, the tenants stated that the rental unit had an "electricity voltage issue" and that the lights flickered, and that they could not use multiple small and large appliances at the same time. The tenants submitted no documentary evidence of this issue. The tenants did not testify as to what appliances were being run at the same time to cause issues, or provide any technical information regarding the amount of power or type of voltage that was available in the rental unit, or what those levels ought to have been.

The landlord did not deny this portion of the tenants' claim, other than to state that the rental unit is safe.

E. Forced Move

As discussed above, the tenants allege that they were forced to move due to the unsafe conditions of the rental unit, and on the advice of the city inspector. They claim $8,000.00 in damages as a result of this move. The tenants testified that due to the rapid time frame for moving, they had to throw out all of their furniture, which they value at $5,400.00, as the location they were moving to (a neighbour's basement suite) was fully furnished and they had nowhere to store their furniture. The tenants did not submit a list of what furniture was discarded, photographs of the furniture, or any documentary evidence relating to the value of the furniture (such as receipts, quotes, or emails relating to each item's purchase).

The tenants testified that the balance of the damages claimed for the forced move were attributed to the “time, agony and the pain” they went through as the result of the rushed moved.

The landlord argued that there was no reason why the tenants could not have stored their furniture, rather than throwing it out. She argued that she should not be responsible for replacing the tenants discarded furniture on this basis.

Other Testimony

The parties gave evidence on other issues at the hearing, including the landlord’s claim that the tenants attempted to blackmail her, the conduct of the tenants at the unit they moved into after leaving the rental unit (the landlord called the tenants’ subsequent landlord to give evidence), and incidents of yell and other conflicts between the parties at the end of the tenancy. None of these topics is relevant to the tenants’ claim, and as such, I will not be addressing these matters further in this decision.

Analysis

In this hearing, the tenants bear the burden of proving that they are entitled to damages as claimed against the landlord. Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**
>
> 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.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

Residential Tenancy Policy Guideline 16 sets out the criteria (the “**Four Part Test**”) which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> 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. In order 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.

As stated above, the tenants claim damage as follows:

A. Electrical Overcharge	$1,189.00
B. Rent Overcharge	$1,200.00
C. Moldy Storage	$800.00
D. Poor quality of living in illegal unit	$10,000.00
E. Forced unplanned move-out (safety)	$8,000.00
Total	**$21,189.00**

I will address each of these in turn.

A. Electrical Overcharge

In order to be entitled to damages for electrical overcharges, the tenants must prove, per point one the Four Part Test, that the landlord breached the Act or the tenancy agreement. The tenancy agreements set out the rate at which the tenants were obligated to pay for utilities (50%, then later 45% of total bill). There is no suggestion that they were paying a higher percentage of the hydro bill than this. Rather, the tenants argued that they should be paying a lower percentage, based on their consumption.

This is not a basis to be awarded damages. If the tenants were unhappy with the percentage of the electrical bill they paid, they had the opportunity to renegotiate the rate at the time of entering into a new tenancy agreement (indeed, they did this before entering into the Third Tenancy Agreement, obtaining a 5% reduction).

I find that the landlord did not breach the tenancy agreement, or the Act, with regards to the electrical bills. As such, I find that the tenants are not entitled to any compensation.

It is not therefore necessary for me to consider the other steps in the Four Part Test.

B. Rent Overcharge

I find that the rent was increased from $1,200.00 on the First Tenancy Agreement to $1,250.00 on the Second Tenancy Agreement, and then to $1,300.00 on the Third Tenancy Agreement.

Policy Guideline 30 states:

> **RENEWING A FIXED TERM TENANCY AGREEMENT**
> A landlord and tenant may agree to renew a fixed term tenancy agreement with or without changes, for another fixed term. If a tenancy does not end at the end of the fixed term, and if the parties do not enter into a new tenancy agreement, the tenancy automatically continues as a month-to-month tenancy on the same terms. Rent can only be increased between fixed-term tenancy agreements with the same tenant if the notice and timing requirements for rent Increases are met.
>
> [emphasis added]

Section 42 of the Act, in part, states:

> **Timing and notice of rent increases**
> **42** (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
> (3) A notice of a rent increase must be in the approved form.

Based on my review of the documentary evidence, I find that the landlord failed to provide notice of the rent increases in the approved form (that is form RTB-7). As such, I find that the rental increases are invalid. The information contained in the handwritten letter notifying the tenants of the rent increase does not include much of the information regarding how to contest a rent increase that is included on form RTB-7.

Section 43(5) of the Act states:

> **Amount of rent increase**
> **43** (5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

As the tenants no longer reside at the rental unit, they cannot make any deductions from their monthly rent. As such, they are entitled to a monetary order to recover the

portion of the rent they have paid as the result of the invalid increases in rent. The tenants paid an extra $600.00 under the Second Tenancy Agreement (July 1, 2017 to June 1, 2017), and a further $500.00 under the Third Tenancy Agreement (July 1, 2018 to November 1, 2018). Therefore, I order that the landlord pay the tenants $1,100.00.

C. Moldy Storage

Per step three of the Four Part Test, the tenants must prove the value of the loss suffered in order to be compensated. In this instance, the tenants must prove the value of the carpet. The tenants provided no documentary evidence as to the carpet's value. They simply asserted that it is worth $800.00. I do not know the basis for this valuation. As this was a gift, I am unsure how the tenants are certain of the carpet's value. Without an appraisal, a receipt for its purchase, or a quote for a replacement carpet, I cannot find that the tenants have met their evidentiary burden. As such, I decline to award any compensation to the tenants for this portion of their claim.

It is not therefore necessary for me to determine if the carpet was damaged as the result of the landlord's breach of the Act or tenancy agreement and I make no finding of fact on that matter.

I should note that the fact that the tenants received the carpet as a gift is not a factor in my decision not to award the tenants compensation for the damage to it. If the tenants were able to establish the value of the carpet (assuming they satisfied the other parts of the Four Part Test), they would be entitled to compensation, notwithstanding the fact that they didn't pay for the carpet.

D. Poor quality of living in illegal unit

Upon my review of the evidence, I do not find that the quality of life of the tenants was poor while living in the rental unit. I do find that the rental unit was unauthorized. However, this in and of itself is not evidence of the quality of life the rental unit would provide.

The tenants have not provided any evidence to corroborate their claim that they were advised to move out of the rental unit by a city inspector. The city records they entered into evidence include no such recommendation. With no corroboration of their oral testimony, I cannot find that the rental unit was unsafe.

Occasional repairs to the rental unit are not a basis to support a claim of “poor quality of life”. Repairs are expected to be needed in the usual course of a tenancy. The tenants provided no documentary evidence that the landlord took an undue amount of time in making repairs. I place little weight on the text message exchanges submitted into evidence by the landlord, as they are not complete. I cannot determine whether the landlord acted promptly in addressing the repairs. In any event, the tenants have the onus to prove they landlord acted in violation of the Act in making (or delaying to make) the repairs. I find that they have failed to discharge this onus.

The tenants have failed to provide any corroborating evidence to their claim there was insufficient voltage in the rental unit. Without reference to building code, or expert documents, I cannot determine if there is sufficient power being provided to the rental unit, or if the rental unit is properly wired. As such, I find that the tenants have failed to discharge this onus.

I accept the tenants’ testimony that there is insufficient water pressure to power wash their deck. However, I do not have any evidence before me to suggest that the low water pressure was the result of some damage to the rental unit (such as a defective pipe), or if it is merely a characteristic of the rental unit. I find that lower water pressure is not in and of itself a breach of the tenancy agreement or the Act. As such, I find that the tenants are not entitled to compensation for this portion of their claim.

I do not find that the landlord had any obligation under the Act or the tenancy agreement to install a motion sensor light on the side of the rental unit. Nor do I find that the she has an obligation to make changes to the gravel driveway. On the photographic evidence before me, it appears that the driveway is largely in the same condition as it was when the tenants entered into the First Tenancy Agreement. I have no evidence before me that the design of the gravel driveway is not up to any municipal code.

As such, any changes they would like make to the gravel driveway are properly described as “upgrades”, to which the tenants are not entitled to as of a right, under the Act or the tenancy agreement. As such, I decline to award the tenants any damages under this portion of their claim.

E. Forced, unplanned move-out

As stated above, there is insufficient evidence for me to conclude that the rental unit was unsafe. I cannot therefore find that the tenants were compelled to move out of the

rental unit. As such, any damage they suffered as a result of the move-out is not attributable to the landlord.

In any event, even if the tenants were required to move out of the rental unit, such circumstances are not an excuse for them to discard all of their furniture. Such an action demonstrates that the tenants, as required in the fourth part of the Four Part Test, failed to minimize their losses.

I decline to award the tenants any compensation for this portion of their claim.

As the landlord has been substantially successful in this application, I decline to order that she must pay the tenants' filing fee.

In summary I order the landlord to pay the tenants $1,100.00, as follows:

Electrical Over Charge	$0.00
Rent Overcharge	$1,100.00
Moldy Storage	$0.00
Poor quality of living in illegal unit	$0.00
Forced unplanned move-out (safety)	$0.00
Filing Fee	$0.00
Total	**$1,100.00**

Conclusion

Pursuant to section 67 of the Act, I order that the landlord pay the tenants $1,100.00.

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 10, 2019

Residential Tenancy Branch