Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT MNSD FFL MNDCL-S

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The landlords requested:

- a monetary order for damage to the unit, site, or property, or for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other's applications for dispute resolution hearing package ("Applications") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenants were duly served with the Applications and evidence.

Issue(s) to be Decided

Are the parties entitled to the monetary orders that they applied for?

Are the tenants entitled to the return of their security deposit?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Background and Evidence

This month-to-month tenancy began on December 1, 2017. Monthly rent was set at $1,800.00, payable on the first of the month. The tenants paid a security deposit in the amount of $900.00 and a pet damage deposit in the amount of $200.00, which the landlords still hold. The landlords issued the tenants a 2 Month Notice for Landlord's Own Use on October 8, 2018, which was disputed by the tenants. A hearing was held on November 29, 2018, and the Arbitrator upheld the 2 Month Notice. An Order of Possession was granted, and the tenancy ended on December 31, 2018 pursuant to that 2 Month Notice. The reason provided for the 2 Month Notice is that the landlord's father was moving into the rental unit.

The tenants testified that they had provided a forwarding address when they moved out, which was placed in the landlord's mailbox on or about November 21, 2018. The landlords dispute that they have ever received the tenants' forwarding address in writing.

Tenants' Application

The tenants applied for monetary orders as set out in the table below:

Item	**Amount**
Return of security deposit and pet damage deposit	$1,100.00
Compensation for landlord's failure to comply with section 49(3) of the *Act* (12x $1,800.00)	21,600.00
Moving Costs for SJ	990.00
Moving Costs for SS	1,236.00
Loss of Quiet Enjoyment (2 x $1,800.00)	3,600.00
Total Monetary Order Requested	**$28,526.00**

The tenants testified that there was a previous hearing held on June 15, 2018. Neither party provided a file number for that dispute. The parties in that dispute involve the

landlords and the basement tenants of the home. The tenants testified that they were not a party to the dispute, but had assisted the landlords as they were still on good terms with the landlords at that time. The basement tenants moved out some time in August or September 2018. The tenants are applying for compensation in the amount of 2 months' rent for loss of quiet enjoyment due to issues with the basement tenants, which they stated in their application to include poisoning of their two dogs, and violence. The landlords dispute this claim, stating that they have not failed in their obligations as landlords regarding this matter, nor did the tenants provide evidence to support these losses due to the actions of the landlord.

The tenants are also seeking compensation under section 49 of the *Act,* and associated moving costs as they believe the landlord did not fulfill their obligations to use the rental unit as stated on the 2 Month Notice issued in October of 2018. The tenants testified that they moved out on December 31, 2018, but they have noted that the blinds of the rental unit have not changed positions since they had moved out. The tenants testified that they had purposely left the blinds down in a specific position in order to test if anyone in fact moves in. They testified that the neighbour KB, whom was called a witness at the hearing, has observed that nobody has moved into the rental unit.

The landlords testified that their father had moved in January of 2019, but were away in India. The landlords submitted a plane ticket to support that they had left in February of 2019. The landlords confirmed that they were unaware of the details of the trip, or when they would be returning. The landlords testified that their return date was a flexible one, and the date has not been confirmed. The tenants testified that the landlords were not credible, and the lack of detail about the trip supports this.

The landlords called several witnesses, including the former tenant SK who had previously rented a room in the home from the tenants. SK testified that arguments would be started by the tenant SS, which would cause numerous issues. The tenant SS questioned the credibility and reliability of SK's evidence as she submitted that the SK was removed from the home by the police. SK confirmed that she was removed, but due to false claims by the tenant.

The landlords also called JB as a witness, who testified that the landlords' mother and father in law moved in the first week of January 2019. JB testified that she lives in the basement suite with her husband and JK, another witness called by the landlord. JB testified that the landlord's mother and father in law moved in the first week of January 2019. The tenants cross examined JB and asked her how many nights the mother and father in law slept in the home, and JB testified that there was no way of knowing or

confirming. She was also asked if any furniture was upstairs, which she could not confirm.

JK testified in the hearing, which was translated by JB. The tenant SS expressed concern about the translation and possibility that the witnesses may not be telling the truth. I informed SS that the witnesses may give affirmed testimony through a translator and that all parties were expected to tell the truth in a hearing as per RTB Rules of Procedure 6.7 which states the following:

6.7 Party may be represented or assisted
A party to a dispute resolution hearing may be represented by an agent or a lawyer and may be assisted by an advocate, an interpreter, or any other person whose assistance the party requires in order to make his or her presentation.

JK testified that the landlords' mother and father in law moved in upstairs in January of 2019, and often comes downstairs to have tea and chat.

Landlord's Application
The landlords applied for monetary orders as set out in the table below:

Item	**Amount**
Partial Unpaid Utility Bill – 10% September 2018	$29.60
Partial Unpaid Utility Bill – 10% October 2018	29.60
50% of Utility Bill – November 2018	148.00
50% of Utility Bill – December 2018	148.00
Filing Fee	100.00
NJ's lost wages for RTB Hearing	383.35
JJ's lost wages for RTB Hearing	324.00
Total Monetary Order Requested	**$1,162.55**

There is a dispute between both parties as to what percentage of the utilities the tenants were to pay. Both parties agreed that the tenancy agreement does indicate that the tenants owe 50% of the utilities, although there was discussion about reducing the amount to 40%. A copy of the offer of the reduction was included in evidence, which the landlord states was never confirmed by the tenants. As such, the landlords feel that the reduction never took effect. The offer reads as follows with the bold and underlining by the landlords:

"I can reduce your share of the hydro and fortis to 40% from 50% which will be in effect from October 2018 (as it is payable month for consumption of Sept 2018). FYI – this is an arrangement not an agreement because you agreed to 50 % share when you moved into the property. This arrangement can be revoke by the landlord without any notice and share mentioned in the Tenancy agreement will be followed. No further negotiations will be made. **(Please reply to me regarding the above arrangement by the end of this week.)"**

The tenants admit that they did not pay the 40% they feel is owing for December 2018 as they were never presented with any utility bills. The tenants dispute the remainder of the claim stating that they had paid the 40% outstanding for the above periods. The landlords testified that the tenants never paid any portion of the November 2018 utilities, and that they have not provided any proof of payment for that month.

Analysis

Section 51(2) of the *Act* reads in part as follows:

> *51(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if*
>
> > *(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or*
> >
> > *(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I have considered the testimony and evidence of both parties, and I find that the landlords have provided sufficient evidence to support that they have been compliant with section 49(3) of the *Act*. The landlord provided witness testimony confirming that the mother and father in law have moved into the rental unit. Although undisputed that the parties have left the country on a trip, this does not invalidate the supporting evidence that they had indeed moved in. The tenants supported their argument with the testimony from a neighbour who has not observed confirmation that the parties have moved in. I find that the absence of this observation is not sufficient evidence to support that the landlords did not carry out their intended purpose. Lastly, the tenants testified that the blinds were set in a specific position, and that is considered a valid test of whether the rental unit is now occupied by the mother and father in law. I find that this test, although it may give rise to skepticism, does not serve as a basis for definitive confirmation of a finding based on fact. In consideration of the evidence supporting that the intended parties have moved in, and in the absence of sufficient evidence to support that this has not happened, I find that on a balance of probabilities that the landlords have fulfilled their obligations. On this basis, the tenants' applications for compensation under section 51 of the *Act*, and application for recovery of associated moving costs, are dismissed without leave to reapply.

The tenants also applied for compensation for loss of quiet enjoyment during this tenancy.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenants must satisfy each component of the following test for loss established by **Section 7** of the Act, which states;

Liability for not complying with this Act or a tenancy agreement

> ***7*** *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
>
> *(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bear the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred

Although the tenants referenced another dispute between the landlords and neighbouring tenants, and incidents that have caused the tenants their loss of quiet enjoyment, I find that the tenants have not met the burden of proof to support that they had suffered the value of the losses claimed due to the landlord's non-compliance with the *Act* or tenancy agreement. On this basis, this portion of the tenants' application is also dismissed without leave to reapply.

The landlords filed a monetary claim for unpaid utilities. Similarly, they must meet the burden of proof to demonstrate their loss. The first part of the dispute is about whether the tenants are responsible for 40% or 50% of the utilities. The written tenancy agreement signed by both parties clearly indicates that the tenants owe 50% of the

utilities. Although it was undisputed that there was an offer by the landlord to reduce the amount to 40%, I find that this document is not equivalent to a mutual agreement by both parties amending the original agreement. I also find that the document is very clear that the change is contingent on the official confirmation of the change, which I find has not been completed by both parties. The offer itself does not sufficiently demonstrate that the original agreement has changed, and accordingly I find that the tenants owe 50% of the utilities as originally agreed upon. On this basis, I allow the landlord's monetary claim for the remaining 10% owing for the months of September and October 2018. As it was undisputed that the December 2018 utilities were not paid, I also allow this portion of the landlord's monetary claim.

The second issue that needs to be addressed as part of the landlords' application is whether the November utilities bill was paid. The tenants testified that they had paid the November 2018 utilities, while the landlords testified that this amount remains outstanding. Although the tenants' testimony is that the amount was paid, I find that the tenants have not provided sufficient evidence to support this. On this basis, I allow the landlords' monetary claim for the unpaid November 2018 utilities.

As the landlords were successful with their application, I allow them to recover the filing fee for this application. The landlords also made a monetary claim to recover their loss of wages associated with the filing of their application. Section 72 of the Act does not allow for recovery of these costs, and accordingly, this portion of their application is dismissed without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenants were not successful with their application, I find that the tenants are not entitled to recover the $100.00 filing fee paid for this application. The tenants must bear the cost of the filing fee for their application.

The landlords continue to hold the tenants' security deposit and pet damage deposits totalling $1,100.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain a portion of the tenants' deposits in partial satisfaction of the monetary claim. The remaining portion shall be returned to the tenants.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

I allow the landlords a monetary award of $455.20 as set out in the table below for recovery of the unpaid utilities and the filing fee. The remaining portion of the landlords' monetary claim is dismissed without leave to reapply. In accordance with the offsetting provisions of section 72 of the *Act,* the landlords may retain a portion of the tenants' deposits in satisfaction of this award.

Item	**Amount**
Partial Unpaid Utility Bill – 10% September 2018	$29.60
Partial Unpaid Utility Bill – 10% October 2018	29.60
50% of Utility Bill – November 2018	148.00
50% of Utility Bill – December 2018	148.00
Filing Fee	100.00
Total Monetary Award to Landlords	**$455.20**
Less Security & Pet Damage Deposits held by Landlords	-$1,100.00
Amount to be returned to Tenants	**$644.80**

The tenants will be provided with a Monetary Order in the amount of $644.80 for the return of the remaining portion of their deposits. The landlords(s) must be served with a copy of this Order as soon as possible. Should the landlords(s) 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 7, 2019

Residential Tenancy Branch