Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, MNDCT, MNSD, RPP, MNDL, FFL

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). In their application identifying Tenants CB and EB as Respondents, the landlords applied for:

- a monetary order for damage to the rental unit pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant CB and their children Tenants ChB and TB applied for:

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33; and
- an order requiring the landlord to return the tenants' personal property pursuant to section 65.

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.

As Tenant CB (the tenant) confirmed that they received the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) from the landlord on March 22, 2019, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As Tenants CB and EB confirmed that they received copies of the landlords' dispute resolution hearing package and written evidence package sent by the landlords by registered mail on June 27, 2019, I find that these tenants were duly served with this

material in accordance with sections 88 and 89 of the *Act.* The tenant gave sworn testimony that they sent the landlords a copy of their dispute resolution hearing package by registered mail. Landlord LT (the landlord) testified that the tenants did not provide them with a full copy of the tenants' dispute resolution hearing package and that the landlord had to contact the Residential Tenancy Branch (the RTB) to obtain a full copy of these documents. Although the tenants may not have served their hearing package to the landlords in accordance with section 89 of the *Act*, and in accordance with paragraph 71(2)(c) of the *Act*, I find that the landlords were sufficiently served with these documents to enable me to proceed to hear the tenants' application. I find that the landlords were served with the tenants' written evidence material in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for losses or other money owed arising out of this tenancy? Are the tenants entitled to a monetary award for the cost of emergency repairs they undertook during the course of this tenancy? Are the tenants entitled to a return of personal possessions and property that the landlords have in their possession? Are the tenants entitled to a monetary award for the return of a portion of the security deposit for this tenancy? Are the landlords entitled to a monetary award for damage arising out of this tenancy? Are the landlords entitled to recover the filing fee for their application from the tenants?

Background and Evidence

This tenancy, signed initially by the tenant, and later by Tenant EB, commenced on November 15, 2017. While this is a separate dwelling, the landlords live in the adjacent house. Although the initial tenancy agreement called for a month-to-month tenancy and monthly payments of $1,275.00, by the first of each month, the parties gave conflicting sworn testimony as to the monthly rent by the end of this tenancy. The landlord testified that monthly rent had increased to $1,306.00, by January 2019; the tenant testified that monthly rent had increased to $1,475.00 by the end of this tenancy. The parties agreed that the landlords continue to hold the $637.50 security deposit paid when this tenancy began.

The landlord gave sworn testimony and written evidence that no joint move-in condition inspection was undertaken for this tenancy because the tenant and their two children who resided in this rental home during the duration of this tenancy had already moved

into the rental unit by the time the tenancy was scheduled to begin. The landlord maintained that the tenant advised them at that time that everything in the rental home was fine and there were no issues regarding the condition of the rental unit. The landlord did not send the tenants a written notice to schedule a joint move-in condition inspection, nor did the landlords complete their own inspection, issue a condition inspection report or provide a copy of such a report to the tenants when this tenancy began.

The tenant confirmed that they did not dispute the landlords' 1 Month Notice and vacated the rental unit in accordance with the effective date identified on that Notice, April 30, 2019.

The landlords provided written evidence that the tenancy was scheduled to end in accordance with the 1 Month Notice by 1:00 p.m. on April 30, 2019, but the tenant refused to leave until the following day. An altercation occurred at the scheduled joint move-out condition inspection on April 30, 2019, in which police were called to intervene. Both parties alleged that physical assaults had occurred, and the tenant cited a police file number, but provided no copy of any report filed by the attending officer(s). The tenant said that had the landlord not assaulted the tenant, the tenancy would have ended on April 30, and the tenants would have surrendered vacant possession of the premises to the landlords that day. On the advice of the attending police officers, the tenant said that they stored the remainder of their possessions in the garage and returned the following day to obtain these items, leaving the keys to the rental unit in the kitchen on April 30.

The landlord gave sworn testimony that the tenants did not leave until May 1, overholding their tenancy by one day, and leading to the loss of a potential tenant for May 2019. The landlord claimed that they did not enter the rental unit until May 2, as they were uncertain whether the tenants intended to return to the rental unit on May 1. The landlord denied having obtained the tenants' keys and replaced the locks the following day, after having the locks rekeyed using the landlord's own keys to access the rental unit.

The tenants' application for a monetary award of $7,940.00 did not include a Monetary Order Worksheet. Based on the information contained in the tenants' application for dispute resolution, their written evidence and their sworn testimony, the tenants' claim included the following:

Item	Amount
Loss of Quiet Enjoyment During this Tenancy (25 % of all rent paid during this tenancy = $7,000.00)	$7,000.00
Return of Security Deposit	640.00
Emergency Repairs to Bathroom Sink and Dishwasher	30000
Total of Above Items	**$7,940.00**

Although the landlord only identified an application for damage to the rental unit in the landlords' original application for a monetary award of $3,234.62 plus the recovery of the landlords' $100.00 filing fee in their application for a monetary award, they included the following items in a written summary of their application:

Item	Amount
Loss of Rent for May 2019	$1,306.00
Installation of Damaged Siding	210.00
Replacement of Manuals for All Appliances	100.00
Rekeying of Locks	31.40
Unpaid Hydro Owing for May 1, 2019	2.25
Unpaid Gas Owing for May 1, 2019	5.33
Disposal of Lawn Mower	10.00
Damaged Shower Blind Railing	44.77
Damaged Blinds	102.97
Broken Chain on Fan	7.99
Broken Window Lock (Bedroom)	8.00
Broken Window Lock (Dining Room)	8.00
Bag of Salt	7.99
Replacement of Styrofoam Insulation	777.42
House cleaning (17.5 hours @ $35.00 per hour = $612.50)	612.50
Total Monetary Award Requested	**$3,324.62**

To that amount, the landlords added their costs for registered mailings associated with this hearing in the amounts of $30.00 and $23.94, in their amended application for dispute resolution. The landlords also requested the recovery of their $100.00 filing fee.

Although the tenant said that they have had Canada Post forward their mail to their new address, the tenant confirmed that the only written provision of their address for the return of their security deposit has been by way of their application for dispute resolution, a copy of which was provided to the landlords. The tenant said that the landlord was informed orally and in writing that the landlords could return their security deposit to the mailing address for the rental unit, as this will be forwarded to them by Canada Post. The landlord denied having received the tenants' forwarding address or anything in writing, other than the current application, advising the landlords that they could return the security deposit to the mailing address of the rental unit.

The landlords entered into written evidence a copy of their move-out condition inspection report of May 3, 2019, the date when the landlords conducted their own inspection of the premises without the tenants.

The landlord and their witness also attested to the accuracy of their photos and assessment of the condition of the rental unit in mid-March 2019, when the landlord and their witness entered the rental unit for a scheduled inspection of the premises. The landlord gave undisputed sworn testimony that they posted a written notice for that Friday inspection on the tenants' door on Monday, four days before they entered the rental unit. Both the landlord and their witness said that they knocked first before they entered the rental unit, called out to ensure that anyone inside was aware that they were entering the rental unit, and later discovered that both Tenant TB and Tenant ChB, both minors, were in the rental unit. The tenant and Tenant TB maintained that Tenant TB was in their underwear when the landlord and the witness entered the rental unit. The tenant maintained that the landlord entered Tenant ChB's room, while Tenant ChB was naked. Both the landlord and their witness denied that they entered Tenant ChB's room, as ChB called out that they were inside. The landlord and their witness also gave sworn testimony that Tenant TB was in his room playing video games, and that he was wearing more than his underwear when he appeared.

The tenant claimed that there had been a long history of the landlords accessing their property, peering in windows, and entering the rental home without notice and without gaining the tenants' permission. The tenant alleged that on the occasion when the house inspection occurred in mid-March 2019, many documents and receipts went missing, which the tenant maintained were taken by the landlord. Tenant EB first said that they had witnessed Landlord HT access the rental unit illegally; later changing this testimony to a claim that he was told that Landlord HT had accessed the lower level of

the rental unit without authorization. Landlord HT gave sworn testimony that they never accessed the rental unit without the tenants' permission

Analysis

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and receipts, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Analysis - Tenants' Application

Section 28 of the *Act* outlines a tenant's right to quiet enjoyment of their rental premises in the following terms:

> ***28*** *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.*

Although I have given the tenants' application for a monetary award for their loss of quiet enjoyment careful consideration, I find that most of the tenants' examples did not involve any attempted access of the rental unit itself. The tenants produced no

witnesses who could corroborate the tenants' claims that the landlords were constantly peering in windows and interfering with the tenants' right to quiet enjoyment of the premises. The landlords said that when they came over to the tenants' rental unit it was to try to obtain payments for unpaid utility bills and rent, which the tenants at times tried to avoid. While the tenants produced a few letters raising concerns about the landlords' accessing of their property, I find little independent evidence to support the tenants' application for a substantial rebate in rent for their alleged loss of quiet enjoyment of the premises. The tenants referenced two specific incidents. One of these was an inspection that occurred in mid-March 2019, the details of which were disputed by the parties. The other incident occurred when this tenancy ended, and when allegations of assault and counter-assault were made. Again, the parties provided very different accounts of what transpired. Under these circumstances, I find that the tenants have failed to demonstrate their entitlement to a monetary award for loss of quiet enjoyment of their premises or any loss in the value of their tenancy as a result of any contraventions of their legal rights as tenants by the landlords. I dismiss this portion of the tenants' claim without leave to reapply.

Section 33 of the *Act* provides the following provisions that affect a tenant's right to claim for the recovery of emergency repairs:

> ***33*** *(1) In this section,* ***"emergency repairs"*** *means repairs that are*
>
> *(a) urgent,*
>
> *(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and*
>
> *(c) made for the purpose of repairing*
>
> *(i) major leaks in pipes or the roof,*
>
> *(ii) damaged or blocked water or sewer pipes or plumbing fixtures,*
>
> *(iii) the primary heating system,*
>
> *(iv) damaged or defective locks that give access to a rental unit,*
>
> *(v) the electrical systems, or*
>
> *(vi) in prescribed circumstances, a rental unit or residential property....*
>
> *(3) A tenant may have emergency repairs made only when all of the following conditions are met:*
>
> *(a) emergency repairs are needed;*

(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant....

Based on the evidence provided by the tenants and the tenant's sworn testimony, I find that the tenants have submitted little evidence that would qualify their $300.00 claim for repairs to the bathroom sink and the dishwasher as emergency repairs as defined above. More importantly, the tenants have not provided sufficient information to show how they complied with the provisions of section 33(3) of the Act, or basically any of the subsequent subsections of section 33 of the *Act*. I find the tenant's claim that the records that they could have produced were stolen by the landlords during their illegal visits inside the rental unit is a poor substitute for providing documentation to

demonstrate their entitlement to a monetary award of this nature. I dismiss this portion of the tenants' claim without leave to reapply.

During the hearing, the tenant barely mentioned the allegation that the landlords continue to hold personal possessions, receipts and documents taken from the tenant' rental unit. The landlords denied these allegations, claiming that they very seldom set foot in the rental unit during this tenancy. I dismiss the tenants' application for a return of personal property without leave to reapply, as I find that the tenants have supplied insufficient evidence to warrant any order in this regard.

Although there is no evidence that the tenants have provided their forwarding address in writing to obtain a return of their security deposit, I will accept that the tenants' testimony at this hearing has made the landlords aware that mail sent to the tenants' former rental unit continues to be forwarded to the tenants. On that basis, and as the landlords' right to retain that deposit has been extinguished by the landlords' failure to hold a joint move-in condition inspection or prepare a report of that inspection and provide it to the tenants, I order the landlords to return the tenants' security deposit to the tenants, less those amounts the landlords are legally entitled to retain, as outlined below.

Analysis - Landlords' Application

In this case, the onus is on the landlords to prove on the balance of probabilities that the tenants caused the damage to the rental unit and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

RTB Policy Guideline 40 provides guidance to arbitrators with respect to the useful life of various elements in a residential tenancy. As the landlord testified that the rental house was built about 1992, without any major structural changes since then, some of the items included by the landlords in their claim for a monetary award may have outlived their useful life.

The landlords' application for a monetary award for damaged siding is affected by the guidance provided to arbitrators in Policy Guideline 40 that the useful life of siding in a residential tenancy is estimated to be 25 years. For a dwelling constructed in 1992, this tenancy ended 27 years after the home was built. As such, even though there may have been damage caused by the tenants, this siding had likely already exhausted its useful life. As such, I dismiss this portion of the landlords' application.

I note that there was a provision in the final section of the Residential Tenancy Agreement (the Agreement) between the parties that the tenants agreed to pay $100.00 to the landlords if they did not return the binder with all of the appliance information to the landlords at the end of this tenancy. Although the tenant said that this binder was returned, I find on a balance of probabilities it more likely than not that this binder was not returned at the end of this tenancy, and as such, I allow the landlords' claim for a monetary award of the $100.00 charge identified in the Agreement for the failure to return this material to the landlords at the end of this tenancy.

As I noted at the hearing, the landlords' application for a monetary award for the rekeying of locks in the rental unit is affected by section 25(1) of the Act, since the landlord is expected to bear the costs of rekeying locks when new tenancies begin. In this case, the landlord confirmed that they had keys to access the rental unit when the tenant vacated the rental unit. and changed the locks after this tenancy ended. I dismiss this portion of the landlords' application as these costs are to be assumed by the landlords.

Based on the landlords' evidence, I find that the landlords are entitled to a monetary award of $10.00 for the cost of returning a lawn mower left on the property by the tenants at the end of this tenancy.

The landlords' application for the repair/replacement of damaged blinds and the shower blind railing are also affected by Policy Guideline 40, as the useful life of blinds in a residential tenancy is estimated at 10 years. The landlord gave sworn testimony that the blinds in the bedroom and living room were only four years old when this tenancy ended. However, the tenant questioned this estimate, claiming that they were already damaged when this tenancy began, and that the shower rod was so badly rusted when this tenancy began that the tenant bought a plastic covering to place over that rod. Without a completed joint move-in condition inspection report, it is difficult to assess the extent to which these elements of this tenancy were damaged during the course of this tenancy. Under these circumstances, I dismiss the landlords' applications for monetary awards for repairs to the blinds and the shower blind.

The parties also gave conflicting testimony as to whether the window locks and the chain on the fan were broken during the course of this tenancy. The landlord claimed that these locks and the fan chain were broken during the tenancy; the tenant claimed that they were already broken when the tenancy began. In the absence of any joint move-in condition inspection report, I dismiss the landlords' claim for these items.

I also heard evidence from the parties with respect to the landlords' claim for a $7.00 bag of salt that the landlords said had to be purchased to fill up the water softener at the end of this tenancy. I find that the landlords have provided insufficient evidence to confirm that this was a responsibility of the tenants or that this purchase was for an item that was damaged beyond reasonable wear and tear. I dismiss this portion of the landlords' application.

The landlords' claim for the replacement of styrofoam insulation in this tenancy is also affected by Policy Guideline 40 in that insulation has an estimated 25 year useful life. Once more, this item was likely already beyond the end of its useful life when the landlords replaced the insulation in this dwelling. As such, I dismiss this element of the landlords' application.

Paragraph 37(2)(a) of the *Act* establishes that when a tenant vacates a rental unit the tenant must "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." Without a joint move-in condition inspection report or photographs taken by the parties when both were in attendance at the beginning of this tenancy, it is difficult to assess the extent to which the premises were properly cleaned at the end of this tenancy and the extent to which damage that the landlords have included in their claim had occurred before this tenancy began. The tenants provided some written evidence supported by photographs, of somewhat limited quality that maintained that the premises were left in a clean condition at the end of this tenancy. The tenant also stated repeatedly during the hearing that items claimed by the landlord as damaged were in that condition when they moved into this rental unit. By contrast, the landlord provided sworn testimony, photographic and written evidence to support their claim that damage arose during this tenancy and the premises were not left reasonably clean and undamaged at the end of this tenancy. The landlords maintained that the 17 1/2 hours of cleaning they undertook at the end of this tenancy at a rate of $35.00 hour was cheaper than they would have had to pay had they hired professional cleaning staff.

Although the landlords' detailed move-out condition inspection report was useful in considering this portion of the landlords' claim as was the sworn testimony of the parties, the photographic evidence of both parties was much less useful. Most of the tenants' photos were taken at such distances, angles and resolution that it was difficult to assess the true condition of the rental unit at the end of the tenancy. The landlords' black and white photos were of relatively poor quality and were far from determinative

as to the condition of the rental unit. This aspect of the landlords' claim is once more affected by the absence of a joint move-in condition inspection report.

In the absence of a completed joint move-in condition inspection report, I accept on a balance of probabilities that the tenants did not leave the rental unit reasonably clean at the end of this tenancy, as is required by paragraph 37(2)(a) of the *Act*. However, I find that the number of hours required to restore the rental unit to its previous condition prior to the commencement of this tenancy was limited to one full day of cleaning. As such, I allow the landlords a monetary award for eight hours of cleaning at the $35.00 per hour rate the parties agreed would be charged when this tenancy began, and as was stated in the Agreement.

As was noted earlier, the landlords' application for dispute resolution only identified damage as the sole reason for their claim for a monetary award. As such, the landlords' claims for a monetary award for their loss of rent for May 2019, and for the portion of the landlords' gas and hydro bill for May 1, 2019 were not part of the landlords' original application, even though they were include in the landlords' written evidenc. However, I also note the wording of section 72(2) of the *Act* reads in part as follows;

> ***72*** *(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted*
>
> > *(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord,...*

The landlords have tried to include a claim in their written evidence for their loss of rent for the entire month of May 2019, due to the tenants' alleged refusal to surrender vacant possession or the rental unit to the landlords by 1:00 p.m. on April 30, 2019, the date noted on their 1 Month Notice. However, even if I were to accept the landlords' disputed claim that the tenants overheld their tenancy by remaining in possession of the rental unit until May 1, 2019, the landlords are also required by section 7(2) of the *Act* to take measures to mitigate the tenants' exposure to the landlords' losses. In this case, despite having issued the 1 Month Notice which was not disputed by the tenants on March 22, 2019, the landlords had not taken adequate steps to try to re-rent the premises to other tenants as of May 1. While the landlord said that they started advertising the availability of the rental home to prospective tenants about two weeks before this tenancy ended, the landlords provided no details regarding these advertisements. The landlord said that by the middle of May, the tenant who rented this

rental property as of June 1, 2019 entered into an agreement with the landlord to rent these premises. On this basis, I find little evidence that the tenants' failure to leave the rental unit by 1:00 p.m. on April 30, 2019, until the following day had any real bearing on the landlords' ability to re-rent the premises for May 2019. Had the landlords offered evidence that they had entered into an agreement with new tenants who were expecting to take possession of the rental property on May 1, 2019 and that the landlords had to compensate these new tenants for their accommodation costs elsewhere, the landlords might have a legitimate claim for their loss of rent for the month of May 2019, due to the tenants' refusal to surrender possession of the premises until May 1, 2019. This was not the case in this instance.

I find that the landlords are only entitled to a monetary award equivalent to one day of overholding, pursuant to section 57(3) of the *Act*. In this regard, I note with considerable interest that the landlords only claimed for one day of pro-rated hydro and gas owing for May 1, 2019, but maintained that they were eligible to an entire month of unpaid rent from the tenants rather than the one day of pro-rated overholding rent that I find they are entitled to receive. Since unpaid utilities become unpaid rent once more than thirty days have expired, I allow the landlords a monetary award equivalent to one day's rent, one day's hydro and one day's gas payments for this tenancy. As I consider this to be rent owing at the end of this tenancy, I issue a monetary award in the landlords' favour in the amount of $49.71 {($1,306.00 / 31 days = $42.13) + $2.25 + 5.33 = $49.71} pursuant to paragraph 72(2)(a) of the *Act*.

Since the landlords' have been partially successful in their application, I allow their application to recover their $100.00 filing fee from the tenants.

Conclusion

i issue a monetary Order in the tenants' favour under the following terms, which allows the tenants to obtain a return of their security deposit, less the amounts the landlords are entitled to receive as outlined below:

Item	**Amount**
Unpaid Rent (Overholding by one day in May 2019 for rent, hydro and gas)	$49.71
Replacement of Manuals for All Appliances	100.00
Disposal of Lawn Mower	10.00

House cleaning (8 hours @ $35.00 per hour = $280.00)	280.00
Less Security Deposit	-637.50
Landlords' Recovery of Filing Fee	100.00
Total Monetary Order	**$97.79**

Tenant CB, the only signatory tenant to the tenants' application for dispute resolution is provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: July 29, 2019

Residential Tenancy Branch