



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S, FFT, MNDCT, MNSD

The Application for Dispute Resolution filed by the Tenants makes the following claims:

- a. A monetary order in the sum of \$9000 including an order for double the security deposit.
- b. An order that the tenants recover the cost of the filing fee

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$5225.34 for damages
- b. An order to retain the security deposit
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was filed by the Tenants was served on the landlord by mailing, by registered mail to where the landlord resides on June 24, 2019. I find that the Application for Dispute Resolution filed by the landlord was served on the Tenants by registered mail on or about August 19, 2019.

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a monetary order and if so how much?
- b. Whether the tenants are entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to A Monetary Order and if so how much?

- d. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- e. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a tenancy agreement that provided that the tenancy would start on August 16, 2018. The rent is \$1800 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$900 on August 24, 2019.

The tenancy ended on April 30, 2019 and the tenants vacated by that date.

The Applicant has the burden of proof to establish each of their claims on a balance of probabilities based on relevant evidence presented at the hearing.

Rule 2.2 of the Rules of Procedure provides that the claim is limited to what is stated in the application.

Tenant's Application:

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenants paid a security deposit of \$900 on August 24, 2018. I determined the tenancy ended on April 30, 2019. I further determined the tenants provided the landlord with their forwarding address in writing on May 14, 2019. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. The landlord's right to claim against the security deposit was extinguished because the landlord failed to conduct a condition inspection prior to the start of the tenancy and at the end of the tenancy. As a result I determined the tenants have established a claim against the landlord for double the security deposit or the sum of \$1800 ($\$900 \times 2 = \1800)..

Tenant's Claim for Reduction of Rent:

The tenants claimed the sum of \$5400 for the reduced value of the tenancy. The tenants testified that the landlord failed to provide sanitary premises for the tenants. In particular the tenants testified the furnace had not been serviced in many years and contained a years-old moldy filter. They further testified that the landlord had qualified furnace technician's onsite in January 2019 to replace condensate pump but did not have them service the unit and replace the filter. As a result the tenants experienced significant health issues. The amount of the claim seeks a 50% reduction of rent for 6 months.

The landlord disputes this claim. She testified that she received a text message from the tenants on September 28, 2018 inquiring when the ducts asking about the date the furnace filter and ducts were cleaned. She responded saying the ducts were probably cleaned about 3 years ago. The tenant responded stating "Great. I will get anew furnace filter before we start using the heat. S is much healthier up here. I wish we had left the island twenty years sooner." On January 17, 2019 the tenants communicated by text that there was a problem with the furnace. The landlord immediately called a furnace repair technician who attended next day and fixed the problem. The tenants made no mention that they felt there was a problem with the air quality, the ducts or the furnace filter. The tenant testified he was unable to find the filter when he attempted to change it. It was not located in an expected location. It wasn't until March that he was able to located the filter and he changed the filter at that time. The tenant discovered that the furnace did not have a filter but was using a humidifier and it was covered in mold.

Analysis:

After carefully considering all of the evidence I determined the tenants failed to prove that they are entitled to a reduction of rent because of the condition of the furnace. In September 2018 the tenant represented to the landlord that he would take care of replacing the filter. The landlord relied on that representation. The tenant was not able to locate the filter but did not ask the landlord where it might be. The landlord testified that based on what the tenant had said she thought he changed the filter. Further, the tenant advised the landlord in January 2019 there was a problem with the filter but did not inform the landlord there was a problem with the filter. The furnace technicians arrived the next day and fixed the problem. The tenants never advised the landlord that they were experiencing breathing problems which they attributed to mold in the filter.

Claim for Breach of the Covenant of Quiet Enjoyment:

The tenants seek a monetary order in the sum of \$2700 for breach of privacy and breach of the covenant of quiet enjoyment. The tenants testified the landlord engaged in a campaign of harassment against the tenants after they declined to purchase the property at an overly inflated price in January 2019. They further testified the landlord had the tenants under surveillance including taking pictures through windows. In particular the tenants testified that on April 29, 2019 the landlord's grandson who is a convicted criminal took photos of the rental property. The tenants also testified that a neighbor had them under constant surveillance in the spring of 2019 including using binoculars. The tenants testified this was most disturbing as they have government clearance jobs.

The landlord testified the neighbor was concerned and advised the landlord that he noticed the tenants had a motor scooter in the house. She denies they were spying. She further testified the grandson took the photos the day before the tenancy ended because she did not want the neighbor to be subject to threats and intimidation from the neighbor.

Policy Guideline #6 includes the following:

“A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.”

I determined the tenants failed to prove that the conduct of the landlord amounted to frequent and ongoing interference with the tenants' enjoyment of the rental property. The photographs taken by the landlord's grandson took place one day before end of the tenancy. The tenants were not aware of it at the time and only became aware of it after the end of the tenancy. I determined the tenants failed to prove the actions of the neighbour amounted to frequent and ongoing interference with the tenants' enjoyment of the property. This claim is dismissed.

The tenants alleged that the landlord is engaging in the rental business with gross incompetence. The landlord was willfully and completely unfamiliar with the RTA guidelines. The landlord did not understand the usage of correct forms. The landlord failed to do a move in inspection. The landlord was offended by being asked to use correct form to end the tenancy for landlord. The landlord was rude, profane and hostile at the time set for move out inspection and the tenant left the premises. LL scheduled no further inspection time. I determined the tenants failed to prove they are entitled to any additional compensation apart from the doubling of the security deposit which has been awarded.

There have been ongoing post tenancy disputes between the landlord and the tenants. I determined the tenants failed to provide sufficient evidence to prove the conduct of the landlord post tenancy amounts to a breach of the covenant of quiet enjoyment.

In summary I determined the Tenants have established a claim against the landlord in the sum of \$1800 plus \$100 for the cost of the filing fee for a total of \$1900.

Landlord's Claim:

Policy Guideline #16 includes the following:

C. COMPENSATION

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.

With respect to each of the landlord's claim I find as follows:

- a. The claimed the sum of \$4673 for the cost of repairing her yard. The claim is based on 50% of a quotation she received. The landlord testified the tenant damaged her front yard as follows:
 - The front yard is bare and no grass has grown because of damage caused by the tenants.
 - The hedge was redesigned by the tenants that went way beyond pruning.
 - The tenants completely destroyed and altered the hedge to suit them. They put a heavy gauge metal fence to contain their dog.
 - The heavy gauge has caused extra damage
 - The tenants removed part of the fencing

I determined the tenant failed to prove this claim. The work has not been done and the tenant failed to show a loss. There is insufficient evidence to prove that she intends to do the work. Secondly, I am satisfied based on the photos and evidence presented that the hedge, yard and fencing was in much better condition when the tenant vacated the rental unit than when the tenants took possession. The landlord failed to prove the tenants caused damage to the yard.

- b. I dismissed the landlord's claim of \$118 for the cost of replacing floor that was allegedly damaged by the scooter being placed in the residence. The landlord failed to provide sufficient evidence to prove the floor was damaged by the scooter. I accept the tenant's evidence that the scooter was placed under mats throughout the time it was in the house.
- c. I dismissed the landlord's claim of \$289.23 for the cost of painting and labor for the porch. The landlord failed to prove the damage was caused by the tenants.
- d. I determined the landlord \$95.17 for the cost of replacing a damaged sprinkler head. The sprinkler head was working at the start of the tenancy. I determined the damaged was caused by the tenants

- e. I determined the landlord is entitled to \$50 for the cost of replacing pot lights in the basement. Policy Guideline #1 provides that tenant is responsible for replacing burned out lights at the end of the tenancy.

In summary I determined the landlord has established a claim against the tenants in the sum of \$145.17 plus \$100 for the cost of the filing fee for a total of \$245.17.

Monetary Order and Cost of Filing fee

I determined the tenants have established a claim against the landlord in the sum of \$1900. I determined the landlord has established a claim against the tenants in the sum of \$245.17. After setting off one claim against the other I ordered that the landlord pay to the Tenant the sum of \$1654.83.

It is further Ordered that this sum be paid forthwith. The parties are given a formal Order in the above terms and the Tenants must serve the Landlord with a copy of this Order as soon as possible.

Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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: September 19, 2019

Residential Tenancy Branch