



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: MNRL, FFL
For the Tenant: MNDCT, OLC, FFT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlord filed a claim for:

- Unpaid rent and utilities owing in the amount of \$7,485.00; and
- recovery of the \$100.00 Application filing fee.

The Tenant filed a claim for:

- \$35,000.00 compensation for monetary loss or other money owed in the form of loss of quiet enjoyment, court orders;
- an order for the Landlord to comply with the legislation and tenancy agreement;
- return of the security and pet damage deposits in the amount of \$1,000.00; and
- recovery of the \$100 Application filing fee.

The Tenant, her witness, K.G. ("Witness"), and the Landlords, C.W. and C.D., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me during the hearing.

Neither Party raised any concerns regarding the service of the Applications for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Are the Landlords entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is either Party entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on July 1, 2015, with a monthly rent of \$950.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlords a security deposit of \$475.00, and no pet damage deposit. This is consistent with the copy of the tenancy agreement that the Landlords submitted. The Parties agreed that the Landlord did not conduct an inspection of the condition of the rental unit before or at the start of the tenancy.

In the hearing, the Parties agreed that the Tenant vacated the rental unit on July 15, 2019, and that she provided the Landlord with her forwarding address via registered mail on September 13, 2019. The Parties agreed that during another dispute resolution hearing on June 11, 2019, they settled matters between them pertaining to the end of the tenancy, agreeing that the tenancy would end on July 15, 2019. The Arbitrator in that hearing dismissed the Tenant's application to cancel a 10 Day Notice; she also dismissed the Landlords' monetary claim with leave to reapply.

LANDLORD'S CLAIMS

The Landlords said that the Tenant was usually late paying rent and that often she did not pay the total amount owing. They said the Tenant paid the following amounts; the Landlords said they went to an accountant "to make sure the amount was right, the amount owing is correct":

	DATE	AMOUNT PAID
1	December 2016	600
2	January 2017	0
3	February	1000
4	March	700
5	April	700
6	May	900
7	June	800
8	July	400
9	August	200
10	September	1850
11	October	650
12	November	0
13	December	0
14	January 2018	2470
15	February	530
16	March	1,490
17	April	1,100
18	May	550
19	June	1100
20	July	1950
21	August	0
22	September	1000
23	October	1800
24	November	0
25	December	0
26	January 2019	600
27	February	600
28	March	1200
29	April	500
30	May	0

31	June	0
32	July	0
	TOTAL	\$22,690

The Tenant owed the Landlords \$950.00 per month for these 32 months for a total of **\$30,400.00**. These numbers indicate that the Tenant failed to pay \$7,710.00 owing to the Landlords for rent over the course of these months of the tenancy.

The Tenant submitted a list of what she said she paid for the same time period and the numbers match those of the Landlords, except for three months in which the Landlord said that the Tenant paid more.

TENANT'S CLAIM

In her Application, the Tenant said she seeks \$35,000 in compensation for the loss of quiet enjoyment of the rental unit while she lived there. The Tenant said that she wants the return of the rent she paid during the tenancy, although she acknowledged that it did not add up to \$35,000.00. The Tenant's evidence consisted of her explaining what her Witness termed as the "third world conditions" in which she lived, because she said the Landlords would not maintain the rental unit, as required by section 32 of the Act.

The Tenant said that the front door did not lock properly, there were no stairs, no railing, "...watery walls, and water coming up through my floors." The Tenant said that she is asking for her rent money back, because the Landlords did not comply with their requirements under the Act or under Orders granted by the RTB. The Tenant said that there were emergency Orders for such things as cleaning out the chimney, because the Landlords would not do it at the Tenant's request.

The Tenant said: "These people were always coming over. He treated me terribly. They never supplied the services I paid for. No screw on the front door. When they first saw me, I was on TV. I'm homeless now. They failed to comply with [their obligations under] section 32 [of the Act] - no certified plumbers or roofers. They tore down the roof, they tore down the chimney."

The Landlord, C.D., responded to the Tenant, as follows:

She makes these broad statements about [C.W.] treating her horribly. That's name calling, not saying any facts. I dealt with her most of the time. As far as the door, she mentions that she couldn't get insurance because of the door. There

are three doors. We took the steps down, because they were unsafe. When she moved in there, that was the case. She was well aware of how that door was from the start. She had furniture against it. We tried to not raise the level of conflict, but we get this harassment accusation. It's just the opposite. We've always complied with what's wrong with the house, always. She had a working sewer, her drain for her washer/dryer was working until 2 years ago. We augured up a pile of dog hair, not feces, dog hair. She had five dogs at one point, even though she said she had one at the start.

The Tenant's witness was brought into the hearing and he had the following to say about the Tenant's living environment:

In the years I have known [the Tenant], one thing that amazed me is her ability to live in third world conditions. It appalled me, the condition of the house; the backed up, overflowed sewer system. Now they are trying to cover up. She has been accused of dumping feces down the drain.

It comes across as they are attempting to come up with every excuse and accusation to justify their years of refusal to fix things – they used every excuse. She's a prisoner of circumstance. They would blatantly ignore Orders to fix things. When [the Tenant] first moved here there had been past problem with the sewer. Her landlords even gave her sewer pucks to flush into the system.

The Landlords responded as follows:

Neighbours had an issue with the sewer.... The health inspector said the best way to help it was using these pucks that generate bacteria in the sewer. [The Tenant] does not understand how a sewer works. The water level stays at that four-inch level all the time. It was liquid when it was pumped out. It could have been a few more years [before we did it].

It was very hard to be around [the Tenant] – there was a phone in your face all the time. You ask them to put them away. We were being filmed the whole time we visited that residence – why isn't that in her evidence if we were harassing her? There was no issue with the sewer, except somebody put paint down that sewer. You're making a bunch of comments here . . . lying . . . [the Witness has] made a lot of statements. If [the Tenant] can't pay her back rent, I'm going to be visiting a lawyer. Maybe [the Witness] can pay her rent.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 26 of the Act states: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlords.

LANDLORDS’ CLAIMS

The Parties’ respective records of how much rent the Tenant paid the Landlords from December 2016 through to July 2019 are parallel. I recorded the Landlord’s figures during the hearing and put them into an electronic spreadsheet to ensure the addition was correct and I came up with a total of \$7,710.00 owing to them by the Tenant for this period of time. Accordingly, and pursuant to section 67 of the Act, I award the Landlord a monetary order of **\$7,710.00** in recovery of the unpaid rent.

TENANT’S CLAIMS

Based on the evidence before me overall, I find some merit to the Tenant’s complaints about the Landlords not maintaining the residential property in keeping with section 32 of the Act. Section 32 states:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common

areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

One of the things the Landlord said was that the Tenant's: "...drain for her washer/dryer was working until two years ago." That implies that it was not working for the last two years. The Landlords agreed that one of the exit doors was not functional, could not be locked, that the outside stairs to this door had been removed, that the Tenant had to place furniture in front of it to avoid an accident, and that she could not get appropriate insurance for the rental unit, because of this.

I find that the Tenant has not provided sufficient evidence to be successful in her claim for recovery of \$35,000.00; however, in this set of circumstances, I find that it is more likely than not that the Landlords did not attend to the repairs of the property in a timely manner of their own accord, which resulted in a series of dispute resolution hearings and Orders. Accordingly, I award the Tenant a nominal amount of **\$2,625.00 or 7.5%** of her claim for a breach of quiet enjoyment of the premises, pursuant to Policy Guideline #16.

The Tenant also applied for recovery of her security and pet damage deposits, which she said amounted to \$1,000.00. However, I went over the details of the Parties' tenancy in the hearing, and they agreed that the Tenant did not pay a pet damage deposit, which was consistent with the tenancy agreement. As a result, I find that the Tenant paid the Landlords a \$475.00 security deposit and no pet damage deposit.

Set-Off of Claims

I have granted the Landlords a monetary award of \$7,710.00 for recovery of unpaid rent, and the Tenant a monetary award of \$2,625.00 as a nominal award for loss of quiet enjoyment of the residential property. The Landlords still hold the Tenant's \$475.00 security deposit, which is available for set off. I authorize the Landlords to retain the security deposit in partial satisfaction of their award.

Since the Parties were both partially successful in their claims, I decline to award either the recovery of their \$100.00 Application filing fees.

Monetary Figures	Amount
Landlord's monetary award	\$7,710.00
Landlord retains security deposit	(\$475.00)
Minus the Tenant's monetary award	(\$2,625.00)
Total monetary order claim	\$4,610.00

After setting off these two awards, I grant the Landlords a monetary order of **\$4,610.00**.

Conclusion

The Tenant failed to pay the Landlords \$7,710.00 of rent from December 2016 through to July 2019. The Landlords are awarded recovery of this amount.

I found that the Landlords violated section 32 of the Act for failing to consistently adhere to their responsibilities to maintain the premises, pursuant to the Act. The Tenant provided insufficient evidence to warrant an award of the full amount she sought; however, I award the Tenant a nominal amount of 7.5% of her claim or **\$2,625.00**.

I authorize the Landlord to retain the Tenant's security deposit in the amount of \$475.00, in partial satisfaction of their monetary award. After set-off of the awards, I grant the Landlords a monetary order in the amount of **\$4,610.00**.

This Order must be served on the Tenant by the Landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 26, 2019

Residential Tenancy Branch