



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, FFT, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on October 21, 2019 (the “Application”). The Tenants applied as follows:

- To be paid back for the cost of emergency repairs made during the tenancy;
- For compensation for monetary loss or other money owed; and
- For reimbursement for the filing fee.

The Tenant and Landlord appeared at the hearing.

The Tenant and Landlord disagreed about who should be named on the Application. Neither party submitted a copy of the written tenancy agreement in this matter such that I could determine who is named on it. The Landlord did not have a copy of the written tenancy agreement with him during the hearing. The Tenant did have a copy of the written tenancy agreement with her during the hearing.

The Tenant testified that all Tenants are named on the written tenancy agreement. The Tenant testified that she is the only person who signed the written tenancy agreement because the other Tenants were not present at the time.

The Landlord testified that he does not know any of the Tenants other than the Tenant.

I am satisfied all Tenants were named on the written tenancy agreement given the Tenant had the written tenancy agreement with her during the hearing and confirmed this. The Landlord did not have the written tenancy agreement with him during the hearing and therefore I do not rely on his position about who was named on the written tenancy agreement. I acknowledge that only the Tenant signed the written tenancy

agreement; however, I find it is permissible for the Tenant to have signed on behalf of all Tenants. Further, the fact that the Tenants are named on the written tenancy agreement calls into question the testimony of the Landlord that he does not know who these people are and therefore I decline to rely on his position about who was a tenant in this matter. I am satisfied all Tenants were tenants in this matter.

The Tenant took the position that the Landlords and their father should be named on the Application. The Tenant had named three landlords; however, the Landlord testified that two of the names relate to him. Given this, I removed O.N. from the Application and style of cause. The Tenant testified that the Landlord's father owns the rental unit and dealt with the Tenants during the tenancy. The Tenant testified that she knows the Landlord's father owns the rental unit because she was told he owns it. The Tenant testified that M.N.N. is named on the written tenancy agreement as well as M.N.

The Landlord agreed he and his brother were the landlords in this matter. The Landlord denied that his father was a landlord. The Landlord testified that his brother owns the rental unit. The Landlord testified that his father was a caretaker for the rental unit but not an owner. The Landlord testified that the Tenants dealt with his father around 10 times over five years. The Landlord provided his father's name which is the same first and last name as the Landlord.

In the absence of further evidence, I am not satisfied the Landlord's father should be named on the Application. I am not satisfied the Landlord's father owns the rental unit. I would expect the Landlord to know who owns the rental unit more so than the Tenant. Being told that the father owned the rental unit is not strong evidence that the father in fact owned the rental unit. I am satisfied the written tenancy agreement named M.N.N. and M.N.; however, M.N. is the Landlord's name as well and therefore I cannot conclude from this that the father was named on the written tenancy agreement.

The Landlord said at the outset that he might call his brother, M.N.N. as a witness. I told the Landlord to let me know if and when he wanted to have M.N.N. provide testimony. The Landlord did not indicate during the hearing that he wanted to have M.N.N. provide testimony.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

I provided an overview of the Application to the parties at the outset. The Tenant did not seem to know what the Application was about. She advised that her and her

children filed the Application. The Tenant said she wanted the security deposit back and indicated that her son put the amount of compensation sought.

The Application does not show that the Tenants are seeking the security or pet damage deposit back. I asked the Tenant to confirm where in the Application it shows the Tenants are seeking return of the security or pet damage deposit. The Tenant acknowledged that the Application does not state this. The Landlord confirmed his materials do not show this.

The Tenant said she made an amendment to the Application. There is no amendment before me. The Landlord testified that he did not receive an amendment. I do not accept that the Tenants filed or served an amendment to the Application.

Section 59(2) of the *Residential Tenancy Act* (the “Act”) states:

(2) An application for dispute resolution must...

(b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings...

I told the Tenant I would not consider return of the security or pet damage deposit. Pursuant to section 59(2) of the *Act*, parties must clearly set out what they are seeking in an Application for Dispute Resolution. This is important as the other party must know what they are expected to address at the hearing. Here, the Application does not say anything about the Tenants seeking return of the security or pet damage deposit. The Landlords could not have known that the Tenants were seeking this from the Application. Return of the security and pet damage deposit is a separate issue from reimbursement for the cost of emergency repairs and compensation for the issues raised in the Application. In the circumstances, I declined to hear the Tenant on return of the security and pet damage deposit.

The Tenant confirmed she wished to proceed with the request for \$19,750.00.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

In relation to the Tenants’ evidence, I had three photos, a photo of page three of the written tenancy agreement and a typed statement before me. The Tenant testified that the Tenants submitted further evidence. No further evidence was before me.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding and Application. The Landlord testified that he did not receive the Fact Sheet, Respondent Instructions or Tenants' evidence.

The Tenant testified that the Tenants' evidence was served on the Landlords by registered mail to their business and regular mail to their home. The Tenant testified that the evidence was with the hearing package.

Rule 3.5 of the Rules of Procedure (the "Rules") states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure. (emphasis added)

It is the Tenants who have the onus to prove they served their evidence on the Landlords. The Tenant testified that the evidence was with the hearing package. The Landlord denied this. There is no further evidence before me to support the Tenant's position. The Tenants have failed to prove service of their evidence.

I told the parties at the hearing that I was not satisfied the Tenants' evidence was served and gave the parties the opportunity to make submissions on whether the evidence should be admitted or excluded. The Landlord said he does not have the evidence, does not know what it is and that he has to see the evidence to rebut it.

The Tenant asked that the matter be adjourned so the evidence could be re-submitted and re-served. The Landlord wanted the matter resolved on the hearing date.

I considered rule 7.9 of the Rules and denied an adjournment as the need for an adjournment arose out of the failure of the Tenants to provide evidence of service. The Tenants are not entitled to an adjournment to re-submit evidence or re-serve evidence when this should have been done, and evidence of such provided, prior to the hearing.

In relation to whether the Tenants' evidence should be admitted or excluded, the Tenant said she cannot say much and would leave it to me.

I exclude the Tenants' evidence. I find it would be prejudicial to the Landlords to admit evidence they did not have a chance to view and could not comment on at the hearing.

The Tenant testified that she did not receive the Landlords' evidence.

The Landlord testified that the Landlords' evidence was served on the Tenant by registered mail. The Landlord testified that the package was sent to the address on the Application. The Landlord provided Tracking Number 1. I looked this up on the Canada Post website which shows the package was sent February 12, 2020. The website shows notice cards were left February 14, 2020 and February 20, 2020 but that the package was not picked up.

The Tenant confirmed the address on the Application is correct. The Tenant testified that no notice cards had been left unless she missed them.

I am satisfied based on the Tracking Number provided, as well as the Canada Post website information, that the Landlords sent their evidence to the Tenant in accordance with section 88(c) of the *Act*. I am satisfied based on the Canada Post website information that notice cards were left for the package. Pursuant to section 90(a) of the *Act*, the Tenants are deemed to have received the evidence February 17, 2020. The evidence is admissible.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the parties and the admissible documentary evidence. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to be paid back for the cost of emergency repairs made during the tenancy?
2. Are the Tenants entitled to compensation for monetary loss or other money owed?
3. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant withdrew the request to be paid back for the cost of emergency repairs made during the tenancy. The Landlord agreed to this request being withdrawn. Based on the agreement of the parties, I allowed the request to be withdrawn and will not consider it.

The Tenants sought the following compensation:

Item	Description	Amount
1	Mold in the house	\$10,000.00
2	Time off work to gather evidence	\$1,000.00
3	Harassment/intimidation	\$3,500.00
4	Emotional stress	\$5,000.00
5	Filing fee	\$100.00
	TOTAL	\$19,600.00

The parties agreed on the following in relation to the tenancy agreement. There was a written tenancy agreement. The tenancy started September 01, 2014 and was for a fixed term of one year then became a month-to-month tenancy.

The Tenant testified that a security and pet damage deposit were paid. The Landlord disagreed that a pet damage deposit was paid.

The Tenant testified that rent was \$2,200.00 per month due on the first day of each month. The Landlord testified that rent was reduced to \$2,000.00 after four or five months.

The Tenant testified that the tenancy ended September 30, 2019. The Landlord testified that the tenancy ended October 04, 2019.

Mold in the house \$10,000.00

The Tenant testified as follows. The Tenants had asked the Landlords from the start of the tenancy to fix the mold in one of the bedrooms and the kitchen. The Landlords would respond by text telling the Tenants to call one of the other landlords. There were three children living in the rental unit and one got pneumonia. Her grandchildren's health was put at risk due to the mold.

The Landlord testified as follows. There was no mold in the rental unit before the Tenants moved in. The Landlords did not know there was mold in the rental unit until the Tenants vacated. The Tenants put wiring through the wall and did not seal it which resulted in mold in the bedroom closet. The Landlords never received text messages about the mold.

Time off work to gather evidence \$1,000.00

I told the Tenant at the hearing that the Tenants are not entitled to compensation for costs associated with preparing for the hearing such as gathering evidence. I did not hear from the parties in relation to this request.

Harassment/intimidation \$3,500.00

The Tenant testified about two instances of harassment and intimidation.

The Tenant testified that the Landlords attended the rental unit, banged on the door and handed her an eviction notice in November of 2017. The Tenant testified that this arose out of a situation where she asked the Landlords to pay their portion of the utilities and the Landlords refused. The Tenant testified that she told the Landlords she would file a claim with the RTB. The Tenant testified that the Landlords attended the rental unit the next day and were screaming and yelling at her that they would throw her belongings out if she did not vacate the rental unit. The Tenant testified that she felt harassed.

The Tenant testified that the Landlords served another eviction notice in August of 2019 and told her she had to vacate by the end of August. The Tenant testified that the allegations in the eviction notice were false and she told the Landlords this. The Tenant testified that the Landlords again threatened to throw her belongings out if she did not vacate the rental unit. The Tenant testified that the Landlords banged on the door. The Tenant testified that she told the Landlords she would call the police if they banged on the door again.

The Landlord denied that the Landlords harassed or intimidated the Tenants. The Landlord denied that the events outlined by the Tenant occurred. The Landlord testified that the Landlords only issued the Tenants one eviction notice in May of 2016 for unpaid rent. The Landlord acknowledged he had a falling out with the Tenant and stopped dealing with her during the tenancy.

Emotional stress \$5,000.00

The Tenant testified that the Landlords wanted her to vacate within 15 days when they issued the eviction notice in August of 2019. The Tenant then said the Landlords tried to kick her out in three weeks and that this caused her stress because she could not find a place in three weeks. The Tenant testified that the Landlords' father said he

would throw the Tenants' belongings out if they did not vacate the rental unit. The Tenant testified that the Landlords had no basis to evict the Tenants.

The Tenant said she did not dispute the eviction notice issued in August of 2019.

The Landlord pointed out that the Tenant previously said the Landlords told her they would throw her belongings out and is now saying their father said this. The Landlord testified that this is not true. The Landlord denied that the Landlords gave the Tenants a deadline to vacate and said the Landlords were easy going about this. The Landlord denied that the Landlords ever pressured the Tenants to vacate.

There is no admissible evidence from the Tenants before me.

The Landlords submitted photos and videos of the condition of the rental unit at the end of the tenancy.

Analysis

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

Pursuant to rule 6.6 of the Rules, it is the Tenants as applicants who have the onus to prove the claim.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Mold in the house \$10,000.00

Section 32 of the *Act* states:

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.

I accept that there was mold in the rental unit at the end of the tenancy as the Landlord acknowledged this.

However, the Tenants have not submitted sufficient evidence to prove they are entitled to compensation for the mold. The only admissible evidence I have from the Tenants about the mold issue is the testimony of the Tenant. The Landlord disagreed with the testimony of the Tenant. The Tenants did not provide further admissible evidence about the mold issue. Given the lack of evidence to support the Tenant's testimony, I am not satisfied of the following. I am not satisfied there was mold in the rental unit from the start of the tenancy. I am not satisfied the Tenants did not cause the mold. I am not satisfied the Tenants told the Landlords about the mold or asked the Landlords to fix the mold. I am not satisfied the Landlords breached the *Act* in relation to the mold.

Further, the Tenants have failed to prove loss or damage resulted from the mold. The Tenants have not provided any admissible evidence from someone qualified to assess mold, or medical evidence, to support the position that the mold in the rental unit put the Tenants' health at risk or caused health problems.

I decline to award the Tenants the compensation sought.

Time off work to gather evidence \$1,000.00

The Tenants are not entitled to compensation for the costs associated with filing the Application or preparing for the hearing.

I decline to award the Tenants the compensation sought.

Harassment/intimidation \$3,500.00

Section 28 of the *Act* states:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following...

(b) freedom from unreasonable disturbance...

The Tenant testified about two instances of harassment or intimidation by the Landlords. The Landlord denied these incidents occurred. There is no further admissible evidence before me to support the Tenant's position about the incidents. The Tenants have failed to prove these incidents occurred and have failed to prove the Landlords harassed or intimidated them during the tenancy. The Tenants have failed to prove the Landlords breached the *Act*.

I decline to award the Tenants the compensation sought.

Emotional stress \$5,000.00

The Tenant testified that the Landlords evicted the Tenants without cause and told them to vacate within 15 days or three weeks thus causing stress. The Landlord denied the Landlords did this. The Tenants have not submitted further admissible evidence to support the Tenant's testimony on this point. If the Tenants believed the Landlords were evicting them without cause, the appropriate course of action was to dispute the

notice to end tenancy. I am not satisfied based on the evidence provided that the Landlords pressured the Tenants to vacate within 15 days or three weeks. The Tenants have failed to prove the Landlords breached the *Act*.

I decline to award the Tenants the compensation sought.

Filing fee \$100.00

Given the Tenants were not successful in this application, I decline to award them reimbursement for the filing fee.

Summary

The Tenants have failed to prove the Landlords breached the *Act*. The Tenants have failed to prove they are entitled to compensation for the issues raised. The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 03, 2020

Residential Tenancy Branch