



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF, OLC, RP, LA

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenants' applied for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlords served the tenants with the notice of hearing package via email on April 7, 2020. Both parties confirmed the landlords served the tenants with the amendment to the application for dispute via email on April 15, 2020. Both parties confirmed the landlords served the tenants with the two submitted documentary evidence packages via email on April 15, 2020 and April 22, 2020.

Both parties confirmed the tenants served the landlords with the notice of hearing package via Canada Post Registered Mail on March 8, 2020. Both parties confirmed the tenants served the landlords with the amendment to the application for dispute and the submitted documentary evidence via email on April 14, 2020. Neither party raised any service issues.

I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act. Both parties are deemed sufficiently served as per section 90 of the Act.

Extensive discussions over a 100 minute period resulted in the hearing being adjourned due to a lack of time.

On June 11, 2020, the hearing was resumed with both parties present. At the outset, the landlords stated that the tenants still occupy the rental unit and continue to not pay rent. The landlords provided undisputed affirmed testimony that rent of \$1,800 for June 2020 was not paid. The tenants confirmed that they continue to not pay any rent. On this basis, I find and order that the tenants have failed to pay June rent of ~~\$1,800.00~~ **\$2,300.00** and extend the landlords' monetary claim to include the unpaid rent of June 2020.

Preliminary Issue(s)

During the hearing the tenants confirmed that the initial request for an order for the landlord to comply was made in error and that this portion of the tenants' application was cancelled at the request of the tenants. As such, no further action is required for this portion of the tenants claim.

During the hearing the tenants made a request to withdraw their application to allow them to reorganize and resubmit the application due to their inability to interpret and reference their own documentary evidence. The landlords disputed this claim arguing that they are present and able to proceed and that it would be unfair to the landlords to have to wait for the tenants' re-application. I find in the circumstances that the tenants request to withdraw their application due to being unable to interpret and present their own documentary evidence to be highly unfair to the landlords. Although this is a monetary claim, I find that the tenants request would be highly unfair to the landlords. The tenants' request to withdraw the application is denied. The hearing shall continue. The tenants were given numerous opportunity and flexibility to present their

claim and reference their submitted documentary evidence. Despite this the tenants were unable to reference any documentary evidence.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for money owed or compensation and recovery of the filing fee?

Are the tenants entitled to recovery of the filing fee?

Are the tenants entitled to an order for repairs?

Are the tenants entitled to an order authorizing the tenants to change the locks?

Are the tenants entitled to an order for the landlord to provide services or facilities agreed upon but not provided?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on November 1, 2019 on a fixed term tenancy ending on October 31, 2020 and then thereafter on another fixed term or month-to-month basis as per the submitted copy of the signed tenancy agreement dated October 1, 2019. The monthly rent is \$2,300.00 payable on the 1st day of each month. A security deposit of \$1,150.00 and a pet damage deposit of \$575.00 were paid. Both parties confirmed the landlords hold both deposits.

The landlord seeks an amended monetary claim of \$2,850.00 which consists of:

\$2,300.00	Unpaid Rent, April 2020
\$1,800.00	
\$450.00	Unpaid Utilities, X3 @ \$150.00 (February, March, April)
\$100.00	Filing Fee

The landlords claim that the tenants failed to pay rent for April 2020 of ~~\$2,300.00~~ **\$1,800.00** and as of the date of this hearing have not paid any rent for May 2020. The landlord also seeks unpaid rent for May 2020 of \$2,300.00 as the tenants continue to not pay rent. During the hearing both parties confirmed that an agreement was made between the two parties to lower the monthly rent from \$2,300.00 to \$1,800.00 **for April**

2020 only. The landlords' monetary claim for unpaid rent was amended to ~~\$3,600.00~~ **\$4,100.00** for unpaid rent (April and May 2020).

The tenants provided affirmed testimony that no rent for April 2020 was paid and that the landlord has not been paid any rent for May 2020.

The landlords claim that the tenants have failed to pay utility arrears for February/March/April 2020 totalling, \$450.00 at \$150.00 per month. The tenants confirmed that an agreement was made shortly after the tenancy had began that the tenants would pay \$150.00 a month payment(s) for utilities (power and propane). The landlords confirmed that utilities are not included as part of the signed tenancy agreement and that an agreement was made via text message between the two parties for power and propane. The landlords clarified that the cost of the propane was averaged out over 12 months and if the amount averaged out higher/lower then a credit/debit payment would be made. The landlords also stated that hydro (power) invoices were received every 2 months and a monthly average was worked out to \$75.00 per month. Both parties referred to the text message exchange regarding this agreement. The tenants argued that a payment of approximately \$400.00 was paid via etransfer sometime in March 2020. The landlords argued that the only etransfer payment was on March 5, 2020 of \$245.37 which was a partial payment as a result of utility arrears owed from a balance of \$395.37. The landlord argued that copies of the invoices were provided to the tenants with a request to pay these arrears. The landlord argues that no payments have been made from the tenants for February, March and April utilities.

The tenants seek a monetary claim of \$13,800.00 for the loss of quiet enjoyment, harassment and breach of their privacy by the landlord. The tenants seek return of 6 months of rent at \$2,300.00 for the period November 2019 to April 2020. During the hearing both parties confirmed that the tenants did not pay any rent for April 2020 and as such, are not entitled to return of April 2020 rent. During the hearing both parties also confirmed that although the tenancy agreement stated that monthly rent was \$2,300.00 both parties agreed that the monthly rent was \$1,800. Neither party provided any details of when this agreement began.

The tenants stated that this claim is an arbitrary amount based solely on the monthly rent originally set in the signed tenancy agreement. The tenants stated that they have suffered the loss of quiet enjoyment due to the landlords' daily text messages which are disturbing them. The tenants argued that the downstairs tenant/caretaker is constantly coming and going to the rental unit. The tenants state that they have no privacy from

the landlords. The tenants stated that the landlord has called them “a liar”; has made illegal entries into the rental unit; the landlords’ caretaker has breached their privacy by taking pictures of the inside of the rental unit. The landlords have disputed the tenants’ claims arguing that the only contact/communications that they have had with the tenants was only in response to complaints received from their downstairs tenant/caretaker which were communicated to the tenants. The tenants have referred to two photographs submitted in evidence of the exterior of the rental unit. Both parties agreed that the photographs referenced are of the outside of the house in particular of a window and a photograph of a blanket laid over a railing. The tenants argued that this is an invasion of their privacy. The landlords argued that there is no privacy to invade as these are views that anyone could have in public view. The tenants called a witness, B.I. who stated that the caretaker/downstairs tenant was seen taking pictures in the window of the rental unit and that the caretaker is seen “staring at us”. The witness referenced the photograph submitted by the tenants as an example of the breach of privacy. The landlords dispute these claims but confirmed that photographs of the rental unit were taken of the exterior of the house. The landlords have argued that the tenants witness is an additional occupant who is not a tenant. The witness stated that she is living at the rental unit and does receive mail there.

During the hearing the tenants also referenced their requests for:

An order for the landlord to make repairs, specifically the description provided by the tenants were that they “have no control over thermostat or temperature of rental (and air). The tenants have subsequently cancelled this portion of their claim as this was during the initial period of their tenancy and they did not understand how the thermostat operated. The tenants stated that this portion of the application was made in error and cancel it. As such, no further action is required.

An order for the landlord to provide services or facilities required by the tenant agreement or law. The tenants provided a description of this issue “Use of common areas for reasonable and lawful purposes, free from significant interference...” The tenants provided no evidence for this portion of the claim. The landlords dispute this claim.

An order authorizing the tenants to change the locks to the rental unit. The tenants provided a description “Do not believe other tenant does not have key to our unit”. Both parties confirmed that the other tenant is the landlord’s caretaker to the rental property and as such does possess a key to the tenants’ rental unit. The tenants stated that they

have no knowledge or proof that the tenant/caretaker has entered their rental unit without their permission. The landlords dispute this claim.

Analysis

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

I accept the affirmed testimony of both parties and find on the landlords' monetary claim that the landlord has established a claim for unpaid rent of \$1,800.00 for April rent. The tenants confirmed non-payment of rent. I also find based upon the undisputed evidence of the landlord that the tenants also failed to pay rent of ~~\$1,800.00~~ **\$2,300.00** for May. During the hearing both parties confirmed that the tenants continue to not pay rent and have not paid any rent for June 2020 of ~~\$1,800~~.

The landlord has also claimed that the tenant failed to pay \$450.00 in unpaid utilities (Hydro and Propane). The landlord provided undisputed affirmed evidence that the tenants had agreed to pay \$150.00 per month and that the tenants had failed to pay the agreed amount for February, March and April. The tenants confirmed their original agreement as per the landlord's claim, however argued that the tenants had made a partial payment of \$400.00 via e-transfer. The landlords argued that no such payment was made. The tenants were unable to provide any supporting evidence of this partial payment. On this basis, I find that the landlords have provided sufficient evidence of unpaid utilities for \$450.00 as claimed. **I note that as of the date of the last hearing on June 11, 2020 the tenant confirmed that no payments were made for June which I find to include the unpaid rent and utilities. On this basis, I find that the landlords are entitled to unpaid utilities for May and June at \$150.00 per month for an additional \$300.00.**

The landlords having been successful are also entitled to recovery of the \$100 filing fee.

I accept the affirmed testimony of both parties and find on a balance of probabilities that the tenants have failed to establish a claim for loss of quiet enjoyment. Although the tenants claimed that they have received atleast 20 text messages from the landlords, the landlords have claimed that each contact was in response to a complaint filed by their downstairs tenant/caretaker. The landlords have argued that no excessive contacts were made and that each contact was to inform the tenants of the claims made by the other tenant in an effort to stop further complaints. I also find that although the tenants' witness provided undisputed testimony of a breach in privacy the details provided by the witness were insufficient. The witness giving testimony had provided as proof of the breach of privacy a reference to the tenants' submitted documentary photograph of the exterior window of the house. I find that this is insufficient of a breach in privacy as it is clearly a photograph of an exterior window with no apparent discernable details of the interior. I also find that the tenants' photograph of a blanket over a railing to be insufficient to be a breach of privacy as it is in plain view outside of the rental unit. For these reasons, I find that the tenants monetary claim is dismissed without leave to reapply.

On the remaining issues filed by the tenants, I find that although the tenants made these claims in their application the landlords have disputed them. The tenants did not provide any supporting evidence or sufficient details of these issues. On this basis, the tenants' application for repairs, to provide services or facilities and authorization to change the locks are dismissed.

The landlord has established a total monetary claim of ~~\$5,950.00~~ **\$7,250.00**.

Conclusion

The landlord is granted a monetary order for ~~\$5,950.00~~ **\$7,250.00 which consists of:**

\$6,400.00	Unpaid Rent, April \$1,800, May \$2,300, June \$2,300
\$750.00	Unpaid Utilities, February – June (X5), @ \$150.00/month
\$100.00	Filing Fee

This order must be served upon the tenants. Should the tenants 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 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: June 11, 2020

Residential Tenancy Branch

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON **June 23, 2020**
AT THE PLACES INDICATED.