Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNRL, MNDL, MNDCL, FFL, MNSD, MNDCT, MNRT, FFT

Introduction

In this dispute, the landlords seek compensation for loss of rent against their former tenants, pursuant to section 67 of the *Residential Tenancy Act* (the "Act"), and the tenants seek compensation for various matters under sections 38 and 67 of the Act. Both parties seek recovery of the filing fee pursuant to section 72 of the Act.

The landlords' application for dispute resolution was made February 25, 2020 and the tenants' application was made on May 7, 2020. Both applications were heard at an arbitration hearing on June 18, 2020. Both parties attended (the landlord was assisted by his daughter) and were given an opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure,* under the Act, and to which I was referred, only evidence relevant to the issues of these applications are considered in my decision.

Issues

1. Are the landlords entitled to compensation?
2. Are the tenants entitled to compensation?
3. Is either party entitled to recovery of the filing fee?

Background and Evidence

The tenancy started in August 2018 and was renewed in August 2019. The tenancy renewal on August 15, 2019 was for a fixed-term tenancy that was to end on August 15, 2020. A copy of the written tenancy agreement was submitted into evidence. Monthly rent was $3,946.25 and the tenants paid a security deposit of $2,000.00 and a pet damage deposit of $500.00. Both deposits were retained by the landlords. The tenants

testified that they provided the landlord with their new forwarding address “a few weeks after” they vacated the rental unit. The rental unit is a rancher style home built in the late 50s or early 60s.

On November 4, 2019, the landlords received a letter from the tenants informing them that the tenants wished to end the tenancy two and half months later (for mid-January 2020). The tenants later extended this by a bit and moved out on February 1, 2020.

In their application, the landlords seek compensation for lost rent from January 15 to June 15, 2020, for a total of five months, in the amount of $19,731.25. It should be noted that the tenants offered to let the landlords keep the $2,000.00 security deposit as compensation for the last two weeks of the tenancy. On June 15, 2020, new tenants took possession of the rental unit.

As soon as the landlords received the notice to end the tenancy, they posted an ad on Craigslist for the rental unit (a house). They also posted a sign on the lawn outside the property, which indicated that the place was available to rent. A copy of the Craigslist ad was submitted into evidence. The landlord’s daughter explained that the timing of the tenants’ notice was “not good” and that the pandemic made things more difficult in terms of finding a new tenant. There were, she and the landlord testified, about “8, 9, maybe 10” interested tenants in the entire five-month duration that the house sat vacant. One of the interested tenants signed a new tenancy agreement in mid-May 2020.

I asked the landlord’s daughter about what she meant by the timing “not being good,” to which she responded that the house is in a highly desirable neighbourhood, and that parents want to secure property early in the year so that they can get their children into the highly desirable, nearby schools within the catchment area.

The house was originally advertised for rent at $4,200.00, but after not receiving much interest the landlord lowered this to $3,950.00 after a couple of weeks. The new tenant took the house at this rate.

The landlord gave evidence that the signs out front were “always there” throughout the five-month period, and there from the beginning until the new tenant was found, because he was “desperate to rent it.”

In reviewing their application, the tenants confirmed that they are seeking the following compensation from the landlords:

1. $500.00 for a return of their security deposit,
2. $100.00 for the application filing fee,
3. $1,465.00 for gardening expenses,
4. $157.50 also for gardening expenses,
5. $92.50 for repairs to a crawl space door,
6. $495.00 for painting and repair of a spare room ceiling, and
7. $542.40 for a destroyed printer.

Regarding the printer, the tenant J.P. testified that there was a rainstorm and water leaked through the roof, through the ceiling, on right onto her computer and printer that were on a desk in a spare room (the home office). The water destroyed the printer, and the landlord refused to pay for it. He apparently told her to seek recovery through her insurance. A copy of the receipt for the purchase of the printer was submitted into evidence.

In respect of the painting and repair of the ceiling, the tenant testified that it was covered in water stains and marks and needed to be painted and patched up. She further noted that these stains and marks were there when they moved into the house. And she added, “the house in general was OK, but there were lots of things that were not OK.” The ceiling was one of those things.

As for the repairs to a crawl space door the tenant gave evidence that it was falling apart and that she was not comfortable walking across it. They brought the repair requirement to the landlord’s attention, but he did not do anything about it.

The claim for gardening was related to the very poor state that the gardens were in when they moved in. Many of the shrubs had dried up (probably from not being watered) and overall the condition of the yard was very poor. The tenant explained that “I’m very fussy about how my house looks [. . .] I could not stand to have an overgrown garden.” A gardener was called in, and he did some gardening, and an invoice for his services was provided into evidence. Also submitted into evidence was a summary of the work that he did.

In response to the landlord’s testimony and submissions regarding his efforts to find new tenants, the tenants argued that “sure he put an ad on Craigslist,” but that he “did not put enough effort into renting it.” Moreover, listing the house at $4,500.00 significantly reduced his chances of finding a new tenant, given that the rent was $3,946.25.

Further, the tenants argued that the three months' notice they gave should have been more than enough time to find new tenants, and that the neighbourhood in which the house is located is a "hot market" and highly sought after. They also argued that the landlord "pretended" to offer it for rent when he was simply working on the property.

A significant issue of which the tenants spoke concerned the landlord's frequent attending to the property to retrieve or store various items. "Hauling junk," the tenant explained. The landlord "came over more and more," sometimes twice a week unannounced, interfering with the tenants' quiet enjoyment. The tenants found this "more and more stressful" but, not wanting to have a confrontation, did not push back on the behavior. That said, the tenant explained that she did, at one point, say to the landlord, "What's this all about?" but the landlord got uppity about it. He reminded the tenants that the house was "his," and not theirs. They reiterated and argued that the landlord essentially broke the tenancy agreement by showing up all the time.

In their response to the tenants' testimony the landlord's daughter and landlord testified that any repairs that the tenants ever asked for were completed by the landlord. They further testified that the tenants never asked the landlord to repair the crawl space door. As for the gardening, the landlords pointed out that the gardener's report described that the yards were "not in good shape when the tenants were there."

As for the claim regarding loss of quiet enjoyment, the landlord's daughter asked (rhetorically, I must assume): "if they were harassed and under duress and stress then why did they renew the tenancy?" As for the landlord's alleged showing up all the time, the landlord apparently would always inform the tenants when he was show up. (How this was done and in what matter was not explained.) The landlords argued that the tenants are "trying to portray us as villains."

The landlord admitted that there was a crack in the roof which caused rain to come into the house, but, that the tenants ought to have tenant insurance to cover the loss to the printer. As for the ceiling water stains and marks, the Condition Inspection Report, a copy of which was submitted into evidence, indicates that the rental unit was in good condition. No reference or mention of the ceiling's issues is recorded in the Report.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

A. Landlords' Claim for Compensation

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

> 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.
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> . . .
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> 67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In this dispute, the landlord argued that the tenants breached their fixed term tenancy by ending the tenancy early. Section 45(2) of the Act states as follows:

> A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The tenants did not, I find, provide notice to end their fixed term tenancy in compliance with the Act. As such, the landlords have proven that the tenants breached both the tenancy agreement and section 45(2) of the Act.

Having found that the tenant breached the Act, I must next determine whether the landlord's loss resulted from that breach. This is known as *cause-in-fact,* and which focusses on the factual issue of the sufficiency of the connection between the respondent's wrongful act and the applicant's loss. It is this connection that justifies the imposition of responsibility on the negligent respondent.

The conventional test to determine cause-in-fact is the *but for* test: would the applicant's loss or damage have occurred *but for* the respondent's negligence or breach? If the answer is "no," the respondent's breach of the Act is a cause-in-fact of the loss or damage. If the answer is "yes," indicating that the loss or damage would have occurred whether or not the respondent was negligent, their negligence is not a cause-in-fact.

Here, the landlords would not have suffered a loss of rent but for the tenants ending the tenancy early in contravention of the tenancy agreement and the Act. Conversely, if the tenants had continued with the remainder of their tenancy then the landlords would have continued to receive rent.

Third, the landlords have proven that the loss of rent for the five months between the tenants vacating the house and the new tenant moving in is $19,731.25.

Fourth, have the landlords done whatever was reasonable to minimize the damage or loss? I find that, while he took out a Craigslist ad, and while he posted a sign on the front lawn, additional reasonable steps to find a new tenant were, based on the evidence, not taken. A landlord who "was desperate to rent it" would, and ought to, have taken additional steps in find new tenants.

There are many additional online and print options for advertising rentals, for example, Kijiji, rentals.ca, Facebook, zumper.com, and so forth. Moreover, both parties seem convinced that the house is located in a "hot market" and a "highly desirable

neighbourhood," but this is not reflected in the simple fact that there were only "maybe ten" prospective tenants in the entire five-month period. That having been said, the landlord's initial listing of rent at $4,200.00 lessens his attempt to mitigate his losses, however brief the advertisement was posted at this amount.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have proven that they are entitled to compensation for loss of rent, but that that because they did not do whatever was reasonable to minimize losses, the amount awarded is reduced by 50% to $9,865.63.

Finally, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlords were successful, I grant their claim for reimbursement of the $100.00 filing fee.

In summary, the landlords are awarded a total of $9,985.63, which shall be offset by an amount awarded to the tenants, below.

B. Tenants' Claim for Compensation

Claim for Loss of Quiet Enjoyment and Privacy

Section 28 of the Act states that

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

In this case, the tenants testified that the landlord came around frequently, sometimes as often as twice a week to bring stuff and carry away his junk. The landlord disputed this and said that he always let the tenants know when he would be coming by. Neither

party provided any evidence as to the specific dates or times that these visitations occurred. While the tenants submitted witness letters, without the witnesses being present during a hearing to attest to the veracity of those statements, I place little evidentiary weight on such evidence.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have not met the onus of proving their claim that the landlords breached their right to quiet enjoyment or loss of privacy.

In the alternative, having carefully considered the testimony of the tenants, I hold that the tenants are prevented from claiming any compensation from a loss of quiet enjoyment or privacy on the basis of the doctrine of estoppel.

Estoppel occurs when one party to a legal claim is stopped from taking legal action that is inconsistent with that party's previous words, claims, or conduct. Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. In order to return to a strict enforcement of their right, the first party must give the second party notice (in writing), that they are changing their conduct and are now going to strictly enforce the right previously waived or not enforced.

In this case, the tenants' failure to make any effort over a period of a year and a half — other than briefly, in one solitary occurrence, saying "What's this all about?" — has, through their silence, provided implied consent for the landlord to drop by the property whenever he felt like it. During her testimony, the tenant J.P. asked me (rhetorically, I must assume) whether "[I] would like it if someone came walking through my flower beds." To answer her: no, I would not. However, if I permitted a person to continue walking through my flower beds for over a year and a half, the law of estoppel would eventually treat such initial trespass as permitted conduct.

Given the tenants' failure to make any meaningful effort to assert their rights in respect of the landlord's alleged, repeated visits to the property, I must conclude that the tenants are estopped from advancing any claim for compensation resulting from any breach of the Act. Nor, I must conclude, has the landlord "breached" the tenancy as argued by the tenants.

Claim for Gardening Expenses

The tenants claim $1,622.50 for gardening expenses, related to weeding and other gardening activities. As explained to the parties during the hearing, a tenant is responsible for most of the property maintenance in these cases.

Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises, at page 7, states that

> Generally, the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

It is only in multi-family dwellings that the landlord often assumes these responsibilities. While the tenants provided a written submission stating that “The landlord did almost nothing, or very minimal effort, in the garden and, as you can see from this attached report, the garden was overgrown and full of weeds,” quite simply it is not a landlord’s responsibility to do anything in the garden.

Based on the above, and taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have not proven that the landlords have breached the Act, the regulations, or the tenancy agreement, and thus, no compensation may flow from this. This aspect of the tenants’ application is dismissed without leave to reapply.

Claim for Crawl Space Door

Section 32(1) of the Act states that

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

The tenants testified that the crawl space door needed repairing due to a safety issue. They testified that they told the landlord about it but that he did not do anything. The landlord disputed this and said that they were never told about this needed repair.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the tenants have not provided any evidence, over and above their disputed oral testimony, that the landlord was informed of the safety issue and required repairs.

As such, I find that the tenants have not proven that the landlords breached section 32(1) of the Act and have not proven that the landlords are somehow liable for the repairs made to the door. Moreover, there was no documentary evidence submitted establishing the exact nature of the safety issue with the door. The tenant said that she was uncomfortable walking over the door, while the landlord testified that they used to walk over the door without any issues.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have not met the onus of proving their claim for expenses related to the crawl space door. As such, I dismiss this aspect of their application without leave to reapply.

Claim for Painting and Repairing of Spare Room Ceiling

The only section of the Act for which this claim might fall under is section 32(1), as referenced in the previous page. There is no evidence that the water stains posed a health, safety, or housing standard issue. Nor was there any evidence that the condition and state of the ceiling made it unsuitable for occupation by a tenant. Moreover, it cannot be overlooked that the state of the ceiling was as it was when the tenants took possession of the house. Further, the Condition Inspection Report reflects no issues with the ceiling.

Based on the evidence before me, I cannot reach the conclusion that the landlord somehow breached the Act in regards to the condition of the ceiling, and thus I cannot make any finding that the landlord is liable for costs related to the tenants' desire to paint and repair the ceiling. Certainly, I appreciate the tenants' preference to have a nice-looking ceiling in the room in which they placed a piano, but it is not a landlord's

responsibility to pay for painting costs if the tenants accepted the condition of that ceiling upon taking occupancy.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have not proven their claim for compensation for painting and repairs, and thus I dismiss this aspect of their application without leave to reapply.

Claim for Destroyed Painter

The tenants claim that their printer was destroyed by water that leaked through a crack or opening in the roof. The landlord did not dispute that there was this issue with the roof, but argued that the tenants' insurer and not him, should cover the cost to replace the printer.

Section 26(3)(b) of the Act, while located within a section of the Act dealing with rules about rent and non-payment of rent, states that "a landlord must not [. . .] prevent or interfere with the tenant's access to the tenant's personal property."

Here, the landlord's duty to maintain the property in compliance with section 32(1) was, by not having a properly functioning roof (by "functioning" I mean one that diverts rain water into the gutters, versus one that allows water to leak into the interior of the house) breached, thus the ensuing leak of rainwater damaged the printer, which ultimately interfered with the tenants' access to their printer. The landlord did not dispute that the leaking roof damaged the printer, nor did they dispute the value of the loss.

But for the landlords' negligence in not having a proper, non-leaking roof, the tenants would not have suffered the loss of their printer. The printer is assessed to have a value of $542.40; a copy of the purchase receipt was submitted into evidence and establishes its value.

As to whether the tenants did what was reasonable to mitigate their loss, I find that there was not much that they could have done. Rain came into the home office and damaged the printer. Moreover, as to the landlords' argument that the tenants' tenant or home insurance policy ought to have covered the cost, I find that the low value of the loss would have likely not been covered by a third-party insurer.

While I recognize that no evidence was lead by the tenants on this point, in my experience as a former director of third party liability claims for a health authority, and in

my experience as an arbitrator, home and tenant insurance policy deductibles are rarely less than $500.00 and in most cases are significantly higher. It is thus unreasonable to expect that the tenants' insurance would have covered the loss of the printer.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have met the onus of proving their claim for $542.40 for the loss of the printer.

Claim for Application Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the tenants were successful on a portion of their application, I grant recovery in the amount of $50.00.

Claim for Security Deposit of $500.00

Section 38(1) of the Act states the following regarding what a landlord's obligations are at the end of the tenancy with respect to security and pet damage deposits:

> Except as provided in subsection (3) or (4) (a), within 15 days after the later of
> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In this case, the tenants provided their forwarding address to the landlords "a few weeks" after they moved out, and the landlords made an application for dispute resolution on February 25, 2020. Based on this evidence I find that the landlords complied with the Act in respect of the security deposit.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may

retain the amount." As such, I order that the landlords may retain the tenants' security deposit of $500.00 in partial satisfaction of the landlords' award.

Summary of Awards

The tenants are awarded $592.40, and, the landlords are awarded $9,985.63, the latter of which is offset by the security deposit and the tenants' award, calculated as follows:

CLAIM	AMOUNT
Loss of Rent (Reduced by 50%) for Landlords	$9,885.63
Filing fee for Landlords	$100.00
LESS security deposit	($500.00)
LESS filing fee claim for Tenants	($50.00)
LESS claim for printer Tenants	($542.40)
Total:	$8,893.23

A monetary order in the amount of $8,893.23 is granted to the landlords. This order is issued in conjunction with this Decision.

Conclusion

I grant the tenants' application, in part.

I grant the landlords' application and issue a monetary order in the amount of $8,893.23, which may be served on the tenants. If the tenants fail to pay the landlords the amount owed, the landlords may pursue enforcement of this order in the Provincial Court of British Columbia.

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: June 22, 2020

Residential Tenancy Branch