Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capital Region Housing Corporation and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damages for the Landlord in the amount of $305.00; a monetary order for unpaid rent and/or utilities in the amount of $3,100.00; and a monetary order for damage or compensation for damage under the Act in the amount of $390.00, retaining the security and pet damage deposits to apply to these claims; and to recover the $100.00 cost of their Application filing fee.

The Tenants, D.P. and A.M., and three agents for the Landlord, K.K., K.K., and M.C. ("Agents"), 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 Tenants and the Agents 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, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application 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 Landlord supplied the Parties' email addresses in the Application, and the Parties confirmed them at the outset of the hearing. They also confirmed their understanding

that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, 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 in the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on March 1, 2019, with a monthly rent of $1,550.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of $775.00, and a pet damage deposit of $775.00.

The Landlord submitted a monetary order worksheet with six claims that we reviewed consecutively in the hearing. Early on, the Agents advised that they are withdrawing the fourth claim for a flea holdback, as there was no evidence of fleas for the holdback. As such, I have not considered this claim.

	Receipt/Estimate From	**For**	**Amount**
1	Landlord	February 2020 rent	$1,550.00
2	Landlord	March 2020 rent	$1,550.00
3	Carpet cleaning company	Carpet cleaning	$105.00
~~4~~	~~Landlord~~	~~Flea Holdback~~	~~$200.00~~
5	Landlord	Parking July – Dec $60/mth	$360.00
6	Landlord	Parking Jan 2020	$30.00
		Total monetary order claim	**$3,595.00**

#1 & #2 February and March 2020 rent → $3,100.00

The Agent said that on February 5, 2020, the Tenants gave the Landlord notice of the end of their tenancy, which was to be effective February 29, 2020. The Agent said that the tenancy is periodic or month-to-month, and that the Tenants are required by the Act and the tenancy agreement to give the Landlord 30 days' notice to end the tenancy. As such, the Agent said that the Tenants only gave sufficient notice for the tenancy to end on March 31, 2020. The Agent said that, therefore, the Tenants owe the Landlord rent for February and March 2020, neither of which she said the Tenants paid.

The Tenant said:

> I don't believe we owe for March, because we had received a retaliatory 10-day notice of eviction [for unpaid rent], after we gave our notice. It would have ended on February 17, based on the 10-day notice. Also, I believe we would consent to a pro-rated amount of $801.17 from February 1 – 15th, as we felt we had no other options than an earlier date.
>
> In our files at Exhibit #1 there are numerous emails back and forth, with our noise complaints that were never really fixed or talked about. We felt as if we were placed in danger, in asking us to speak to neighbours who were causing the noise. We didn't know the state of the upstairs neighbours – dangerous?
>
> Either way, there's a clause in the lease at page 8, section 15, which protects the Landlord from that rent loss anyway. They get money back from noisy tenants who caused us to vacate early, anyway. The specific clause reads as follows:
>
> 15. Conduct
>
> In order to promote convenience, safety, welfare and comfort of other tenants in the building, the Tenants and guests shall not disturb, harass, or annoy Tenants of the building or neighbours, and shall not cause loud conversation, music, television or other irritating noise to disturb peaceful enjoyment at any time: and shall MAINTAIN QUIET BETWEEN 11:00 P.M. AND 8:00 A.M. Any Tenant who causes other tenants to vacate the premises because of noise or other disturbance, harassment, or annoyance, shall indemnify the Landlord for any reasonable costs and losses caused, and the tenancy may be terminated on short notice pursuant to the Act. If there is play equipment at the housing complex, it

> shall be used not earlier than 8:00 a.m. nor after 8:00 p.m. or sunset, whichever is earlier.
>
> [emphasis in original]

The Tenants' submitted texts they shared with the Agents about the noisy neighbours above them, starting on June 18 through to June 26, 2019, and then again from December 8, 2019 to January 19, 2020. The texts from the Tenants to the Agents, starting on June 18, 2019, included reference to the upstairs neighbours being:

> …extremely loud, ever since they've moved in; loud stomping, banging and the sounds of screeching furniture is filling our suite so far, every night and at certain times during the morning/afternoon while the family is at home.
>
> We of course understand that it is hard with young children to maintain a [quiet] household, but the amount of running and stomping coming from above us is beyond ridiculous. When laying in bed, I can feel the vibrations from their banging upstairs.

The Agents responded by noting that the upstairs tenants had just moved in, and asking if the Tenants had spoken with them about the noise. On June 19, 2019, the Tenants explained that they had not approached the upstairs tenants, as "…we were both under the impression that we aren't supposed to create tenant conflict, so we've only assumed any disturbances were supposed to be brought up with yourself…."

On June 26, 2019, the Agent responded:

> Thank you for your email. Please allow 10 business days to note any improvements. Should the issue continue after making your initial complaint, please continue to keep a log of incidents, including dates, times, locations, and provide as much detail as possible. If the situation has not improved after 10 business days, please follow up with the office in writing (i.e. email or letter) with a log of incidents, as mentioned above.. . .

The Tenants' next email to the Agents is dated December 8, 2019:

> . . . The noises that we were concerned about a couple months ago have continued since our last email exchange. We are wondering if there's anything you can do about their loud noises (which include running, jumping, bike riding, etc.). We think hearing from management will be better than hearing from us, as

> [D.P.] already has gone upstairs to ask them to be quiet and nothing has resolved yet. We understand that they have a daughter, but our walls are still shaking from the aggressive vibrations they are creating. There's no reason it should be that intense.

The Agent responded, saying: "I wanted to be in touch letting you know that I am working with senior staff on this. I will be in touch tomorrow with a plan on how we can try to address this." Hand-written on this email were the words, presumably written by the Tenant: "(no plan received; I followed up with another email Dec 30)."

On December 31, 2019, the Agent responded to the Tenant's further inquiry, saying:

> I am sorry for the slow reply and did follow up on this as well as speak to senior staff regarding this situation. They were suggesting if all parties are open to it, possibly we could meet as a group to try to come up with a solution. Would the two of you be open to meeting as a group?

The Tenants advised the Agents that they were concerned that the upstairs tenants "…seem to not care that we have to hear their noises constantly." The Tenant mentioned having hit the ceiling to get their attention, with the response being yelling from upstairs. The Tenant said that [D.P.] had gone upstairs at 8:30 p.m. one evening to tell them to quiet their banging:

> …and the adult woman barely seemed interested in the child being quiet, she didn't seem apologetic for disturbing our peace.
>
> The most recent interaction was recently again around 9pm when [D.P.] tapped on the ceiling to get them to be quiet, and in return we heard them intentionally stomp aggressively on our ceiling/their floor, which we perceived as a very rude way to say they don't care at all about us as a neighbour.
>
> [D.P.] is wondering when he can come in to speak with you in person over this topic, we're displeased that this situation has been stretched for so long . . ..

In the hearing, the Agent said:

> One item to add: at the time that they submitted their late notice, we were already preparing a 10 Day Notice [to End the Tenancy for Unpaid Rent]. I and [other Agent] went to discuss the matter and serve the notice in person. We understood

> they made claims about noise disturbances in the past. We were working with tenancies individually and resolving issues, but we hadn't heard from them that it was ongoing. We were presented their reasoning for their late notice in their notice on February 5th.

#3 Carpet Cleaning → $105.00

The Agents said that upon the move-in inspection, the Tenants agreed to have the carpets cleaned at the end of the tenancy. She pointed to a clause in the CIR, which was acknowledged by the Tenants with their signature. This clause is in a box beside the execution portion of the CIR and states:

> YOUR CARPETS WERE PROFESSIONALLY CLEANED PRIOR TO OCCUPANCY AND MUST BE PROFESSIONALLY CLEANED UPON VACATING. TENANT SIGNATURE _____
>
> [emphasis in original]

The Tenants said that they consented to this $105.00 carpet cleaning fee.

~~**#4 Flea Holdback → $200.00**~~
[this claim withdrawn by the Landlord]

#5 Parking July – December 2019 → $360.00 ($60/month)

The Agents said that parking is not included in the rent at this residential property address. They said: "Upon [the Tenants] moving in, they agreed to parking charges to have their red dodge in parking spot #67. It was assigned to them on May 1, 2019."

The Tenants said:

> We do not believe that we owe this, because we were promised an underground parking stall at the beginning, but because of the garage door or something, it was not available. [M.C.] told us to park anywhere on the property. The head/front office lady downtown had also advised us to not pay for any parking until we were assigned a spot.

> We never signed anything re what stall. When I spoke with [K.], she was not sure we had been assigned one. There was a lot of miscommunication re parking in general. We never signed a parking agreement - no paperwork re parking payment. The only paper we received re parking was a direct deposit form stating we had a specific stall and they needed permission go withdraw from our account.
>
> Also, section 12 of the lease says that any change must be agreed to in writing or initialled, and it's not enforced, otherwise. We never signed any parking payment form they gave us, just a direct deposit form. They didn't sign the copy they handed to us - just a blank paper. This is your stall as of March 1. No registration was asked for with our vehicle, just driver's licence, and what type of car we were driving.

In answer to a question whether they paid in March and going forward, they said: "Yes, we paid a separate fee – paid in the office or in person via debit at downtown location. There were no receipts."

The Agent referred me to an email to the Tenants dated July 10, 2019, in which the Agent said:

> I have reviewed your file and since parking stall 67 was assigned to you on May 1, 2019 officially, I have reversed your March and April parking charge.
>
> You currently have parking outstanding for the months of May and June, totalling $120.00. July's parking will be payable by the end of the month. I do require that we set up parking to be automatically withdrawn from your account commencing August [1], 2019 and every month after.
>
> Please complete the attached form and return it to our office with a void cheque or pre-authorized debit form as confirmation of your banking information.
>
> Payment of your May, June and July parking may be made by credit card over the phone or by debit or credit at our office during office hours.

The Agent said that they had filled in some of the information for the Tenants on the debit authorization form, and that they did receive a response from the Tenants about parking being paid by pre-authorized debit. "If they were in our office in [regional location] or in headquarters, it should have been applied to their account", she said. The Agent went on:

> With our having no record of it is a little strange. There's no evidence that our pre-authorized debit system was off by $60.00 when they came in to make that payment. To my knowledge at no time did they say a payment had not been credited to their account. She would have mentioned the outstanding fee at that time.
>
> We also pulled their account – it's still outstanding – still outstanding today.

The Tenant said: "I'd just like to say that there was never a parking agreement executed fully."

The Agent: "But they were parking on the property."

The Tenant pointed to "…the signed tenancy agreement at 12(b); if there wasn't an agreement signed by both of us, it is null and void, and out of good faith, we paid some, but not all of the amounts. I'm not too sure if there's a way to go back to that bank account – not too sure what we paid and didn't pay."

I note that clause 3B of the tenancy agreement states that parking is not included in the rent, and is "subject to availability".

#6 Parking January 2020 → $30.00

The Agent said:

> The only comment is whether that charge is still outstanding. We decreased the fee from $60.00 to $30.00 for parking. Notices were circulated to existing tenants who were known to be parking on the property that the decrease would take place January 1, [2020]."

The Tenant said that they were never given a piece of paper indicating that the amount had changed. "I found out through a separate tenant of the building who let me know, I hadn't paid that $30.00." The Tenants said they did not dispute this parking charge.

Analysis

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

Before the Parties began testifying, I let them know how I would analyze the evidence presented to me. I said that the party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. RTB Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenants violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

"Test"

Further, Rule 6.6 sets out that the person making the claim bears the onus of proving their case on a balance of probabilities. In order to do so, a claimant must present sufficient evidence at the hearing to support their claim, meeting this standard of proof.

#1 February and March 2020 rent → $3,100.00

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 Tenants had a right to deduct any portion of their rent from the monthly rent due to the Landlord.

I was not referred to a copy of the 10 Day Notice, to which the Tenants referred, and therefore, since it is not in evidence before me, I have not considered it in this Decision.

According to section 45 (1) of the Act, a tenant may end a periodic tenancy by giving the landlord notice that the effective date of the end of the tenancy is:

45 (1)(a) is not earlier than one month after the date the landlord receives the notice, and

(b) 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.

. . .

Accordingly, the Tenants' February 5, 2020 notice of the end of the tenancy should have had an effective vacancy date of March 31, 2019. If the Tenants had wanted to end the tenancy on February 29, 2020, the Landlord needed to receive this notice by January 31, 2020, at the latest, pursuant to section 45 of the Act.

The Tenants argued that the noise from the upstairs tenants was an excuse for their early departure. I find that the Tenants turned to the Landlord for help in obtaining quiet enjoyment of their rental unit; however, they did not apply to the RTB for dispute resolution, seeking an order for compensation for the loss of quiet enjoyment of the rental unit. As such, without an order from the RTB, I find that the Tenants cannot use this as a reason to not pay rent.

In this case, I find that the Tenants' notice to end the tenancy was effective March 31, 2020; as such, I find that they owe the Landlord the full rent for February and March 2020. I, therefore, award the Landlord recovery of **$3,100.00** for rent owing by the Tenants to the Landlord in February and March 2020, pursuant to section 67 of the Act.

#3 Carpet Cleaning → $105.00

The Tenants accepted the Landlord's claim for this cost, and therefore, I award the Landlord with recovery of **$105.00** from the Tenants for the cost of carpet cleaning.

~~**#4 Flea Holdback → $200.00**~~
[claim withdrawn by Landlord]

#5 Parking July – December 2019 → $360.00 ($60.00/month)

The Tenants indicated that they had paid for parking on some occasions, but that they did not have a record of when or how much. I find this acknowledgement of having paid for parking equates to an acceptance of this fee. Further, I find that the Landlord clearly advised the Tenants of their parking spot in the email dated July 10, 2019. The Landlord also provided the Tenants with an effective means of paying this every month with the pre-authorized debit form.

The Tenants argued that the absence of a parking charge in the tenancy agreement means that it cannot be added without the written agreement of both Parties. However, I

find that being charged for a parking spot is consistent with the tenancy agreement, which states that parking is not included in the rent. Further, it indicates that parking is "subject to availability", which explains why a spot was not available or assigned to the Tenants until May 1, 2019.

Based on the evidence before me overall on this point, I find that the Landlord has provided sufficient evidence on a balance of probabilities to meet their burden of proof in this matter. Accordingly, I award the Landlord with recovery of the parking fees from July through December 2019, in the amount of **$360.00**.

#6 Parking January 2020 → $30.00

The Tenants accepted the Landlord's claim for this cost, and therefore, I award the Landlord with of **$30.00** from the Tenants for the cost of parking in January 2020.

Summary and Set Off

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security and pet damage deposits of $775.00 each, in partial satisfaction of the Landlord's monetary claim.

Given the success of their Application, I also award the Landlord with recovery of the **$100.00** Application filing fee from the Tenants, pursuant to section 72 of the Act.

	Receipt/Estimate From	For	Amount
1	Landlord	February 2020 rent	$1,550.00
2	Landlord	March 2020 rent	$1,550.00
3	Carpet cleaning company	Carpet cleaning	$105.00
4	Landlord	Flea Holdback	$0.00
5	Landlord	Parking July – Dec $60/mth	$360.00
6	Landlord	Parking Jan 2020	$30.00
		Sub-total	**$3,595.00**
	Tenants	Less deduction of security and pet damage deposits	($1,550.00)

	RTB	Recovery of Filing Fee	$100.00
		Total Awarded	**$2,145.00**

The Landlord is awarded with recovery of $3,595.00 for their claim, pursuant to section 67 of the Act. I authorize the Landlord to retain the Tenants' security and pet damage deposits of $1,550.00 in partial satisfaction of this award. The Landlord is also awarded recovery of the $100.00 Application filing fee, pursuant to section 72 of the Act. After set-off, I award the Landlord with a Monetary Order of **$2,145.00** from the Tenants pursuant to section 67 of the Act.

Conclusion

The Landlord's claim for compensation for damage or loss against the Tenants is successful. I found that the Landlord provided sufficient evidence to support their burden of proof in this matter.

The Landlord has established a monetary award of $3,595.00. I authorize the Landlord to retain the Tenants' full security and pet damage deposits of $1,550.00 in partial satisfaction of the claim. The Landlord is granted a Monetary Order under section 67 of the Act for the balance due by the Tenants to the Landlord in the amount of **$2,145.00**.

This Order must be served on the Tenants by the Landlord 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: July 28, 2020

Residential Tenancy Branch