



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, FFT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the respective materials. While the landlord mentioned that they did not receive the tenant's second evidence package until recently, they confirmed they received and had an opportunity to review its contents. Based on the testimonies I find each party was duly served with the respective materials in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover the filing fee from the landlord?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in April, 2019 and ended in April, 2020. Monthly rent was \$2,200.00 payable on the first of each month. The rental unit is a suite in a strata managed multi-unit building.

The tenants submit that throughout the course of the tenancy there was ongoing infusion of the smell and smoke from pot into the rental unit. The tenants say that the smoke and smell was omnipresent and caused them considerable negative health effects both physically and psychologically. The tenants say that due to the presence of smoke they suffered a loss in the value of the tenancy and ultimately needed to end the tenancy.

The landlord testified that they took reasonable steps in response to the tenants' complaints by investigating the smoke and smell, informing the strata council of the issue and having the strata post reminders of the bylaws prohibiting smoking marijuana on the premises.

The parties agree that in May of 2019 there was water incursion into the rental unit originating from a leak in an upper suite in the building. The parties agree that there was a period of approximately 2 or 3 days when the bathrooms of the rental unit could not be used and a further 4 to 6 weeks when repairs were being conducted. Throughout the course of the repairs the tenants continued to reside in the rental unit though they say they suffered disruptions dealing with tradespeople and being required to curtail the use of some areas of the rental unit.

The tenants also say that they spotted what they believed to be mold in the rental unit at the end of the tenancy and believe that the presence of mold had negative health effects on them.

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. This provision is also read in conjunction with

paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

I accept the undisputed evidence of the parties that there was a period of a few days when the tenants were unable to use the bathroom of their rental unit and a further period of some weeks where tradespeople were effecting some repairs. The parties agree that the tenants were able to reside in the rental unit throughout the course of the work. In their testimonies the tenants said there was some disruption of their daily routine as they dealt with tradespeople.

Based on the evidence I find that there was some minor loss in the value of the tenancy for a period when there was disruption to the use of the facilities and thereafter in the ongoing repairs being performed. I find that the loss of value was minor, did not lead to the tenants being unable to use the rental unit or to be required to move out. I find that an appropriate loss in the value of the tenancy resulting from the water ingress and repairs to be 5% of the monthly rent.

In accordance with section 65(1)(f) of the *Act*, I issue a one-time retroactive monetary award in the tenant's favour in the amount of \$110.00 to compensate the tenants for the loss in value of the tenancy during the period when there were issues due to water ingress.

The tenants raise the issue of mold in the rental unit but I find that their evidence consists of supposition and conjecture about wall stains that they believe may have been mold and may have had negative health effects. The documentary evidence of the landlord shows that no mold was found in the rental unit and the stain was identified as dust. I find the materials submitted by the tenants to not meet their evidentiary onus to establish.

The tenants complain that there was ongoing, pervasive smell and smoke from neighboring units that led to a loss of their right to quiet enjoyment of the rental unit. I find insufficient evidence in support of the tenants' position. The parties provided contradicting testimonies about observing smoke in the rental unit and the written statements by each of their witnesses are also diametrically opposed. I find that the evidence of professional building managers who reside or work on the premises to be more persuasive than the observations of guests of the tenants who attended the rental unit for a shorter time. In any event, I find that the tenants have not met their evidentiary onus on a balance of probabilities to establish that there was the smell and smoke of marijuana on the premises.

Based on the documentary evidence I find that the landlord took reasonable steps in addressing the tenants' concerns by raising them with the strata council managing the property, having investigations conducted and reminding neighbors of the rules for the building. I find that the landlord acted in a reasonable and professional manner throughout the tenancy and any loss of enjoyment suffered by the tenants is not attributable to negligence or inaction on the landlord's part.

Based on the totality of the evidence I find that the tenants have failed to establish on a balance of probabilities that there was damage or loss, that it was attributable to a breach on the part of the landlord or that the amount of the monetary award claimed has any underlying factual basis. Accordingly, I dismiss this portion of the tenants' application.

As the tenants were partially successful in their application I allow them to recover \$50.00, a portion of their filing fee for this application.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$160.00. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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: November 13, 2020

Residential Tenancy Branch