



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT

Introduction

On January 24, 2020, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants and the Landlord attended the original hearing; however, this hearing was subsequently adjourned for reasons set forth in the Interim Decision dated June 17, 2020.

Both Tenants and the Landlord attended the reconvened hearing on July 13, 2020 and this hearing was subsequently adjourned for reasons set forth in the Interim Decision dated July 13, 2020.

Both Tenants and the Landlord attended the final, reconvened hearing on October 6, 2020. All in attendance provided a solemn affirmation at all the hearings.

During the original hearing, the Tenants advised that the Notice of Hearing and evidence package was served to the Landlord by registered mail on January 25, 2020 and the Landlord confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been served the Notice of Hearing and evidence package. As such, this evidence will be accepted and considered when rendering this Decision.

The Landlord advised that he served his evidence to the Tenants by email on May 28, 2020; however, the Tenants stated that they never received this evidence, with the exception of a demand letter. The Landlord submitted a copy of the email that he sent to the Tenants as proof of service, noting the attached documents as well. The Tenants

confirmed that this was their email address but claimed they never received this email. Based on the evidence before me, I am satisfied that the Tenants were served the Landlord's evidence. As such, this evidence will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

During the original hearing, all parties agreed that the tenancy started on April 1, 2016. The tenancy ended on or around January 21, 2020 after the Tenants vacated the rental unit due to being served with a 10 Day Notice to End Tenancy for Unpaid Rent. Rent was established at \$5,000.00 per month and was due on the first day of each month. A security deposit of \$2,500.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

Tenant H.H. advised that they are seeking compensation in the amount of **\$4,733.67** which represents 25% of the utilities that the Landlord verbally agreed to pay in June or July 2016. He stated that this amount is calculated by the average amount of utilities that they paid each month over 44 months. He submitted that when they first met the Landlord, they were advised that the whole house would be rented to them; however, the Landlord asked to have access to one room for his own use and they agreed to this. He alleges that the Landlord then asked, in approximately mid-April 2016, for the full use of the basement, less the basement suite, which was already rented to the Tenants.

On or around mid-July 2016, they submitted that the Landlord or his parents would occupy and live in the rooms downstairs, which they did not know would happen. They attempted to accommodate these people and even offered them rides to the ferry. They testified that the Landlord's parents would often enter the rental unit and then go down to their own space.

The Tenants did not submit any invoices to support their claims for the cost they were seeking for utilities owed. They stated that they emailed the Landlord in March 2017, about these arrears, but the Landlord did not pay them any money. Rather, the Landlord started "pulling back on things."

The Landlord confirmed that he should be responsible for 25% of the utilities; however, this should not include the gas. He does not remember when he verbally agreed to this arrangement with the Tenants. He advised that he did not pay the Tenants the 25% of the utilities as they owed him money for other issues.

Regarding the Tenants' dispute that they rented the whole house but the Landlord subsequently took rooms away from the Tenants, he referenced the Addendum to the tenancy agreement which specifically outlines the areas of the house that would be rented to the Tenants and the areas of the house that were to be occupied by the Landlord.

H.H. advised that they are seeking compensation in the amount of **\$525.00** because there were rodents that were coming into the rental unit through holes in the siding. They could hear the rats in the walls, and rat feces was prevalent in their kitchen. He stated that they hired a pest control company, who set down traps.

Tenant S.H. advised that they brought this issue to the Landlord's attention on or around June or July of 2016 by text and they had multiple conversations with the Landlord about this, but no action was taken. She stated that their friend came and sealed large gaps behind their appliances and holes in the exterior of the rental unit. They then hired a pest control company to rectify this problem. She referenced the pictures submitted as documentary evidence to demonstrate the gaps behind the appliances and to illustrate the amount of rat feces in the rental unit. As well, she cited the invoice submitted from the pest control company.

The Landlord advised that the rental unit was brand new in 2016 and there were no holes in the exterior or interior of the house. He stated that mice and rats are everywhere, that the Tenants ran a food-based business in the rental unit, that the

neighbours complained that the Tenants left food outside, and that the mice or rats could have entered because the Tenants left doors or windows open. He confirmed that he was advised of this issue in 2017 and he recommended that they ensure their doors or windows were closed at all times. As well, he stated that he advised them that a pest control professional could assess the reason for the mouse or rat problem. He stated that he was not presented with the invoice for the pest control company until the Tenants made this Application.

S.H. advised that they are seeking compensation in the amount of **\$292.95** because they had to pay for the repair of appliances themselves. She stated that the heating element in the dryer only worked periodically in 2016 and they texted the Landlord about this. The Landlord advised them to call a local company, who then called the Landlord about the repair. However, the Landlord did not respond. They then texted the Landlord repeatedly, but as they did not receive a direct answer from the Landlord, they simply lived with this issue. In 2019, they had a repair person fix this heating element issue at their own expense.

She stated that there was a fridge upstairs where the heating system stopped working on it in October 2019. Mould developed and a foul smell started to emanate from it. They notified the Landlord multiple times, but he did nothing to address this other than to tell them to call a technician. A repair person advised them to turn off the fridge. They notified the Landlord of this and he told them he would get back to them, but he never did. They turned off the fridge and never used it again. Rather, they relied on a mini fridge in the garage.

She also stated that there was a fridge in the basement that leaked right from the start of the tenancy. They brought this to the Landlord's attention, and he told them to call a technician. They unplugged the fridge and did not use it. When the repair person looked at the upstairs fridge in 2019, this technician advised the Tenants that gas was leaking from it and to dispose of the fridge.

The Landlord confirmed that he was advised of the dryer issue and he called the retailer about it. He was given the number of a repair company that would fix it. He gave this number to the Tenants twice so they could coordinate the repair, and he told them that he would pay for it. He never heard back from the Tenants after he provided this number to them a second time.

Regarding the downstairs fridge, he accepted that there was a leak, but he provided the number of a repair company that could fix this problem. He cannot recall if the Tenants

advised him of the upstairs fridge issue and he assumed that any repairs would be deducted off the rent. As the Tenants owed a considerable amount of rental arrears, their requests for repairs was “a little rich”.

The Tenants advised that the Landlord gave them a number for a plumber and this person said they do not conduct repairs on appliances. As well, they said a relative of the Landlord’s came in to look at the broken appliances. This person came in, stated that they were working, and then left. It was their belief that the Landlord was making them deal with any problems in the rental unit.

The Landlord advised that he texted the Tenants in March 2017 telling them that the retailer he contacted would contact them about any repairs, and the Tenants thanked him for this information.

S.H. confirmed that the retailer contacted them but as it was not covered under warranty, they should talk to the Landlord. When they talked to the Landlord, he advised them to call the plumber that he referred.

Finally, S.H. advised that they are seeking compensation in the amount of **\$30,037.91** for the Landlord’s breaches of the *Act* and their subsequent loss of quiet enjoyment of the rental unit for the entire time that they lived in the rental unit. She stated that this was calculated as \$1,000.00 per month for the 42 months that they lived there. They were advised that as per Rule 2.8 of the Rules of Procedure that the maximum amount of their claim that could be heard is \$35,000.00 and that their claim of \$30,037.91, in addition to the above claims, exceeds this maximum limit. As such, this claim would be adjusted accordingly.

She advised that a portion of this claim arises out of their belief that they entered into a tenancy for the entire house, and this changed within two months of the tenancy starting. She stated that the Addendum states that the Landlord will have use of the “remainder of the basement” and that the Landlord said he would store items in this portion of the basement. However, on or around July 2016, the Landlord installed a door, built a kitchen, and created an illegal suite in this area. Guests of the Landlord would use the laundry room and would often appear in the Tenants’ rental unit or go through it to get to the basement suite. They explained to the Landlord in July 2016 verbally and by text, that this was inappropriate, and they believe they were taken advantage of.

She stated that there was a huge problem with the sump that started within a month of the tenancy commencing. The sump could not adequately handle the number of people that lived in the house, so the toilets had to be flushed seven to ten times a day and the sink had to be run to prevent a smell of sewage from permeating the rental unit. They informed the Landlord of this problem verbally and by text and the Landlord enlisted a repair person; however, while the source of the odour could not be found, this person advised that a second sump should have been installed. A second sump was installed in 2017, but this was still not adequate to handle the number of people living on the property. There was also a broken seal in the sump at one point, where raw sewage was escaping in the basement.

She stated that she had developed health issues during this tenancy, and she saw a specialist who advised that her symptoms could be related to the odour in the rental unit. She was given a prescription for medication for her sinus issues in 2017; however, they did not submit any evidence or medical documentation to support that there was a correlation between any issues in the rental unit and her health.

Finally, she advised that the Landlord's renovations in 2016 were not completed to the BC Building Code, and there were gaps in the ceiling that were not sealed properly. This led to constant condensation on their windows and to mould growth. In 2017, water leaked in through an outside faucet leak and flooded the basement to approximately ankle depth of water. They cleaned up this water and notified the Landlord; however, the water penetrated the ceiling of the basement and the Landlord did not have the ceiling examined. Mould and a musty smell developed. They submitted a picture as documentary evidence of the constant black and green mould; however, this picture was black and white, and it was difficult to see anything in it. They did not submit any evidence, such as remediation reports, to support their position.

She stated that the Landlord brought in heaters to dry the basement after the leak, but these were left on all the time. A by-law officer attended the rental unit in October 2019 and stated that it was fortunate that the house did not catch on fire due to the heaters being left on constantly. They submitted a picture of the heaters as documentary evidence.

In response to the Tenants' claims, the Landlord stated that the rental unit was brand new in 2016, that the tenancy agreement clearly outlines that there was an area in the basement that was designated for the Landlord's use, and that the Tenants were responsible for the utilities. He stated that their relationship was good in 2016; however, in 2017, the Tenants started to have difficulties paying rent on time or at all. In 2018,

they suffered from financial and family issues and asked to delay rent payments; however, they owed a considerable amount of rent arrears.

Regarding the Tenants' first submissions about the rental unit, he stated that he did not receive any complaints from the Tenants, and that they emailed him stating that they enjoyed their tenancy. The only time they brought up any dissatisfaction was when they started to face rental arrears issues and eviction. He submitted that his parents used the laundry room once, but they were invited to by the Tenants. Furthermore, no one went into the Tenants' rental unit unless they were invited by the Tenants. He read from the Tenants' text message on March 31, 2016 where they agreed to pick up his father from the ferry. In addition, they talked about making food for his father and offering to pick him up on other occasions.

With respect to the sump and the sewage smell, he was advised of a foul odour in 2016 and he told them to flush the toilets. If the toilets were flushed or if water was poured into the drains, it would fill the sump and force the sump to pump out any waste. He spoke with an engineer and a repair person was brought in, but a problem could not be found. In 2017, he was informed that there was a sewage smell, but this was due to a seal that was broken in the sewage pump. This would have impacted the Landlord exclusively as the pump was in the Landlord's area of the house, and this was subsequently fixed. He advised that a second sump was never installed, but a second pump was added as per an engineer's recommendation. He listed off approximately 19 days in 2019 where he or his family stayed in the basement area of the house.

Finally, regarding the water issue, he advised that there was a hose that was attached to the faucet on the exterior of the house. Water froze in the hose and subsequently burst on the inside of the house, but only in the Landlord's suite. There was water on the floor, but it was not ankle deep as the Tenants claim. In fact, an insurance claim was never made as it was not a significant flood. He submitted that the Tenants helped clean up the water and that his family used wet vacuums to clean up the water. A plumber came in and fixed the broken pipe that same day. He stated that the Tenants never informed him of any mould issues. Furthermore, regarding the use of the heaters, he reiterated that he was not there much, and the Tenants would have had keys to the Landlord's suite when the heaters were on.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 32 of the *Act* outlines that the Landlord “must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.”

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, “It is up to the party who is claiming compensation to provide evidence to establish that compensation is due”, that “the party who suffered the damage or loss can prove the amount of or value of the damage or loss”, and that “the value of the damage or loss is established by the evidence provided.”

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenants prove the amount of or value of the damage or loss?
- Did the Tenants act reasonably to minimize that damage or loss?

In addition, when two parties to a dispute provide equally plausible 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.

With respect to the Tenants’ claims for compensation in the amount of \$4,733.67 for 25% of the utilities owed during the course of the tenancy, the consistent and undisputed evidence is that the Landlord agreed to pay for 25% of some utilities. In

assessing this claim, as noted above, the onus is on the Tenants to submit evidence justifying this amount. However, the Tenants provided insufficient evidence to corroborate that the utilities totalled this amount. Furthermore, while I acknowledge and accept that the Landlord was responsible for paying a portion of some utilities, the Tenants are obligated to demonstrate that they mitigated any loss. However, there is insufficient evidence that they took any steps during the tenancy to request this compensation, nor did they file for dispute resolution to have this rectified.

As the Tenants did not demonstrate that they mitigated their loss, and as they have not submitted compelling evidence to support their claim, I do not find that the Tenants have substantiated a loss equivalent to the amount they claimed for. Given that I am satisfied that the Landlord acknowledged to being responsible for some utilities, but given the limited evidence provided by the Tenants, I grant the Tenants a monetary award in the amount equivalent to **\$1,000.00**.

Regarding the Tenants' claim for compensation in the amount of \$525.00 because of a rodent infestation, when reviewing the Tenants' testimony and limited evidence, I am not satisfied that their evidence supports that the Landlord was negligent for this infestation. Rather, in reviewing the pest control invoice submitted by the Tenants, I find it important to note that there is nothing on this report to indicate that the rental unit is deficient in allowing rodents to enter the premises. In fact, the pest control technician noted "Advice give on food storage...", which in my view supports the Landlord's submissions that the Tenants improperly stored food in the rental unit and likely attracted rodents. As I am not satisfied that the Tenants have established any grounds for this claim, I dismiss it in its entirety.

With respect to the Tenants' claims for compensation in the amount of \$292.95 for the repair of appliances, I note that there is conflicting testimony about who was contacted about the necessary repairs and the steps taken by the parties to have these repairs dealt with. However, if there was a problem that the Tenants believed to be the responsibility of the Landlord to fix, the Tenants should have mitigated their loss by applying for Dispute Resolution and having the Landlord Ordered to fix issues that they believed he was responsible for. As there is insufficient evidence that the Tenants mitigated their loss, I am not satisfied that they have established any grounds for this claim. Consequently, I dismiss it in its entirety.

Finally, with respect to the Tenants' claims for compensation in the amount of \$30,037.91 for the Landlord's breaches of the *Act* and their subsequent loss of quiet enjoyment of the rental unit for the entire time that they lived in the rental unit, as the

Tenants' total claim on this Application exceeded the maximum limit allowable, this amount will not be considered in its entirety.

As the Tenants submitted three main issues under this claim, each one will be addressed individually. Their first issue pertained to their belief that they entered into a tenancy for the entire house, but the Landlord took back a portion of the house, and him or his guests entered into the area of the rental unit that was rented exclusively to the Tenants. When reviewing the totality of the evidence before me, I find it important to note that the signed Addendum to the tenancy agreement clearly indicates that "The remainder of the basement will be retained by the landlord for his use." In my view, it is evident that the entire house was not rented to the Tenants, and a portion of the basement was reserved for the use of the Landlord.

Furthermore, while the Tenants claimed that the Landlord's guests would frequently enter the rental unit without the Tenants' consent, I find it important to note that the Tenants offered to pick up the Landlord's guests and to cook for them. It seems to me as if there was a casual, open, amicable relationship at the start of the tenancy between the Tenants and the Landlord where the boundaries for a regular Landlord/Tenant relationship were blurred and the Tenants likely allowed the Landlord's guests into their home. I do not find that it is consistent with common sense or ordinary human experience that everyday tenants would offer to pick up a landlord, or the landlord's guests, or to cook for them.

Moreover, if a landlord's guests were to enter a tenant's rental unit without consent, I find that every tenant would consider this a serious breach of the *Act* and would take steps to have this rectified as soon as possible instead of allowing it to continue. Based on a balance of probabilities, I find it more likely than not that the Tenants had a friendly relationship with the Landlord's guests and allowed access to their rental unit. It was only when the relationship between the parties deteriorated that this became a problem.

Had this truly been an issue from the start of the tenancy, I do not find that the Tenants have demonstrated that they mitigated their loss and did anything to rectify this problem. As there is insufficient evidence that this in fact was a problem, or that the Tenants mitigated their loss, I am not satisfied that they have established any grounds for this claim. Consequently, I dismiss it in its entirety.

Regarding the Tenants claims of an issue with the sump, there are contradictory submissions from each party with respect to the significance of the sump problem. As noted above, the onus is on the Tenants to substantiate their claim, and they have

provided scant documentary evidence to support that there was an ongoing sump problem. Furthermore, while they claimed that S.H. suffered from health complications due to the lingering odour, they have provided limited medical documentation to support that any health conditions were linked directly to any alleged deficiencies in the rental unit. I find that there is insufficient, compelling evidence submitted by the Tenants to support this claim. As such, I dismiss it in its entirety.

Finally, with respect to their claim of a renovation that did not comply with the BC Building Code and the resultant mould growth from that and from a flood, I again find it important to note that the onus is on the Tenants to substantiate their claim. However, they have provided little documentary evidence to support their allegations on this point. Based on the lack of persuasive evidence from the Tenants that would cause me to prefer their portrayal of the events described over the Landlord's, I do not find that they have met the burden of establishing their claim on this point. Ultimately, I dismiss this claim in its entirety as well.

As the Tenants were partially successful in their claims, I find that the Tenants are entitled to recover \$50.00 of the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Item	Amount
Utilities Owed by the Landlord	\$1,000.00
Partial Recovery of Filing Fee	\$50.00
Total Monetary Award	\$1,050.00

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$1,050.00** in the above terms, and 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 1, 2020

Residential Tenancy Branch