



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (the Regulation) or tenancy agreement, under to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

Tenants MC (the tenant) and HC and landlords JZ (the landlord) and CW attended the hearing. The tenants were assisted by advocate GR. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Issues to be Decided

Are the tenants entitled to:

01. a monetary order for compensation for damage or loss?
02. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained

rule 7.4 to the attending parties; it is the tenants' obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started in November 2016 and ended on January 23, 2020. Monthly rent was \$2,700.00, due on the first day of the month. At the outset of the tenancy the landlord collected a security deposit of \$1,350.00 and at a later point a pet damage deposit of \$500.00. The landlords were authorized to retain the security and pet damage deposits in a previous application.

The first tenancy agreement was from November 16, 2016 to April 30, 2018. The second tenancy agreement was from May 01, 2018 to August 31, 2018. Monthly rent in both contracts (submitted into evidence) was \$2,500.00.

The tenancy agreement from September 01, 2018 to August 31, 2019 set rent at \$2,600.00. A copy of the agreement not signed by the parties was submitted into evidence. Both parties agreed monthly rent of \$2,600.00 was paid during that period.

Both parties agreed the rental unit is a self-contained 2-floor, 5-bedroom, 2,200 square feet house and there was no move in and out inspection.

The tenants are claiming for \$1,700.00 for two illegal rent increases above the rent increase limit - item 5 of the monetary order worksheet (the worksheet).

The tenant confirmed receipt of two notices of rent increase (RTB-7), both submitted into evidence. The first one, dated April 01, 2018, increased rent from \$2,500.00 to \$2,600.00 effective on September 01, 2018. The second one, dated May 15, 2019 increased rent from \$2,600.00 to \$2,800.00 effective on September 01, 2019. The parties signed the fourth tenancy agreement (from September 01, 2019 to August 31, 2020) and set rent at \$2,700.00.

The tenant affirmed the landlord pressured her to sign the fixed-term tenancy agreements and threatened to end the tenancy. The landlord denied this; she testified she prefers to have a tenancy agreement signed every year and it is her right to do so.

The tenants are claiming \$640.00 for the late rent fees (item 8 of the worksheet).

The landlord stated the tenants verbally agreed to pay \$10.00 per day of late payment and she collected the total amount of \$935.00 in late rent fees during the tenancy.

The tenants are claiming for a compensation of 5% of their rent for the fridge not working properly in the amount of \$4,735.00 and 10% of their groceries expenditures in the amount of \$1,846.00 (items 6 and 7 of the worksheet).

The tenant said she was afraid to be evicted if she complained to the landlord about the fridge not working properly, she bought groceries more often and 10% of her groceries spoiled every month during the tenancy because the fridge did not work properly. The tenant verbally notified the landlord in December 2016 about this issue and the landlord did not repair it. On October 07, 2019 the tenant notified the landlord again about the fridge by email.

The landlord testified the fridge was repaired 3 weeks after the tenancy started. She did not inspect the fridge after the October 07, 2019 complaint and the fridge does not need repair.

The tenants are claiming for a compensation of 5% of rent (\$2,110.00 – item 1 of the worksheet) for the period when the furnace was not working properly (September 01, 2018 to March 2019) and 70% of rent (\$14,175.00 – item 2 of the worksheet) for the period when the furnace was not working at all (March to October 2019).

The tenant testified the rental unit's furnace was not working properly since August 24, 2018 and the landlord was notified on September 01, 2018. The landlord inspected the furnace but did not repair it. The furnace completely broke in March 2019 and the landlord only repaired it in October 2019. The tenant stated she did not submit an application to the Residential Tenancy Branch asking for an order for repairs because the landlord was constantly promising to repair the furnace. The landlord submits the furnace was properly maintained throughout the tenancy.

The tenants are claiming for a compensation of 10% of rent (\$4,190.00 – item 3 of the worksheet) for the dishwasher not working.

The tenant testified the dishwasher leaked a considerable amount of water on August 22, 2018 and the landlords were notified on that day. On September 01, 2018 the landlords inspected the dishwasher and did not repair it. The tenants could not use the dishwasher until the end of the tenancy. The tenant stated she did not submit an application to the Residential Tenancy Branch asking for an order for repairs because she was afraid to be evicted.

The landlord denied the tenant's chronology and said she became aware the dishwasher was not working on August 09, 2019 and confirmed it was not repaired.

The tenants are claiming for a compensation of 5% of rent (\$3,855.00 – item 10 of the worksheet) because they could not use one of the bedrooms due to water damage and mould from the dishwasher flood.

The tenant testified the bedroom under the kitchen flooded when the dishwasher leaked on August 22, 2018. The landlords claim there is no mould. There were two large water stains in the bedroom's ceiling and they did not need to be repaired.

The tenants are claiming for a compensation in the amount of \$254.00 for the yard work (item 4 of the worksheet). The tenant stated the trees in the yard needed to be cut, as the branches grew and blocked the access to the mailman and partially blocked the driveway. The tenant asked the landlord to cut the trees branches.

The tenant worked during 21 hours in July 2019 to cut the trees and submitted photographs showing the trees before and after her work. The landlord stated the tenant never asked her to cut the trees and she told the tenants they must do the yard work. She did not agree to pay the tenants for yard work.

On July 04, 2019 the landlord wrote the tenant:

From the photo, the stairway leading to your mailbox should be cleaned up a bit more. Those brown stuff of cedar needles are better to be gone, as well as any green leaves that are not from the cedar trees but covers the stairway. The point to make a clean path to the mail box, without leaves and grass on the way.

The tenants are claiming for aggravated damages in the amount of \$676.00 (item 9 of the worksheet) because the landlords failed to repair the dishwasher, furnace and mould in the bedroom. The tenant affirmed the landlords pressured them to pay the late rent fees and conducted house viewings and inspected the house without the 24-hour written notice.

The landlord testified she only attended the rental unit without the 24-hour written notice on 4 dates in January 2020 because these were the move-out dates. The landlord stated she did not pressure the tenants to pay the late rent fees and provided the necessary repairs.

The total amount the tenants are claiming is \$34,175.00.

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

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.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

Rent increase (item 5)

Sections 41, 42 and 43 of the Act state:

41 A landlord must not increase rent except in accordance with this Part.

42

(1)A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a)if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;

(b)if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2)A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3)A notice of a rent increase must be in the approved form.

(4)If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

43

(1)A landlord may impose a rent increase only up to the amount

(a)calculated in accordance with the regulations,

(b)ordered by the director on an application under subsection (3), or

(c)agreed to by the tenant in writing.

(2)A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(emphasis added)

Based on the parties testimony and the four residential tenancy agreements submitted into evidence, I find the landlord was subject to section 43(1) of the Act.

In accordance with section 22 of the Regulation, the maximum allowable rent increase for residential tenancies was 4% in 2018 and 2.5% in 2019.

Based on the parties testimony and the notice of rent increase dated April 01, 2018, I find the rent increase effective on September 01, 2018 was in accordance with the Regulation and the Act.

Residential Tenancy Branch Policy Guideline 37 states:

A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. If the tenant agrees to an additional rent increase, that agreement must be in writing.

The tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase.

[...]

Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.
(emphasis added)

The fixed-term tenancy agreement from September 01, 2018 to August 31, 2020 increased rent from \$2,600.00 to \$2,700.00 and does not acknowledge the parties agreed to a rent increase that is greater than the maximum allowable rent increase.
Rent

I find the rent increase effective on September 01, 2019 was not in accordance with the Regulation and the Act, as rent increased 3.8461% and it could only have increased 2.5%. Thus, rent increased \$35.00 more than the allowed rent increase (\$2,700.00-\$2,665.00).

The tenants paid the illegal rent increase for 5 months. As such, in accordance with section 67 of the Act I award the tenants the amount of \$175.00 for compensation for the extra amount of rent paid from September 01, 2019 to January 23, 2020.

For the purpose of educating the landlord, I note that under section 44(3) of the Act, when a fixed-term tenancy ends it is automatically renewed as a periodic tenancy. The landlord can not ask the tenant to enter a new fixed-term tenancy agreement.

Late rent fees (item 8)

Section 7(2) of the Regulation states the landlord can only charge late rent fees if the tenancy agreement provides for that fee. Furthermore, a clause in a tenancy agreement providing for the payment by the tenant of a late payment fee will be a penalty if the amount charged is not in proportion to the costs the landlord would incur as a result of the late payment.

The tenant affirmed she did not agree to pay late rent fees and the landlord did not provide any documentary evidence to support her claim that late fees were part of the tenancy agreement.

I find the landlord failed to comply with section 7(2) of the Regulations by collecting late rent fees in the amount of \$935.00

As the tenants applied for a monetary order in the amount of \$640.00, I grant the tenants \$640.00 for this loss.

Fridge and spoiled food (items 6 and 7)

Section 32 (1) of the Act states:

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

Based on both parties testimony, I find the tenants proved, on a balance of probabilities, the fridge was not working properly since November 2016, the landlords were aware of this since December 2016 and did not repair the fridge. I find a not functional fridge makes the rental unit partially not suitable for occupation by a tenant, thus breaching section 32(1)(b) of the Act.

Residential Tenancy Branch Policy Guideline 05 explains the duty of the party claiming compensation to mitigate their loss:

B. REASONABLE EFFORTS TO MINIMIZE LOSSES

A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided. In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:

- remove and dry the possessions as soon as possible;
- promptly report the damage and leak to the landlord and request repairs to avoid further damage;
- **file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.**

Compensation will not be awarded for damage or loss that could have been reasonably avoided.

Partial mitigation

Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. If in the above example the tenant reported the leak, the landlord failed to make the repairs and the tenant did not apply for dispute resolution soon after and more damage occurred, this could constitute partial mitigation. In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred.

The tenants only partially mitigated their losses by notifying the landlord of problems with the fridge. They did not seek remedy through the dispute resolution process until after the landlord was authorized to retain the tenants' security deposit.

As the tenants only partially mitigated their loss, I find they are not entitled to the compensation claimed.

Furnace (items 1 and 2)

Based on the tenants' more convincing and straightforward testimony, I find the tenants proved, on a balance of probabilities, they notified the landlord the furnace was not working properly in September 2018, the furnace was not properly repaired, in March 2019 it stopped working and it was repaired in October 2019. I find a not functional furnace makes the rental unit partially not suitable for occupation by a tenant, thus breaching section 32(1)(b) of the Act.

As stated earlier in this decision (topic 'fridge and spoiled food'), the tenants should have applied for dispute resolution seeking an order for the landlord to provide the necessary repairs.

As the tenants only partially mitigated their loss, I find they are not entitled to the compensation claimed.

Dishwasher (item 3)

Based on the tenants' more convincing and straightforward testimony, I find, on a balance of probabilities, the landlords were aware since September 01, 2018 the dishwasher was not working and did not repair it. I find a not functional dishwasher reduces the value of a tenancy.

As stated earlier in this decision (topic 'fridge and spoiled food'), the tenants should have applied for dispute resolution seeking an order for the landlord to provide the necessary repairs.

As the tenants only partially mitigated their loss, I find they are not entitled to the compensation claimed.

Flooded bedroom (item 10)

Based on both parties testimony, I find, on a balance of probabilities, the landlords were aware since September 2018 the bedroom under the kitchen flooded with water that leaked from the dishwasher in August 2018. I find a bedroom that can not be used reduces the value of a tenancy.

As stated earlier in this decision (topic 'fridge and spoiled food'), the tenants should have applied for dispute resolution seeking an order for the landlord to provide the necessary repairs.

As the tenants only partially mitigated their loss, I find they are not entitled to the compensation claimed.

Yard work (item 4)

Based on both parties testimony and the July 04, 2019 email I find, on a balance of probabilities, the tenants asked the landlords to cut the tree branches in the yard and the landlords instructed them to do this service and tenant MC worked for 21 hours in July 2019 to cut the tree branches in the yard.

Based on the tenancy agreements submitted into evidence, I find the parties did not have an agreement about yard work.

Residential Tenancy Branch Policy Guideline 1 explains the landlord's obligations regarding yard maintenance:

3. 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.

4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.

5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

(emphasis added)

Based on the tenant's testimony, the photographs and the July 04, 2019 email submitted into evidence, I find that cutting the tree branches is a major yard work project and, as such, it is responsibility of the landlords. I find the failure of the landlords to cut

the trees breached section 32(1)(b) of the Act, as the trees were blocking the access to the mailman and partially blocking the driveway.

I find that 21 hours of work at an hourly rate of \$12.09 is a reasonable amount to compensate the tenant for the losses she incurred.

As the landlord breached section 32 of the Act, I award the tenants \$254.00 in compensation for this loss.

Aggravated damages (item 9)

Residential Tenancy Branch Policy Guideline 1 explains the concept of aggravated damages:

“Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. **Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence.** Aggravated damages are rarely awarded and must specifically be asked for in the application.

(emphasis added)

Failure to repair a dishwasher, the furnace or mould are not reasons to grant aggravated damages.

I am not satisfied with the testimony offered by the tenant regarding the landlords' pressure for late rent fees and the rental unit's inspections without written notice. The tenant's testimony was vague and not convincing that the landlord acted deliberately to cause significant damage.

As such, I dismiss the tenants' application for aggravated damages.

Filing fee and summary

Per section 72 of the Act, as the tenants were partially successful in this application, I find they are entitled to recover the \$100.00 filing fee paid for this application.

In summary:

Item	Amount \$
Rent increase	175.00
Late rent fees	640.00
Yard work	254.00
Filing fee	100.00
Total monetary award	1,169.00

Conclusion

Pursuant to sections 67 and 72 of the Act, I grant the tenants a monetary order in the amount of \$1,169.00.

The tenants are provided with this order in the above terms and the landlords must be served with this order. Should the landlords 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: January 28, 2021

Residential Tenancy Branch