



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

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

- A monetary Order for Damages and authorization to retain a security deposit pursuant to sections 38 and 67;
- An Order of Possession for Cause pursuant to sections 47 and 55;
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67;
- Authorization to recover the filing fee for this application from the tenants pursuant to section 72; and
- A monetary order for rent pursuant to section 67.

The tenants did not attend this hearing, although I left the teleconference hearing connection open throughout the 40 minute hearing to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that he served each tenant with a copy of the Notice of Dispute Resolution Proceedings package by registered mail on November 20, 2020. Tracking numbers for the mailings are recorded on the cover page of this decision. The landlord testified the packages were sent to the residential address of the tenants. I deem the tenants

served with the Notice of Dispute Resolution Proceedings package five days after mailing, on November 25, 2020 in accordance with sections 89 and 90 of the *Act*.

The landlord testified that he served the amendment package to his Application for Dispute Resolution Proceedings by giving 3 copies to the tenant AK on January 15, 2021. He told AK that she was to provide a copy of the amendment to each of other the tenants named on the tenancy agreement. I find the amendment was served in accordance with rule 4 of the Residential Tenancy Branch Rules of Procedure and section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Can the landlord recover the filing fees?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The tenancy began on April 8, 2019 with rent set at \$650.00 per month payable on the first day of each month. A security deposit of \$650.00 was collected by the landlord which he continues to hold. Paragraph 7(b) of the tenancy agreement states: *The following are not included in this agreement for use by the tenant and will remain the sole property of the landlord to do with as he sees fit, and to have access at all times: any area outside the fenced area.*

There is an addendum to the tenancy agreement which states, *"It is understood and agreed that any violation of these rules will be grounds for immediate eviction" –*

4. Taking in of boarders, or additional tenants without the expressed permission of the landlord.

The landlord testified that one of the tenants moved his adult son into the rental unit on October 1, 2019. He moved his adult daughter into the unit on September 1, 2020. The landlord testified that he repeatedly told the tenant that the presence of the tenant's children occupying the rental unit is a breach of the tenancy agreement, however the tenant refused to move them out. The landlord told the tenants that if the children stayed, an additional \$150.00 per additional occupant would be charged to the tenants and that the children would be required to sign a new tenancy agreement.

The landlord testified that the tenants have been cutting down trees on the property located outside the fenced area of the residential property and using the wood to fuel their woodstove.

The landlord testified that he served the tenants with a One Month Notice To End Tenancy for Cause on October 30, 2020. He personally gave 3 copies of the Notice to the tenant RD. On October 31, 2020, he served the tenant GJ with a further 3 copies. A copy of the Notice was provided as evidence. It is signed and dated October 29, 2020, provides an effective date of October 29, 2020 and gives the following reasons for ending the tenancy:

1. the tenant has allowed an unreasonable number of occupants in the unit/site
2. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
3. the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property;
4. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
5. Tenant has not done required repairs of damage to the unit/site.
6. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
7. Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlord testified that to his knowledge, the tenants did not file a dispute to the notice to end tenancy.

The landlord provided a monetary order worksheet to support his monetary claim. A further monetary order worksheet was provided in the landlord's amendment. Each of the items claimed by the landlord will be described in the order they appear on the worksheet.

- 1,2,4 Tree Damage cleanup and tree estimate fee

The landlord hired an arborist to assess the damage to the trees the tenant chopped down for firewood and the associated cleanup. A warning letter was sent by the landlord to the tenants on April 1, 2020. The landlord paid \$30.00 to obtain an estimate from the arborist and the arborist provided written estimates of \$3,000.00 for the replacement of two western red cedars, one grand fir and one hemlock with average canopy heights of 60 feet. The arborist provided an estimate of \$300.00 to clean up the site, including cutting the stem wood, cutting stumps and removing debris. A second estimate to replace a 60 foot birch that was subsequently cut down by the tenants is \$2,000.00 plus \$120.00 for clean up costs. The landlord testified that the tenants continue to cut down his trees.

- 3 Registered mail - the landlord seeks to recover the \$44.82 spent in sending documents to the tenants by registered mail.
- 5 filing fee – to file Application for Dispute Resolution
- 6, 7 Billy Goat Mower, grass cutting, transport

The landlord testified that it was the tenant's responsibility to mow the grass for the residential property. It grew to 4 feet tall over the septic field for the property. Despite promises made by the tenants to mow the grass, they didn't do so. It grew so long that a ride on mower wouldn't cut it. During the summer months, the tall grass became a fire hazard. The landlord eventually had to rent a billy goat mower for \$100.00 and hired a mowing company to deliver the rented mower from the rental place back and forth and cut the grass. Receipts were provided.

- 8 reseeding

The tenants used the front lawn to store their belongings by placing pallets on the ground and tarping over it. The landlord told them not to do so, however the grass under the tarps died. Photos of the dead grass was provided where the tenants moved their bbq and swing set over the dead patches to cover it up. An estimate from the lawn company to reseed the dead grass for \$200.00 was provided.

The landlord's amendment sought further monetary relief.

- A-2 Rent for tenant's son / A-7 Rent for tenant's daughter

The landlord testified one of the tenants moved their son into the rental unit on October 1, 2019 and his daughter into the unit on September 1, 2020. The tenancy agreement does not provide written agreement as to the additional rent required when additional occupants are brought into the rental unit, however the landlord seeks \$150.00 per occupant. The warning letter dated April 1, 2020 advises the landlord will bill the tenants \$150.00 per month for the landlord's son living there since October 1, 2019.

- A-3 transporting of Billy Goat

This was previously accounted for in part 6,7 (above)

- A-4, A-5, A-6 other trees cut, brush removal, cost to replace stumps

The landlord testified the tenants continued to cut his trees. The landlord provided photos of the additional damage and estimates each tree the landlord values at \$200.00

per tree and estimates it would cost \$250.00 to remove brush, \$100.00 to replace stumps with driftwood. No written estimates were provided.

- A-8 January 2021 rent

The landlord testified rent was paid for January 2021.

Analysis

Based on the undisputed evidence of the landlord, I am satisfied the tenants were served with the One Month Notice To End Tenancy for Cause on October 30, 2020 in accordance with sections 88 and 90 of the *Act*.

Sections 47(3)(4) and (5) of the *Act* state:

(3) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(4) A tenant may dispute a Notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the Notice.

(5) If a tenant who has received a Notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant (a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and

(b)must vacate the rental unit by that date.

I have reviewed the landlord's One Month Notice to End Tenancy for Cause and I find that the 1 Month Notice complies with the form and content provisions of section 52 of the *Act*.

Although the tenants had the opportunity to do so, they did not file an application to dispute the Notice within 10 days, by November 9, 2020, or attend the scheduled Dispute Resolution Hearing. Since the tenants have not filed for dispute resolution, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must move out. The effective date stated in the notice is earlier than the earliest date permitted under the applicable section. In accordance with section 53 of the *Act*, the effective date is changed to November 30, 2020. As this date has passed, the landlord is entitled to an order of possession effective 2 days after service upon the tenants.

Section 7 of the *Act* states: 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.

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

The landlord's monetary claims will be analysed individually.

- 1,2,4 Tree Damage cleanup and tree estimate fee

Based on the undisputed evidence of the landlord, I am satisfied the tenants cut down live trees to use as firewood without the landlord's permission. The tenants had no right to cause the damage to the residential property and the landlord is entitled to recover compensation for the damage to it in accordance with sections 7 and 67 of the *Act*. The landlord has provided written estimates from a professional arborist for a total of \$5,420.00 to replace the trees cut down by the tenants and cleanup. The landlord tried to mitigate his damages by telling the tenants they had no right to cut the trees and advising them to stop it. I award the landlord the full \$5,420.00 as sought.

- 3 Registered mail

My abilities to award compensation are restricted by Section 67 of the *Act* which are described above and limited to claims where damage/loss has stemmed directly from a violation of the Tenancy Agreement or a contravention of the *Act* on the part of the other party. I therefore have no ability to return the costs associated with preparation for a hearing and decline to award the landlord the registered mailing fees.

- 5 filing fee

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

- 6, 7 Billy Goat Mower, grass cutting, transport

Section 32 of the *Act* states a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. This is further discussed in Residential Tenancy Branch Policy Guideline PG-1 [Landlord & Tenant – Responsibility for Residential Premises]

Property Maintenance

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.

I find the grass cutting was the responsibility of the tenants. As they did not maintain the residential property in accordance with section 32 of the *Act*, the landlord is entitled to be compensated for taking on this responsibility. The landlord was required to cut the grass during the summer fire season and I accept this reasoning for having to do it. I accept the landlord's testimony that the grass was too long for a regular ride-on mower to mow the grass. I award the landlord the \$250.00 he paid to cut the 4 foot long grass.

- 8 reseeding

The same policy guideline states:

Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.

Based on the landlord's undisputed testimony and photographs provided, I find the tenants killed the grass on the residential property. The landlord has provided an estimate of \$200.00 from a lawn company to reseed the grass and I find this estimate to be reasonable. The landlord is awarded \$200.00 to reseed the grass in accordance with section 67 of the *Act*.

- A-2 Rent for tenant's son / A-7 Rent for tenant's daughter

The tenancy agreement makes no mention of an agreement between the parties as to the fee to be expected if additional occupants move into the rental unit. Without a predetermined agreement as to what the cost of additional occupants would be, I find the landlord's charge of \$150.00 per person per month to be arbitrarily chosen by the landlord. I find the landlord has provided insufficient evidence to satisfy me the value of the damages he seeks (point 3 of the 4 point test). Second, the landlord testified that he knew as early as April 2020 that the tenant's son was living in the rental unit and didn't supply any evidence of drafting a new tenancy agreement to include the new tenant as he said he was going to do in his April 2020 letter. Nor did the landlord serve

the tenants with a notice to end tenancy for breaching a material term of the tenancy when he first discovered the breach. For these reasons, I find the landlord failed to mitigate his damages (point 4 of the 4 point test). These portions of the landlord's claim are dismissed.

- A-4, A-5, A-6 other trees cut, brush removal, cost to replace stumps

The landlord testified that he did not retain the service of the arborist to provide an estimate of the damage caused by the additional tree cutting and associated costs to remove brush and replace the stumps. I find the landlord has not provided sufficient evidence to satisfy me the value of the damage or loss (point 3 of the 4 point test) and I dismiss these portions of the landlord's claim.

- A-8 January 2021 rent

The landlord testified rent was paid for January 2021. I dismiss this portion of the claim.

The landlord continues to hold the tenant's security deposit. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the entire security deposit in partial satisfaction of the monetary claim.

Item	amount
Tree Damage cleanup and tree estimate fee	\$5,420.00
Filing fee	\$100.00
Billy Goat Mower, grass cutting, transport	\$250.00
Reseeding	\$200.00
Less security deposit	(\$650.00)
Total	\$5,320.00

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**.

I issue a monetary order in the landlord's favour in the amount of **\$5,320.00**.

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: February 04, 2021