Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL
MNDCT, MNSD, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the Landlord (the Landlord's Application) under the Residential Tenancy Act (the Act), seeking:

- Compensation for damage to the rental unit, site, or property; and
- Recovery of the filing fee.

The hearing also dealt with two cross-Applications filed by the Tenants (the Tenants' Applications), seeking:

- Compensation for monetary loss or other money owed;
- The return of their security deposit; and
- Recovery of the filing fee.

Three previous hearings were held before me in relation to the above noted Applications on May 28, 2020, September 28, 2020, and January 25, 2021. As a result, three previous Interim Decisions were also rendered by me, copies of which were sent to the parties by the Residential Tenancy Branch (the Branch). For the sake of brevity, I will not repeat here the numerous and lengthy matters covered or the orders made by me in the previous three Interim Decisions. As a result, the Interim Decisions should be read in conjunction with this Decision.

The final hearing was reconvened before me by telephone conference call on April 30, 2021, at 9:30 AM and was attended by the Landlord, an articling student G.B., on behalf of the Landlord's Legal Counsel, the Landlord's Legal Counsel J.G., a witness for the Landlord M.S., the Tenants, and Legal Counsel for the Tenants (S.D.). All testimony provided was affirmed.

While I have considered the documentary evidence and the testimony before me for review and consideration, not all details of the submissions and arguments are reproduced here. Only the relevant and important aspects of the claims and my findings are set out below.

Preliminary Matters

At the outset of the hearing, the articling student G.B., who attended the hearing on behalf of the Landlord's Legal Counsel J.G., requested a brief recess, as J.G. was running late due to an emergency. Although the Tenants and their Legal Counsel S.D. agreed to a brief recess, they pointed out that this was the fourth hearing, and that several previous hearings had been adjourned already due largely in part to the Landlord's lack of due diligence in serving evidence and following the orders made by me in the previous Interim Decisions.

A brief recess was granted, and the hearing was reconvened at 10:00 AM on April 30, 2021, at which point the Landlord's Legal Counsel J.G. was in attendance and the hearing proceeded.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, site, or property?

Are the Tenants entitled to compensation for monetary loss or other money owed?

Are the Tenants entitled to the return of all, some, none, or double the amount of their security deposit?

Is either party entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that the Tenants moved into the rental unit on August 15, 2019, and that a verbal tenancy agreement existed between them wherein rent in the amount of $1,400.00 was required each month, plus a security deposit in the amount of $700.00. The parties disagreed about the date the tenancy ended, with the Landlord arguing that it was November 14, 2019, and the Tenants arguing that it was November 15, 2019. They also disagreed about why the tenancy ended. However, the parties agreed that the Landlord still holds the $700.00 security deposit paid by the Tenants, that the

Tenants provided their forwarding address to the Landlord in writing approximately two weeks prior to the first hearing date of May 28, 2020, and that the Tenants are entitled to the return of $1,400.00, double the amount of the $700.00 security deposit initially paid. There was also agreement between the parties that neither a move-in condition inspection report nor a move-out condition inspection report was completed.

The Landlord and their legal counsel claimed that the Tenants had not left the rental unit reasonably clean, and undamaged except for reasonable wear and tear, at the end of the tenancy as required by section 37(2)(a) of the Act, and sought $12,297.88 in compensation for recovery of costs allegedly incurred by them to repair the rental unit at the end of the tenancy. The Landlord cited two incidents on October 18, 2020, and October 23 or 24, 2020, where they state that the Tenants were negligent in leaving the stove unattended while it was turned on. The Landlord stated that on October 18, 2020, they attended the rental unit to provide the Tenants with food as part of the lunch service provided to them under the tenancy agreement, and the stove was on, unattended, while someone slept in the rental unit. The Landlord stated that on October 23/24. 2020, they attended the rental unit when the fire alarm went off, found the door to be unlocked after knocking, and no one in the rental unit, with the stove on. The Landlord stated that on this occasion three burners for the stove were turned on, and it appeared as though a plastic fan had dropped onto the stove, causing smoke to set off the fire alarm, and causing damage to the fan, glass stovetop, kitchen cabinets, and the wall behind the stove.

In addition to the above noted damage, the Landlord stated that the Tenants also caused water damage in the bathroom and damage to the toilet by improperly installing a bidet, and had broken the fridge. The Landlord stated that the fridge and stove were only four and three years old, respectively, and were in good condition prior to the start of the tenancy.

The Landlord’s Legal Counsel stated that as the result of the above noted damage, the Landlord paid $12,297.88 for repairs via cheque to the witness M.S., which was cashed on January 17, 2020. The Landlord’s Legal Counsel stated that the work in the renal unit commenced on the afternoon of November 15, 2020, and was completed on December 3, 2020.

On January 25, 2021, the Landlord and their Legal Counsel called three witnesses. The first witness, C.R. testified that they are the Tenants’ previous Landlord. C.R. testified that the Tenants resided in their rental unit from March – August of 2019, and that during that time, they flooded the basement by leaving water running in a bathtub

unattended, removed the fire alarms, and almost burnt down the rental unit on several occasions by leaving pots unattended on the stove while it was on. Under cross-examination Legal Counsel for the Tenants questioned C.R. about whether they had been promised or given anything by the Landlord in exchange for their testimony, to which C.R. provided affirmed testimony that they had not, and that they did not even personally know the Landlord and were only contacted to provide testimony at this hearing as the Tenants' previous landlord. Although Legal Counsel for the Tenants argued that the situations described by C.R. were accidents, C.R. disagreed, categorizing them as acts of carelessness and negligence on the part of the Tenants.

The second witness, M.G., testified that while at the property in which both the rental unit and the Landlord's residence were located, a fire alarm went off in the house, and they therefore followed the Landlord to the rental unit where no one was found to be home and the stove was turned on and very hot with nothing on it. Although M.G. stated that the stove was on, they acknowledged that there was nothing on the stove and therefore do not know what set the fire alarm off. M.G. also described the rental unit as generally messy, with clothing and alcohol bottles on the floor, a kitchen sink full of dishes, and characterized the rental unit as having a "weird smell". Under cross-examination Legal Counsel for the Tenants questioned the purpose of M.G.'s presence at the home, to which M.G. gave conflicting testimony, first stating that they were there to view the rental unit and then stating that they were not as it had already been rented to the Tenants.

The third witness, M.L. testified that on November 1, 2019, they were assisting the Landlord with moving a fridge and mattress out of the rental unit and observed the rental unit to be very untidy, the stove and fridge to be damaged, the washroom to be soggy with tiles pulling away and the toilet seat to be damaged, and a kitchen cabinet to be broken. M.L. further testified that they had been the previous occupant of the rental unit between September 2018 – January 2019, and that during that time, the condition of the rental unit had been good and that the rental unit had been undamaged during their tenancy in the ways that they observed on November 1, 2019.

The Landlord and their Legal Counsel stated that at the time of the above noted entry to the rental unit, the Tenants had already given their notice to vacate the rental unit effective October 31, 2020, but had not yet moved out, and that November 1, 2020, was the scheduled inspection date for the rental unit. Legal Counsel for the Tenants disagreed, stating that no notice to end tenancy was ever given by the Tenants and that the tenancy ended as the result of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities with an effective date of November 4, 2019. Under cross-examination M.L

testified that it was their understanding that they and the Landlord were attending the rental unit for a scheduled inspection.

On April 30, 2021, the Landlord and their Legal Counsel called their fourth and final witness, M.S., who testified that they completed construction work in the rental unit after the end of the tenancy, costing approximately $12,000.00. M.S. stated that they changed the drywall and baseboards in the bathroom due to water damage, replaced the broken toilet, renovated the kitchen cupboards, and that they replaced the fridge and stove. When asked, they stated that it is their opinion that these repairs were necessary in order for new tenants to move in, as there was so much damage to the rental unit.

Under cross-examination M.S. was unable to provide the date or dates upon which the above noted repairs were allegedly completed by them, or a more accurate amount for the final costs. When asked by the Tenants Legal Counsel if the toilet was still in the washroom when they completed the repairs, they stated that it was, and that they removed it themselves.

Legal Counsel for the Tenants denied the allegations of the Landlord, and called into question their testimony and the testimony of their witnesses, regarding the state of the rental unit both during at the end of the tenancy. The Tenants and their Legal Counsel denied that lunch service was part of the tenancy agreement and alleged that the Landlord had, on numerous occasions, entered the rental unit without proper notice, permission, or entitlement to do so under the Act. The Tenants and their Legal Counsel also called into question the testimony of the Landlord and M.S. with regards to the repairs allegedly required and completed, arguing that the Landlord had in fact removed the toilet from the rental unit in advance of the end of the tenancy, contrary to the Landlord's own testimony and the testimony of M.S. In support of this position the Tenants and their Legal Counsel pointed to a photograph allegedly taken on November 2, 2020, where a person, who the Landlord acknowledged during the hearing was them, can be seen removing the toilet from the rental unit.

Although the Landlord acknowledged that they are removing the toilet in the photograph, they stated that their attendance at the rental unit and the removal of the toilet was agreed to by the Tenants and that the photograph and the Tenants'' characterization of it and the interaction in general, is misleading. Legal Counsel for the Tenants also pointed to photographs in the documentary evidence before me, which they state show the Landlord and the Landlord's spouse removing cabinets from the

rental unit prior to the end of the tenancy, something the Landlord and their Legal Counsel denied.

Legal Counsel for the Tenants argued that between August 15, 2019 – November 15, 2019, the Landlord repeatedly breached sections 27, 28, 29, 30, and 31 of the Act by refusing to provide adequate heat to the rental unit and repeatedly ignoring the Tenant's requests to turn on the heat, entering the renal unit without proper notice, permission, or entitlement under the Act to do so, and watching the Tenants through the windows of the rental unit. The Tenants and their Legal Counsel also referred to an incident on October 23, 2019 wherein they state that the Landlord verbally harassed them over the phone, blocked their driveway preventing them from leaving with their friends, threatened them with a baseball bat, demanded that they immediately clean and vacate the rental unit, and physically assaulted their guest. The Tenants and their Legal Counsel stated that the police attended three times on October 23, 2019, as a result of the above noted behavior from the Landlord and because the Landlord refused to move the vehicle blocking the driveway. Legal Counsel for the Tenants stated that the Tenants spent 3-4 hours outside in the cold, as they were prevented from accessing their vehicles and frightened about returning to the rental unit and that they suffered emotional distress and harm as a result of this incident.

Legal Counsel for the Tenants stated that the following day, October 24, 2019, the Landlord's wife threatened them and issued an invalid hand-written notice to end tenancy, a copy of which was submitted for my review and consideration. Neither the Landlord nor their Legal Counsel denied the issuance of this notice to end tenancy.

Legal Counsel for the Tenants and the Tenant S.S. stated that on November 1, 2019, they were sleeping when the Landlord knocked on the door, then entered the rental unit without permission or proper notice and removed a bed frame, a gas stove, and the refrigerator. The Tenants stated that the following day when they returned to the rental unit after work, the Landlord was removing their toilet.

The Tenants and their Legal Counsel stated that on November 3, 2019, the Landlord again entered the rental unit without proper notice or permission and advised them that they needed to move out immediately as the rental unit was being sprayed for pests and began throwing their possessions on the ground. The Tenants stated that he Landlord also removed the sinks from the bathroom and the kitchen and threw one of their phones on the ground, cracking the screen. Photographs were submitted by the Tenants in support of this testimony. The Tenants stated that the Landlord also attempted to unlawfully change the locks, and that the police were called, who advised

the Landlord not to change the locks and to stop entering the rental unit without proper written notice or permission from the Tenants.

They Tenants sought $850.00 for damage to their personal possessions as follows:

- $50.00 for damaged kitchen utensils;
- $400.00 for damage to a phone;
- $50.00 for damage to clothing;
- $350.00 for a king sized mattress thrown in the yard by the Landlord; and
- $100.00 for recovery of the filing fee.

The Landlord and their Legal Counsel denied the above noted allegations against the Landlord, stating that the photographs presented by the Tenants were not in fact taken during the tenancy as alleged by the Tenants, but after it had already ended.

Legal Counsel for the Tenants stated that the Tenants were also called by a collection agency purporting to act as legal counsel for the Landlord, in an attempt to settle the Landlord's $12,000.00 monetary claim for between $6,000.00 - $8,000.00. Legal Counsel for the Tenants stated that the collection agency has previously consented not to engage in the practice of law in exchange for a fee, gain, or reward and provide me the link to that ruling.

The Tenants sought $2,100.00 in compensation for 45 days without heat, calculated as $46.67 per day ($1,400.00/30), $46.67 for one day of lost electricity, $933.40 for 20 days without wifi, calculated at $46.67 per day, and $1,000.00 for loss of quiet enjoyment and improper entry, calculated at $100.00 per violation. The Landlord denied ever having restricted heat or electricity to the rental unit and denied ever having been advised by the Tenants that they lacked heat or electricity. They also denied that they restricted internet or that internet was to be provided as part of the tenancy agreement, stating that rather than restricting services, they routinely provided the Tenants with more than they were entitled to under the tenancy agreement.

Finally, the Tenants sought $12,000.00 for mental loss, $4,000.00 each, for mental stress, harassment and overall suffering and the lack of concentration on their schooling which they stated resulted in all three Tenants being placed on academic probation. The Landlord and their Legal Counsel denied harassing the Tenants or interfering with their right to quiet enjoyment and argued that the reverse occurred, with the Tenants repeatedly harassing them and interfering with their own enjoyment of their property..

Analysis

Rule 6.6 of the Rules of procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim.

Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results and that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss. Further to this, Residential Tenancy Policy Guideline (Policy Guideline) #16 states that 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

Although the Landlord argued that the Tenants caused $12,297.88 in damage to the rental unit, the Tenants denied these allegations stating that all damage either pre-existed the start of their tenancy, or was caused by the Landlord when entering their rental unit without permission or authority under the *Act* to do so and in an attempt to have the Tenants move out. No documentary evidence was before me from the Landlord for consideration in support of the Application or their claims and the parties agreed that neither move-in or move-out condition inspection reports were completed by the Landlord with the Tenants as required. As a result, I find that there is no documentary evidence before me from the Landlord to support their arguments that the Tenants failed to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear at the end of the tenancy, as required by section 37(2)(a) of the Act, and that the Landlord is therefore entitled to the $12,297.88 sought for repairs.

Although the Landlord called several witnesses during the hearing in support of their claims, for the following reasons I find the witness testimony, in the absence of further corroboratory evidence from the Landlord, insufficient to establish the claims made the Landlord on a balance of probabilities.

The Tenants previous Landlord testified that the Tenants had damaged their rental unit and left stove burners on and unattended on several occasions. While I find this testimony reliable, as it was not disputed by the Tenants and the Tenant's Legal Counsel referred to these events as accidents on the part of the Tenants, I do not find that these previous actions at a different rental unit under a previous tenancy agreement establish that the Tenants engaged in similar behavior in the current rental unit as argued by the Landlord and their Legal Counsel. I also have cause for concern that the testimony provided by the witness M.S. is not entirely accurate, as M.S. testified that they personally removed the toilet from the rental unit as part of the repairs completed and billed to the Landlord, a fact later shown to be inaccurate, as the Tenants provided a photograph of the Landlord removing the toilet from the rental unit and the Landlord therefore acknowledged doing so.

Although M.S. allegedly completed more than $12,000.00 in repairs to the rental unit, under cross-examination they could not provide a more detailed accounting of the costs incurred or a precise amount for the final bill, and could not provide details regarding when the repairs were completed. Although the Landlord also called the former tenant of the rental unit, M.L. as a witness, who testified that the rental unit was in good condition at the end of their tenancy in January of 2019, and that they observed it to be damaged when they attended the rental unit on November 1, 2019 to assist the Landlord, I note that the Tenants did not move into the rental unit until August 15, 2019. As a result, I am not satisfied that at least some of the damage the Landlord claims was caused by the Tenants during the tenancy, did not occur during the period between the end date of M.L's tenancy and the start date of this tenancy. Finally, although the Landlord called another witness, M.G. who stated that they had attended the rental unit with the Landlord with regards to a fire alarm being set off in the rental unit, they did not speak to or identify any damage to the rental unit. As a result, I do not find their testimony helpful in establishing whether or not the rental unit was damaged by the Tenants.

Based on the above, I therefore find that the Landlord has failed to satisfy me, on a balance of probabilities that the Tenants breached the *Act* resulting in a loss by the Landlord, or the value of any loss suffered as a result. I therefore dismiss the Landlord's $12,297.88 claim without leave to reapply. As the Landlord was unsuccessful in their Application, I also dismiss their claim for recovery of the $100.00 filing fee.

Having made these findings, I will now turn to the Tenants claims. Although Legal Counsel for the Tenants submitted three previous decisions from the Branch for my

consideration, section 64(2) of the Act requires me to make each decision or order on the merits of the case as disclosed by the evidence admitted and explicitly states that I am not bound by pervious decisions from the Branch. Further to this, I find that the type, nature, and quality of the evidence present before those decision makers, as set out in the decisions submitted for my review and consideration, to be markedly different from that currently before me, and that in several of the decisions submitted, testimony was either entirely undisputed or the testimony of one party was corroborated by the testimony of the opposing party in numerous regards, which is not at all the case here. As a result, I find the previous decisions submitted by the Tenants' Legal Counsel of little value in assessing the Tenants' claims and have instead rendered my decision on the merits of the case as disclosed by the documentary evidence accepted by me for consideration and the testimony provided by the parties and their witnesses at the hearings.

Although the Tenants claimed that the Landlord withheld heat in the rental unit for 45 days, electricity for one day, and wifi for 20 days, the only documentary evidence in support of these claims by the Tenants is a self-authored and handwritten notice to the Landlord which appears to have been authored on October 25, 2019, wherein they outline their complaints. At the hearing the Landlord denied withholding these services or receiving this document. Further to this, there was only a verbal tenancy agreement in place between the parties and there was not agreement between them at the hearing about what was included in rent. As a result, I find that the Tenants have failed to satisfy me, on a balance of probabilities, that the Landlord withheld the above noted services as alleged. Further to this, I find that the Tenants have failed to satisfy me of the value of any losses that would have been suffered as a result, as they appear to be claiming full loss of rent for each day that a service was withheld, which I find to be unreasonable, as the Tenants continued to reside in and make use of the rental unit even during the periods in which they state these services were withheld.

Based on the above I therefore dismiss the Tenants' claims for $2,100.00 for lack of heat, $46.67 for lack of electricity, and $933.40 for lack of wifi, without leave to reapply.

Although the Tenants sought $1,000.00 for loss of quiet enjoyment, calculated at $100.00 per incident, I am not satisfied that the Tenants are entitled to this full amount. While the Tenants argued that the Landlord entered the rental unit improperly on at least 10 occasions, the Landlord denied this allegation, and the Tenants submitted little or no evidence, other than their own affirmed testimony, that unlawful entries occurred. Further to this, I find that the Landlord had reasonable cause to enter the rental unit on at least one of the occasions discussed by the parties at the hearing, pursuant to

section 29(1)(f) of the Act, when the fire alarm was going off. Although the Tenants argued that the Landlord also peered through their windows and hovered around their entryway, I am not satisfied by the evidence and testimony submitted by the Tenants that this is the case. I am also cognizant that the rental unit is located within the same dwelling as the Landlord's residence and therefore find it reasonable to conclude that the Landlord and their spouse would be present around the property throughout the tenancy.

Despite the above I am none the less satisfied that the Landlord entered the rental unit on several occasions without proper notice or permission, as I do not accept that lunch service was provided as part of the tenancy agreement and there is no evidence that the Landlord ever issued proper written notice to enter the rental unit, and I therefore award the Tenants $200.00 for loss of quiet enjoyment suffered by them due to unlawful entries.

Although the Tenants also sought $12,000.00 for mental loss, $4,000.00 each, for mental stress, harassment, a drop in their academic performance, and overall suffering during the tenancy, I am not satisfied that any poor academic performance on the part of the Tenants either occurred or can be attributed solely or in part, to their tenancy. Further to this, no justification for the amounts sought, which I find to be excessive, was given either at the hearing or in the written submissions and documentary evidence before me for review and consideration. As a result, I dismiss the majority of this claim without leave to reapply. I do however accept, based on a video submitted by the Tenants, that a verbal and physical altercation occurred between the Landlord, the Landlord's spouse, the Tenants, and the Tenants' guests, and that during the altercation the Landlord physically grabbed one of the Tenant's guests, and then swung a weapon, appearing to be a bat or similar shaped object, at the Tenants and their guests. I also accept that this incident caused the Tenants a not insignificant amount of stress and suffering, as stated by the Tenants and their Legal Counsel, and that the incident resulted in a period of several hours during which the Tenants remained outside in the cold for fear of returning to their rental unit. As a result, I award the Tenants $300.00, $100.00 each, for the loss of use and quiet enjoyment of their rental unit during that time period.

Finally, although the Tenants sought $850.00 for damage to personal possessions as follows, I am not satisfied that they are entitled to the majority of these amounts:

- $50.00 for damaged kitchen utensils;
- $400.00 for damage to a phone;
- $50.00 for damage to clothing;

- $350.00 for a king sized mattress thrown in the yard by the Landlord; and
- $100.00 for recovery of the filing fee.

While I am satisfied by the documentary evidence before me, most notably a photograph of a mattress outside and the testimony of the witness M.L., that a mattress was removed from the rental unit on or about November 1, 2019, I am not satisfied that a phone screen, kitchen utensils, or clothing was damaged by the Landlord, as the parties disputed who created the damage shown in the photographs taken by the Tenants and the date upon which these photographs which do not contain date stamps, were taken. The Tenants have also failed to satisfy me of the value of the items claimed, as no documentary or other evidence in support of the claimed amounts was provided by the Tenants. As a result, I award the Tenants only $350.00 for the damaged mattress, an amount I find to be more than reasonable even in the absence of corroboratory evidence of its original cost, given the cost of mattresses in general and taking a reasonable amount of depreciation into account.

As the parties agreed that the Tenants are owed $1,400.00 for double the amount of the security deposit, I also award the Tenants this amount. Although the Tenants filed two separate applications and sought recovery of the $100.00 filing fee paid for both Applications, I award the Tenants recovery of only one filing fee in the amount of $100.00, pursuant to section 72(1) of the Act, as I find the Tenants could have amended their original Application, at no further cost, rather than filing a subsequent Application and paying a second filing fee.

Pursuant to section 67 of the Act, I therefore grant the Tenants a Monetary Order in the amount of $2,350.00, and I order the Landlord to pay this amount to the Tenants.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of **$2,350.00**. The Tenants are provided with this Order in the above terms and the Landlord is ordered to pay this amount to the Tenants. Should the Landlord fail to comply with this Order, it may be served on the Landlord and filed in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

Although this decision has been rendered more than 30 days after the close of the proceedings, and I apologize for the delay, section 77(2) of the *Act* states that the Director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d). As

a result, I find that neither the validity of this decision and the associated order, nor my authority to render this decision and any associated order, is affected by the fact that this decision was rendered more than 30 days after the close of the proceedings.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Act*.

Dated: July 6, 2021

Residential Tenancy Branch