Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT, MNDL, MNDCL, FFL

Introduction

The tenants seek compensation pursuant to sections 38, 67, and 72 of the Residential Tenancy Act (the "Act"). By way of cross-application the landlords seek compensation pursuant to sections 67 and 72 of the Act. This Decision addresses both claims.

No service issues were raised, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained. It should be noted that relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. However, only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced.

Preliminary Issue: Tenants' Motion to Summarily Dismiss Landlords' Application

The tenants sought to have the landlords' claim summarily dismissed on the basis that the landlords have provided no evidence that it was the tenants' negligence which caused the flooding. The landlords opposed the tenants' motion.

The onus to prove the particulars of a claim rests on the party making that claim. As the landlords' case had not yet been made at the start of the final hearing, it would have been premature for me to dismiss the claim. As such, the tenants' motion was denied.

Issues

1. Are the tenants entitled to the doubled return of their security deposit?
2. Are the tenants entitled to any compensation as claimed?
3. Are the landlords entitled to any compensation as claimed?
4. Are the tenants or the landlords entitled to recover the cost of their filing fees?

Background and Evidence

The Tenancy

The tenancy began on August 15, 2017 and ended on June 30, 2018 by way of a *Mutual Agreement to End a Tenancy* document. Monthly rent was $1,600.00 and the tenants paid a $800.00 security deposit and a $800.00 pet damage deposit. A copy of the written tenancy agreement was submitted into evidence.

The Parties' Claims

The tenants seek compensation for the following:

1.	Loss of use of home	$2,789.93
2.	Loss of use of yard	$815.74
3.	Loss of room rental	$1,500.00
4.	Pain and suffering	$8,000.00
5.	Deposit return	$1,609.50
6.	Filing fee	$100.00

The landlords seek compensation for the following:

1.	Restoration	$810.00
2.	Reimbursement to landlord	$379.83
3.	Reimbursement to landlord	$201.31
4.	Deductible for insurance	$1,000.00
5.	Increase in insurance	$1,600.00
6.	Loss of rent	$1,900.00
7.	Additional excess work	$3,900.00
8.	General nuisance	$1,000.00
9.	Filing fee	$100.00

The Flood and the Aftermath

Almost all of the above claims made by both parties flow from a flood that occurred approximately six weeks into the tenancy. Neither party disputed that there was a flood that resulted in expenses and losses to both parties. What is in dispute, however, is who caused the floor to occur.

It was the landlords' position that it was the tenants who flooded the rental unit. The flooding was substantial. The landlords argued that the hose at the back of the washing machine somehow dislodged itself seven weeks into the tenancy. He submitted that there was no possible way for the landlord to have dislodged the hose. Rather, it was "the tenants or their dog" who did it.

What is more, that tenants let the washing machine go through two more rinse cycles which exacerbated the flooding. The repair work was completed as soon as possible thereafter. Copies of invoices and work orders were submitted into evidence.

The tenants disputed the landlords' claim that it was them or their dog that potentially dislodged the hose. The tenant remarked that the dog would have had to climb behind the washing machine in order to get at the hose. Rather, the tenants argued that the hose was improperly installed by the landlords, and that the hose over a period of several weeks slowly, "wiggled its way out."

In addition to the parties' rather limited testimony regarding who caused the hose to somehow detach from the wall, the parties testified about the contractors and other workers who came in and repaired the property, including digging ditches and trenches around the yard in an effort to abate the issues arising from the flood. The tenants gave evidence of how they were interrupted for months by the workers and contractors.

Conversely, the landlords gave evidence that the tenants were frequently not cooperating and that they peppered the contractors with questions. Indeed, the tenant allegedly engaged in "all sorts of acrobatic activities" with the workers which slowed down construction. A few photographs of the tenant engaged in yoga-like interactions with the workers were in evidence.

Tenants' Claim re Loss of Use of Home and Yard

The tenants claim the amounts referenced about for the loss of the use of their home and the yard during restoration. I will review the calculations below.

Tenants' Claim re Loss of Rent

The tenants claim that they loss the ability to rent a room due to the restoration, thus were deprived of the ability to earn rental income in the amount of $1,500.00 over a period of three months ($500.00 per month).

Tenants' Claim re Pain and Suffering

The basis for this claim is that the tenants seek compensation for what is described in their application as "illegal entry, loss of privacy and quiet enjoyment, and pain and suffering" in the amount of $8,000.00. The tenants argued that there was "significant mental anguish, stress, anxiety, depression and other distress" experienced. Moreover, the claim is based on what the tenants describe as a "constant disruption to privacy and quiet enjoyment of their home."

Tenants' Claim re Security Deposit

The tenants claim the following in respect of the security and pet damage deposit, as written in their application for dispute resolution:

> Security and Pet deposit were not returned within the 15-day restriction from the end of tenancy after a written forwarding address was provided. It was mailed after 20 days and received after 23 days in person by mail carrier. $9.50 was deducted by the landlords even though the full amount was agreed to be returned and signed as such. A copy of the move in inspection was never provided to the tenant; there was no dispute resolution filed to retain part of the deposit.

In rebuttal, in the hearing, the landlords testified that they returned the security and pet damage deposits as soon as they had the forwarding address.

Landlords' Claims Related to Flood

Items 1 through 5, and 7, of the landlords' claim (as listed in the above-noted subsection "The Parties' Claims") relate entirely to the flood. I will not reproduce in any detail these claims, as the dollar amounts have been established, but whether they are to be awarded depend entirely on whether causation is proven. This matter is examined in greater depth below in the Analysis section of the decision.

Landlords' Claim re Loss of Rent

The landlords claim that they suffered a loss of rent due to the tenants' frustrating visits and showings to potential renters. The tenants dispute this and argued that it was the landlords who cancelled showings and not the other way around.

Moreover, the tenants argued that they never refused access, and simply asked the landlords to reschedule the showings. What is more, the tenants pointed out, the landlords were attempting to rent out the rental unit at $1,900.00 per month, versus the $1,600.00 that they were paying in rent during the tenancy.

Landlords' Claim for General Nuisance

The landlords seek compensation in the amount of $1,000.00 for what they describe as general nuisance. They argued that this claim is made based on the tenants' preventing access to the landlords and their contractors and for interfering with the landlords' rights under the Act.

Claims for Application Filing Fees

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. This claim, which was made by each party, will be addressed at the very end of the decision.

Analysis

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.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded (the "four-part test"):

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

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.

. . .

67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

A. TENANTS' CLAIMS

1. and 2. – Claims for Loss of Use of Home and Yard

Did the landlords fail to comply with the Act, regulations, or the tenancy agreement?

To answer this question, we turn first to section 28 of the Act which states that

> A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
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> (a) reasonable privacy;
> (b) freedom from unreasonable disturbance;
> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

There is no doubt that the tenants temporarily suffered from disturbances, loss of exclusive possession of the rental unit due to the extensive renovations and construction, and, that they lost some use of common areas.

Indeed, some of the work appears to have even caused significant interference. Thus, on a *prima facie* basis, I must conclude that a breach of the Act occurred. (Whether the landlords "meant" to cause this breach is immaterial. That section 28 of the Act was breached is sufficient.) And, it goes without saying that the tenants suffered some sort of loss from this breach of the Act.

However, I am not persuaded that the tenants have adequately proven the amount or value of their loss. The percentages provided in the tenants' calculations are, I find, quite arbitrary. Various percentages of 100%, 55%, and so forth, do not appear to be based on anything tangible, such as the percentage of square footage of the property, or some such reasonable baseline from which a loss might be ascertained.

Thus, taking into consideration the oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have not met the onus of proving the amount or value of their loss. Accordingly, this aspect of the tenants' claim is dismissed without leave to reapply.

2. Claim for Loss of Room Rental

In respect of this claim, while the flood repairs may have resulted in a room being made unavailable to rent, I am not prepared to award damages for what would be considered to be business income losses. A landlord would be liable to pay compensation for a tenant's loss of the exclusive possession of a room, for example, but they cannot be held liable for potential future loss of revenues that the tenants might have hoped to have earned from the loss of that room. This does not change even when the landlord may have known about the tenants' intentions in regard to renting the room.

In short, I must conclude that there is no breach of the Act, the regulations, or of the tenancy agreement that might lead to the landlords being liable for a potential loss of revenue from the tenants' planned sublet of the room. For these reasons, I decline to award any compensation in respect of this aspect of the tenants' application.

3. Claim for Pain and Suffering

While the tenants have alleged that the landlords breached section 28 of the Act by the "constant disruption to privacy and quiet enjoyment of their home [that] had substantial impact on their personal health and well being," I am not persuaded that the tenants have proven a reasonable, quantified amount for their pain and suffering.

Certainly, it is not lost on me that, as noted by the tenants, “[p]ain and suffering such as this is not easily quantified.” However, the amount claimed is, in my mind, rather excessive. Moreover, it is difficult for me to accept that both tenants suffered exactly 50% of the total amount claimed.

In short, considering the submissions made, it must be concluded that the tenants have not discharged the onus of proving the value or amount of their loss for pain and suffering. This aspect of the tenants’ claim is accordingly dismissed.

4. Claim for Security and Pet Damage Deposits

Section 38(1) of the Act states the following regarding what a landlord’s obligations are at the end of the tenancy with respect to security and pet damage deposits:

> Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In this dispute, the tenant’s mother provided a statement dated June 23, 2020 in which she purportedly witnessed the tenants providing their forwarding address to the landlords at the end of the tenancy. However, without the mother attending the hearing to affirm and attest to the facts referencing in her statement, I place little evidentiary weight to that document and will not consider it as proof of the events described.

Where we are left then, in the absence of any direct evidence that the tenants provided their forwarding address to the landlords on June 30, 2018, is a situation of two parties providing equally reasonable accounts of when the forwarding address was given. The tenants claimed that they gave their forwarding address to the landlords on the last day of the tenancy.

The landlords claimed and argued that they did not return the security deposit late, and that they "sent it to [tenant's] work as soon as we had the address." The landlords also claimed that the two letters dated after June 30 submitted by the tenants have been altered or adjusted. There is, I note, no basis for this assertion, however.

When two parties to a dispute provide equally reasonable accounts of events, the party making the claim has the burden to provide sufficient evidence *over and above their testimony* to establish their claim. In this case, I find that the tenants have failed to provide any evidence that the tenants in fact gave their forwarding address to the landlords on June 30, 2018. Copies of documents that are dated are not proof that those documents were also in fact given to another party on that date.

Taking into consideration all of the evidence (and lack thereof) before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have not proven that the security and pet damage deposits were returned after the fifteen days and therefore I cannot conclude that the landlords breached section 38(1) of the Act. As such, no claim for a doubling of the deposits under section 38(6) of the Act may be made. This aspect of the tenants' claim is therefore dismissed.

5. Claim for Filing Fee

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the tenants did not succeed in their application, I decline to award any compensation to cover the cost of the filing fee.

B. LANDLORDS' CLAIMS

1. Claims Related to Flood (Claims 1, 2, 3, 4, 5, 7, and 8)

The basis for the landlords' claim for compensation related to the flood is based on an alleged breach of section 32(3) of the Act. This section of the Act states that

> A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

The landlords argued that the tenants caused the flood which resulted in substantial damage. They testified that the hose at the back of the washing machine became dislodged.

Seven weeks passed between the start of the tenancy and the hose becoming dislodged. The landlord argued that “there is no possible way” that it was the landlords who dislodged the hose. Rather, it was “the tenants or their dog” who caused the dislodgment.

At this point, it is important to note that there is no direct evidence of the tenants deliberately, or through neglect, having caused the hose to become dislodged. No photographs, videos, or eyewitness accounts of any such action are in evidence. Nor it is equally important to note, is there any circumstantial evidence that the tenants deliberately or through neglect caused the hose to dislodge and the flood to ensue. And, for that matter, there is no direct or circumstantial evidence to support the rather absurd claim that the tenants’ dog somehow had dislodged the hose.

Finally, there is no evidence of the state of the hose at the start of the tenancy being tightly and properly screwed into the wall. Certainly, the landlord remarked that it had been screwed in “good and tight,” but there is no evidence to support this assertion.

In short, the landlords’ claim that the dislodgment of the hose was caused by the actions or neglect of the tenants is mere speculation. Indeed, as held by the Supreme Court of Canada in *R. v. Villaroman,* 2016 SCC 33, when it comes to circumstantial evidence, any inferences must be reasonable and not speculative. That the tenants occupied the rental unit does not lead me to find that they therefore caused the hose to become dislodged. Quite frankly, it makes no rational sense as to why the tenants would have even contemplated causing the hose to become dislodged.

After carefully considering the landlords’ testimony, submissions, and argument, I am not persuaded that the landlords have proven that the tenants breached section 32(3) of the Act.

Having not proven that the tenants breached the Act in a manner that may have led to the flood, the remaining three criteria of the four-part test need not be considered. Accordingly, all of the landlords’ claim for compensation related to the flood are dismissed without leave.

2. Claim for Loss of Rent

The landlords claim that the tenants frustrated and blocked their efforts to show the rental unit to prospective renters. The tenants adamantly deny this assertion.

Section 29(1) of the Act is the only section under which a breach, and a potential claim for losses, may be made in respect of this aspect of the landlords' application. This section of the Act lays out the conditions and circumstances under which a landlord may lawfully enter a rental unit during a tenancy. If a tenant is found to have behaved in a manner that frustrates or stops a landlord from exercising their right of entry under this section, then compensation may be contemplated.

Subsections 29(1) and (b) of the Act must be considered:

> A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies: [. . .] (b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
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> (i) the purpose for entering, which must be reasonable;
>
> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

Submitted into evidence is a copy of an email dated May 20, 2018 at 11:29 AM from the landlord (T.) to the tenant (L.). The landlord writes that "We have secured prospective applicants for 5886. We will be showing the unit Monday may 21st between 5 pm and 6 pm." Later that afternoon the tenant responds, stating that "5pm doesn't work for us as we are again away for the weekend and won't be back home yet. We can be back by 6pm at the soonest. Does 6 of 630pm tomorrow work for you?" And then there is further back and forth between the parties.

What the tenants appeared to have failed to understand at the time was that landlords may give 24 hours' notice and are not required to obtain any sort of acceptance or confirmation from a tenant that the time and date of entry is acceptable to that tenant. That 5:00 PM did not "work for" the tenants is irrelevant and had no bearing on the landlords' right to enter the rental. Indeed, the landlords had every right, after giving the tenants notice of entry, to simply go and enter the rental unit. Tenants have no right under the Act to be present at the rental unit when such entry occurs.

Based on the evidence before me I find that the tenants deliberately frustrated the landlords' lawful right to enter the rental unit for reasons that are wholly reasonable (that is, to show the house to prospective tenants), and it is therefore my finding that the tenants breached section 29(1) of the Act.

Though a breach occurred, it is difficult for me to find that the landlords suffered the loss of rent for July 2018 solely because of this breach, however. It is not that the tenants completely blocked any showings of the rental unit. Rather, it simply proved a bit more difficult to show the rental unit at a time which was convenient for the landlords.

Thus, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have not met the onus of proving the second required criteria, namely, that the landlords would not have suffered the loss of rental income but for the tenants' breach of the Act. Accordingly, this aspect of the landlords' claim is dismissed.

3. Claim for Filing Fee

As the landlords did not succeed in their application, I decline to grant them any compensation to recover the cost of the filing fee.

Conclusion

The parties' applications are hereby dismissed in their entirety, without leave to reapply.

This decision is final and binding and is made on delegated authority under section 9.1(1) of the Act. Should either party disagree with this decision they are at liberty to make an application under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: September 29, 2021

Residential Tenancy Branch