



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenants: FFT, MNDCT
Landlord: MNDCL, MNRL, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary order for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the

Act, I find that both the landlords and tenants were duly served with the Applications and evidentiary materials.

Issue(s) to be Decided

Are the parties entitled to the monetary orders applied for?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed term tenancy began on September 1, 2018, and continued on a month-to-month basis after August 31, 2019. Monthly rent was set at \$1,895.00, payable on the first of every month. The tenants paid an additional \$115.00 per month for a parking spot. The landlord had collected a security deposit in the amount of \$947.50, which the landlord still holds.

The tenants moved out on December 31, 2019 after giving notice on December 9, 2019 to end the tenancy. The landlord filed an application to recover the lost rental income for January 2020 due to the insufficient notice given by the tenants. The landlord testified that they advertised the rental unit for rent, and were able to re-rent the rental unit on February 15, 2020. The landlord is also requesting a monetary order in the amount of \$25.00, which the landlord incurred for January 1, 2020 due to a NSF charge assessed by the bank.

The landlord is also seeking recovery of the cost of professional carpet cleaning in the amount of \$105.00. The landlord noted that condition 48 on the written tenancy agreement states the following: "Tenants are responsible for having the carpets professionally cleaned at the end of the tenancy, and for submitting a copy of receipt to the landlord". The tenants submitted proof of a professional quality carpet cleaner, and submitted the receipts to the landlord. SG, the landlord's son, testified that he had assisted his father in cleaning the carpet, and testified that they had thoroughly cleaned the carpet as required. The tenants argued that they interpreted "professionally cleaned" to include cleaning using a professional quality carpet cleaner.

The tenants filed their own application for monetary losses. The tenants are requesting a monetary order in the amount of \$6,000.00 in compensation for the additional rent they have to pay for their new rental unit, \$575.55 for moving costs, plus recovery of the filing fee.

The tenants testified that they had no choice but to move out due to the numerous issues they faced in the tenancy. The tenants provided detailed written submissions of the issues they faced in this tenancy. The tenants testified that they were assigned a specific parking spot, which they required due to the landlord's wife's illness and lack of mobility. The tenants testified that they had to file a complaint to the strata manager after the apartment manager gave the parking spot to another tenant. The tenants confirmed in the hearing that following the complaint, they were able to use the designated parking spot again, but were humiliated by the other tenant.

The tenants testified that the strata manager failed to take any actions against this tenant, or other tenants after complaints were filed. Another issue had arisen on January 1, 2019 when a new tenant had moved into the building with their four year old child. The tenants submit that the child would run after 10:00 p.m. at night, and would disturb the tenants and prevented them from being able to sleep. The tenants provided a detailed history of complaints to the apartment managers and strata manager from January 1, 2019 through to December 26, 2019 without any resolution. The tenant testified that their wife suffered from medical conditions which required the ability to rest and sleep in a quiet environment. The tenants testified that they had no choice but to move out due to wife's medical condition, and lack of action on part of the landlord to deal with the noise.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which 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.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

The applicants bear the burden of establishing their claim on the balance of probabilities. The applicants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the applicants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the applicants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 45 of the *Residential Tenancy Act* reads in part as follows:

Tenant's notice

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the tenants did not end this tenancy in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this tenancy. The evidence is clear that the tenants did not comply with the *Act* in ending this periodic tenancy as they never gave notice in a manner required

by section 45(1) of the *Act*. Although I sympathize with the tenants as they feel that they had no choice but to seek new accommodation, the tenants moved out without attempting to mitigate their losses as required by section 7(2) of the *Act*. The tenants submit that the landlords failed to take action from January 1, 2019 through to December 2019 after they had complained about the noise from the upstairs tenants. Despite the ongoing issues, and concerns that the landlord failed to take proper measures to ensure their quiet enjoyment of their rental unit, the tenants did not file an application for dispute resolution until over twenty-one months after the tenants had already moved out. As a result of the tenants' failure to give written notice in accordance with section 45 of the *Act*, the landlord suffered a loss of rental income for the month of January 2020. I am satisfied that the landlord had mitigated their losses by advertising the rental unit immediately, and re-rented the rental unit for February 15, 2020. Accordingly, I allow the landlord to recover the loss of rental income for January 2020. I note that the landlord had applied for a monetary order in the amount of \$2,040.00 for the lost rental income for January 2020. I find that the tenancy agreement stipulates that monthly rent was set at \$1,895.00 plus an additional \$115.00 for parking. As I find parking to be an additional and optional facility which is not included in the monthly rent, I allow the landlord to recover \$1,895.00 only for the month of January 2020. I find that the landlord did sufficiently support that they suffered an additional loss of \$25.00 in NSF charges for the tenants' failure to pay the January 2020 rent as required under the tenancy agreement, and accordingly, I allow his monetary claim.

The landlord filed a claim to recover the cost of professional carpet cleaning services. In assessing this claim, I note that both parties did initial condition 48 on the tenancy agreement which stipulates that the tenants are responsible for having the carpets professionally cleaned at the end of the tenancy, and for submitting a copy of receipt to the landlord. In this case, the tenants rented a professional quality carpet cleaner, and performed the job themselves. I am satisfied that the tenants did pay for a carpet cleaner, and performed the work as testified to. I must now assess whether the tenants met the requirement of the tenancy agreement as both parties had agreed to. In this case the requirement was for the carpets to be "professionally cleaned at the end of the tenancy". Although perhaps loosely interpreted, I find that the tenants met this requirement as they deemed the use of a professional carpet cleaner as operated by themselves constituted the definition of professional cleaning. The terms did not stipulate that the work must be completed by professional cleaners, or by a company that specialized in this service. I find that the tenants had provided proof that they had performed this service to the extent required by the tenancy agreement, and therefore I dismiss the landlord's monetary claim without leave to reapply.

The tenants filed their own monetary claims in relation to the cost of finding new accommodation and moving. As noted above, although I sympathize with the tenants, the tenants lived in a multi-tenanted building, with many occupants. I find that the level of quiet enjoyment is often significantly reduced due to the communal nature of the living space and construction of the building. The tenants are correct that the landlord had a duty to address issues that compromised their right to the quiet enjoyment of the home, but on the same note, the tenants have an obligation to mitigate their losses. I find that instead of exercising other options such as filing an application for dispute resolution, the tenants decided to move out instead. I am not satisfied that the losses claimed were necessary, nor am I satisfied that these losses were suffered due to the landlord's deliberate or negligent actions. I find that the tenants made the decision to move out, and accordingly, I dismiss the tenants' monetary claims without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenants were unsuccessful with their application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application. The tenants must bear the cost of this filing fee.

As the landlord was partially successful with their claims, I allow the landlord to recover half of the filing fee for their application.

The landlord continues to hold the tenants' security deposit of \$947.50. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' deposit in partial satisfaction of the monetary claim.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

I issue a \$1,022.50 Monetary Order in favour of the landlord as set out in the table below.

Item	Amount
Loss of Rental Income for January 2020	\$1,895.00
NSF Charge	25.00
Recovery of Filing Fee	50.00
Less Security Deposit Held	-947.50
Total Monetary Order	\$1,022.50

The tenants must be served with this Order as soon as possible. Should the tenants 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.

The remainder of the landlord's application is dismissed without leave to reapply. 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 5, 2022

Residential Tenancy Branch