



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RR, RP, CNC, FFT**

Introduction

This hearing dealt with an application by the tenants pursuant to the *Residential Tenancy Act* (“the Act”) for:

- to cancel a 1 Month Notice to End Tenancy given for Cause (“1 Month Notice”) pursuant to section 47 of the *Act*;
- a monetary award pursuant to section 67 of the *Act*;
- an order directing the landlord to repair the unit pursuant to section 32 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Tenants C.O. and J.S., along with the landlord attended the hearing by way of conference call. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath. All parties confirmed they were not recording the hearing pursuant to section 6.11 of the Rules of Procedure.

All parties confirmed receipt of each others evidentiary packages and the landlord acknowledged receipt of the tenants’ application for dispute. I find both parties were duly served in accordance with the *Act*.

Preliminary Issue – Notice to End Tenancy

Following opening comments, the tenants confirmed they were accepting the landlord’s Notice to End Tenancy and were no longer looking to dispute the 1 Month Notice to End Tenancy issued on October 30, 2021. The tenants asked that their application to dispute this 1 Month Notice be withdrawn.

As the tenants are no longer disputing the 1 Month Notice and have indicated they will vacate the premises at the end of January 2022, pursuant to section 44(1)(d) of the *Act*, I find this tenancy has ended. The landlord did not ask for an Order of Possession.

Issue(s) to be Decided

Are the tenants entitled to a monetary award? Can the tenants recover the filing fee?

Background and Evidence

This tenancy began on September 1, 2020. Rent was \$2,250.00 per month and a security deposit of \$1,250.00 paid at the outset of the tenancy continues to be held by the landlord.

The tenants are seeking a monetary award of \$600.00 (4 x \$150.00) representing alleged issues around a broken washing machine and dryer. The tenants argued that this figure represented \$50.00 per tenant for each month that they were without laundry facilities. The tenants testified that the laundry had been unusable since September 7, 2021 and they alleged the landlord had taken minimal steps to repair the laundry despite repeated attempts to have it repaired.

The tenants explained they are seeking an award of \$50.00 per person representing the time, expense and inconvenience of having to do their laundry off-site. As part of their evidentiary package, the tenants supplied various letters from friends explaining that the tenants had to use the laundry machines of different people during the time in question.

The parties provided conflicting testimony regarding the steps that were taken to address the laundry issue. The landlord alleged the tenants continued to use the laundry despite repeated instructions not to do so. Further, the landlord testified that numerous steps were taken to fix the laundry in the rental unit. As part of her evidentiary package, the landlord supplied numerous emails purporting to show steps she had taken to have the laundry issue addressed by a repair person.

I note back and forth correspondence between the tenants and the landlord starting on September 7, 2021, followed by an October 4, 2021 from the landlord to the tenant indicating that a repair person would be attending the property.

On October 20, 2021 the landlord received an email titled 'Appliance Service Ltd.' Which states, "It will cost \$250.00 for the tub if it is required on top of everything else

that was estimated to you. I would not be able to determine if the tub is required until everything is taken apart. The tub is a factory order and could take up to 3 months to receive.”

No further relevant messages are exchanged between the parties.

The tenancy agreement submitted in evidence by the tenants does not include the use of laundry in Section 3 of the agreement marked **What is included in the rent**. There is note which states, “see attached addendum”, however, no addendum was included with the tenants’ application package.

Analysis

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. As noted in Policy Guideline #16, in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove their entitlement to a claim for a monetary award.

Further, section 7(1) of the *Act* states, “If a landlord does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord must compensate the other for damage or loss that results.” While section 7(2) notes, “A 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 tenants have applied for a monetary award of \$600.00 representing \$150.00 per month for a four-month period.

As noted previously, the parties provided conflicting testimony on the matter, with the landlord arguing she took all reasonable efforts to have the laundry repaired, while the tenants argued the landlord made minimal efforts to address their concerns. Further, the landlord alleged the tenants continued to use the laundry despite it being broken and following several warning from her not to do so.

Policy Guideline #1 states at 1-3, “The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.”

While I find the tenants have sufficiently demonstrated that they were without the use of laundry for the time frame cited in their application, I do not find any evidence that laundry was provided for in the terms of their tenancy agreement. I do however accept that it was an implied term of their tenancy. The landlord did not object to their use of laundry provided (had it been working properly) and forward no argument that laundry did not form part of their tenancy.

I find the landlord made some reasonable efforts to fix the laundry but the fact remains that the tenants were without the use of laundry for a significant period of time. Further, no specific cause of the laundry issues was identified and recorded by any repair person who attended the property.

I find that a nominal award as described by *Policy Guideline #16* would be appropriate in this case. These are described as, “Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.”

I therefore grant the tenants half of their monetary award, specifically an award of \$300.00.

As the tenants were successful their application, they may recover the filing fee.

Conclusion

The tenants withdrew their application disputing the 1 Month Notice for Cause and this Notice remains in effect.

I grant the tenants s a Monetary Order of \$400.00 as follows:

ITEM	AMOUNT
Nominal damages	300.00
Recovery of filing fee	100.00

TOTAL =	\$400.00
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The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 27, 2022

Residential Tenancy Branch