



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **LL: MNDL, MNDCL**
 TT: FFT, MNDCT

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “*Act*”).

The landlord named OR and HN as respondents and applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

The tenant HN applied for:

- a monetary order for compensation for damage or loss 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 sworn testimony, to make submissions and to call witnesses. The tenants represented themselves with the aid of an individual assisting.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the tenants noted typographic errors in how their names were spelled in the landlord's application and provided the correct spellings. The names used in the style of cause for this decision have been corrected in accordance with the consent of both parties.

Issue(s) to be Decided

Is either party entitled to a monetary award as claimed?
Are the tenants entitled to recover the filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in August 2019. The monthly rent was \$850.00 payable on the first of each month. The landlord claims that there is an agreement wherein the tenants are required to pay an additional \$50.00 each month for utility fees and the tenants have never made any of the required payments. The tenants dispute that such an agreement exists. The landlord collected a security deposit of \$425.00 which is still held by the landlord. No condition inspection report was prepared at any time for this tenancy. No written tenancy agreement was prepared.

No notice to end this tenancy was ever issued by the landlord. The tenants submit that in June, 2021 the landlord cut off utilities including electricity, heating and hot water rendering the rental unit uninhabitable. The evidence of the parties is that this was a fraught tenancy for much of its duration with the landlord frequently harassing the tenants and their child verbally, approaching them in an aggressive manner and entering the rental unit on multiple occasions without notice or permission. The tenants gave evidence of the detrimental psychological effects this had on them, the anxiety and fear experienced on a daily level, and the negative health effects causing them to take time off from employment.

The tenants further gave evidence that, on one instance, the landlord entered the rental unit without notice or permission and attempted to forcibly eject the tenants and their child from the premises. As a result of these assaults the landlord has been criminally charged and there is currently a no-contact order barring the landlord from interactions with the tenants. The tenant provided documentary evidence including a valid police file

number and court file number showing that the landlord has been criminally charged with assault.

The tenants initially gave written notice to the landlord of their intention to vacate by a letter dated June 11, 2021 with an end of tenancy date of July 31, 2021. However, the tenants submit that as a result of the landlord cutting off utilities and making the rental unit uninhabitable, they were forced to vacate by the end of June 2021 and find alternate accommodations. Nevertheless, the tenants paid rent in the amount of \$850.00 for the month of July 2021.

The tenants say that they incurred significant costs related to ending the tenancy including moving fees, alternate accommodations, cost of food as they had no access to a kitchen, and time off from work due to the stress and negative physical effects caused by the landlord's actions. The tenants seek a monetary award in the amount of \$17,622.20. The tenants submitted various invoices, medical notes and explanations for their expenses recorded on a spreadsheet.

The tenants submit that they provided the landlord with written notice of their forwarding address by a letter dated December 7, 2021. A copy of the letter and a valid Canada Post tracking receipt were submitted into evidence. The tenants say that they have not authorized the landlord to retain any portion of the deposit and seek its return. The landlord disputes that they were ever provided with a forwarding address.

The landlord seeks a monetary award in the amount of \$11,000.00 and provides the following description of their claim in their application:

NO RENT GINN FOR 4 MONTH
NO NOTICE GIVEN
NO FORWARD ADREES GIVEN

1 FURNACE DAMAGE
2 HOT WATER TANK DAMAGE
3 FLORE FLOUR DAMAGE
4 APPLANCE DAMAGE
5 BATH ROOM DAMAGE
6 UN PAID RENT

The landlord was given a full opportunity to make submissions on their claim and how they calculated the monetary amount. The landlord's primary submissions consisted of disparaging the character of the tenants and insisting that they are entitled to monetary compensation. The landlord did not detail which months they believe rent was not paid nor did they give a description of what damage they believe was caused by the tenants.

Analysis

As the parties disagree on details of this tenancy and their conflict, I must first make a finding of credibility. I have considered the testimonies of the parties, their content and demeanor as well as whether it is consistent with the other evidence and circumstances of this tenancy.

Based on the totality of the evidence I find the landlord to be a wholly unreliable witness. Their testimony was self-serving, often contradicted their own earlier statements during the hearing, and is not supported in any of the documentary evidence of the parties. The landlord repeatedly failed to answer simple yes or no questions I put to them, instead giving lengthy testimony on matters unrelated to the issues at hand.

Despite cautions against interruptions and inappropriate behaviour pursuant to Residential Tenancy Rule of Procedure 6.10 the landlord repeatedly made remarks and inappropriate comments when the tenants and their witness were testifying, disputing the veracity of their statements.

The tenants provided internally consistent testimony that was supported in the documentary materials. Where they were uncertain of facts, they admitted the limitations of their memory and did not attempt to provide information they did not have. Where the accounts of the parties differ, I find the tenants to have greater credibility.

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. 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.

Pursuant to Residential Tenancy Rule of Procedure 6.6 the onus is on the applicant to establish their claim on a balance of probabilities.

I find the landlord has failed to establish any portion of their claim on a balance of probabilities.

I accept the undisputed evidence of the parties that monthly rent for this tenancy was \$850.00. I do not find the landlord's position that there was an additional agreement that the tenants would pay \$50.00 for utilities to particularly persuasive. By the landlord's own testimony there is no written tenancy agreement recording such terms. The landlord testified that the tenants have never made any payment for utilities. I find that a reasonable interpretation of the evidence is not that there is an agreement obligating the tenants to pay \$50.00 for utilities each month and the tenants have breached this agreement throughout the whole tenancy, but rather that no such agreement exists, and the landlord's testimony is incorrect.

In any event, the landlord failed to prepare the tenancy agreement in writing as required under section 13(1) of the *Act*. I find that it is not open for a landlord to fail to properly record the terms of the tenancy agreement and subsequently claim additional requirements for payment.

Similarly, I accept the testimony of the tenants that the landlord insisted upon rent payments in cash and did not provide receipts as required under section 26(2) of the *Act*. I do not find the landlord's dispute of these facts to be particularly convincing. If the landlord issued receipts it would be reasonable to expect that the tenants would have copies or that the landlord themselves would have records of previous payments for this tenancy. The landlord now claims that there is a rental arrear but has provided no details, submitted no tenant ledger or documentary evidence and says they are seeking a monetary award of \$5,500.00 for unpaid rent, a figure for which they provided no calculations or explanation.

I find the landlord's damage claims to not be supported in any documentary materials and have no air of reality. I find the landlord's testimony on these points to lack any substantive details. The landlord provided no description of the purported damage despite being given a full opportunity to make submissions. Instead, the landlord used the time provided in the hearing to simply make disparaging remarks about the tenants and their tenancy. If there was damage to the rental unit as claimed, it would be reasonable to expect the landlord could provide some details or description and that

there would be documentary evidence noting such damage. I draw an adverse inference from the landlord's failure to provide details of their claim or provide materials in support.

I find that the landlord has failed to demonstrate that any damage or loss exists or that it is attributable to any breach on the part of the tenants. The landlord has failed to meet their evidentiary onus and consequently I dismiss their claim in its entirety without leave to reapply.

Section 32(1) provides the obligation of a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

Section 28 of the *Act* speaks to a tenant's right to quiet enjoyment, and provides as follows:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (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.

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means a substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

Section 29 restricts the landlord's right to enter a rental unit that is subject to a tenancy agreement without giving notice to enter the suite for reasonable purposes.

Based on the preponderance of evidence, including the consistent testimony of the tenants, the signed witness statements from third parties, the medical notes, and the evidence of criminal charges laid against the landlord, I find that the landlord has engaged in conduct that has resulted in unreasonable disturbance of the tenants, infringement of their right to privacy and constitutes a breach of their right to quiet enjoyment. I find that these were not simply isolated incidents that occurred during the tenancy but characteristic of the relationship between the parties that was ongoing throughout.

This behaviour culminated in June 2021 when the landlord shut off the utilities to the rental unit, entered the suite without authorization and physically assaulted the tenants through unwanted, violent contact.

As noted above, I do not find the landlord's submission that the tenancy agreement requires payment of utilities by the tenants to be persuasive. I find that the monthly rent of \$850.00 included the use of utilities. In any event, even if utilities were not included in the agreement, pursuant to section 27(1) of the *Act*, a landlord must not terminate or restrict a service or facility that is essential to the tenant's use of the rental unit as living accommodation.

I find that electricity, hot water and heating are essential elements for the use of a rental unit as living accommodation. I find that a rental unit that is without these utilities is not suitable for occupation.

I accept the evidence of the parties that utilities were cut off in June 2021 and the tenants vacated the rental unit that month having paid the monthly rent in full. I accept the evidence of the tenants that they made full payment of rent in the amount of \$850.00 for each month of the tenancy up through to July 2021.

I find that the actions of the landlord constitute a breach of the *Act* which has resulted in a loss of quiet enjoyment on the part of the tenants and a loss in the value of the tenancy. I accept the evidence of the tenants that this behaviour occurred throughout the tenancy from its inception in October 2019 until the tenants vacated the rental unit in June 2021, a period of 21 months.

While the tenants continued to reside in the rental unit, I find that the conduct of the landlord had a profound detrimental effect on the tenants and their young child. I accept that the tenants had to make major adjustments to their lifestyle, that they experienced negative health and mental health effects and were unable to fully enjoy their home. I find it reasonable that individuals would live in anxiety and fear when there is a landlord who threatens them and periodically enters the rental unit without notice or reason.

I am satisfied that the tenants have met their evidentiary burden to demonstrate that they have suffered a loss of quiet enjoyment and a loss in the value of the tenancy. Based on the totality of the evidence, I find that this loss was significant in nature and continued for much of the period of this tenancy. While I accept the evidence that the tenants were able to reside in the rental unit for much of the tenancy, I find that this occupancy was fraught and accompanied by fear and anxiety. I accept that the actions of the landlord culminated in their shutting off utilities and physically assaulting the tenants.

Under the circumstances, I find that a \$4,420.00 representing a retroactive reduction of 20% of the value of the tenancy for the 21 months that the tenants occupied the rental unit and 100% recovery of the \$850.00 rent paid for July 2021 when the suite was uninhabitable, to be appropriate. In accordance with section 65(1)(f) of the *Act*, I issue a one-time retroactive monetary award in the tenants' favour in that amount to compensate the tenants for the loss in value of their tenancy stemming from the landlord's breaches.

I find that the tenants have demonstrated that the landlord's conduct has caused an ongoing and significant loss of quiet enjoyment. The tenants provided evidence about the inconvenience to their daily routines, the fear they had for their personal safety and the health of their children and the impact the landlord's behaviour has caused. I find it appropriate to issue a one-time monetary award in the tenants' favour in the amount of \$4,462.50 for loss of quiet enjoyment, the approximately equivalent of 25% of the monthly rent for the period of 21 months that the tenants occupied the rental unit.

I accept the evidence of the tenants that they incurred costs of alternate accommodations for the period of June and July 2021 when the landlord had terminated utility services. I am satisfied with the documentary evidence submitted by the tenants that the cost of their housing and other expenses for that period was \$1,619.44 and issue a monetary award in that amount.

I find insufficient evidence in support of the portion of the tenant's claim seeking a monetary award for loss of income. While I find that the conduct of the landlord and their agents have had a detrimental effect on the tenants' ability to work and earn income, I find insufficient evidence to demonstrate the hours missed or the hourly earnings the tenants lost. Consequently, I find that I am unable to make a finding of a loss of income beyond what I have issued under the global damages for loss of quiet enjoyment.

I find insufficient evidence to establish that the cost of food is attributable to a breach on the part of the landlord. The tenants would have been required to eat in any event and I find insufficient evidence to find a causal link that the cost of the food purchased and consumed during June and July 2021 is a result of the landlord's actions or negligence. Consequently, I dismiss this portion of the tenants' application.

I find that the cost of postage and filing fees for previous dispute resolution applications that were subsequently withdrawn are not costs borne as a result of the landlord's breach but simply the expected disbursements that accompany pursuing a dispute resolution application and are not recoverable pursuant to section 67.

Section 24(2) of the *Act* provides that the right of a landlord to retain a security deposit is extinguished if they do not complete a condition inspection report in accordance with the *Act* and regulations.

Section 38 of the *Act* requires the landlord to return all of a tenant's security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit.

In the present circumstance I accept the evidence of the tenants that they provided the landlord with their forwarding address by a letter dated December 7, 2021. I do not find the landlord's rebuttal to be convincing. I find the landlord's refutation to be more in the nature of simple contradiction of the submission of the other party without providing

cogent reasoning. The tenants provided documentary evidence by way of a copy of the letter and a valid Canada Post tracking receipt. I am satisfied on a balance that the landlord was served with the tenants' forwarding address. Pursuant to sections 88 and 90 of the Act the landlord is deemed served on December 12, 2021, five days after mailing.

I accept the evidence of the parties that the landlord has not returned the security deposit in full within 15 days of the date of deemed service of the forwarding address or at all. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to an \$850.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period. As the tenants were successful in their application, they are entitled to recover the filing fee for this application from the landlord.

Because I am concerned with the multiple instances of the violations on the part of the landlord as detailed above, the nature of the offenses in terminating heating and electricity in a rental unit making it wholly unsuitable for occupation, and the egregious and especially heinous act of physical assault perpetrated by the landlord on the tenants, I am sending a copy of this decision to my manager.

My manager will review this decision and if they are of the opinion that these circumstances could reasonably lead to administrative penalties, then they will send a copy of this decision along with any other relevant materials from this dispute resolution file to the Compliance and Enforcement Unit. This separate unit of the Residential Tenancy Branch is responsible for administrative penalties that may be levied under the Act. They have the sole authority to determine whether to proceed with a further investigation into this matter and the sole authority to determine whether administrative penalties are warranted in these circumstances. After any dispute resolution materials are sent, neither I nor my manager play any role in their process and, if the Compliance and Enforcement Unit decides to pursue this matter, they do not provide me or my manager with any information they may obtain during their process.

Before any administrative penalties are imposed, a person will be given an opportunity to be heard. While the Compliance and Enforcement Unit can review the contents of this dispute resolution file, they can also consider additional evidence that was not before me. They are not bound by the findings of fact I have made in this decision. The orders made in this decision are, however, final and binding and cannot be challenged or set aside in the administrative penalty process.

Any further communications regarding an investigation or administrative penalties will come directly from the Compliance and Enforcement Unit.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$11,451.94 on the following terms:

Item	Amount
Rent Reduction	\$4,420.00
Loss of Quiet Enjoyment	\$4,462.50
Damages and Losses Incurred	\$1,619.44
Double Security Deposit	\$850.00
Filing Fee	\$100.00
TOTAL	\$11,451.94

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

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: March 2, 2022

Residential Tenancy Branch