



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, MNDCT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On September 7, 2021 the Tenants applied for:

- an order to cancel a Two Month Notice to End Tenancy;
- an order for the Landlord to comply with the Act, regulation, or tenancy agreement;
- compensation for monetary loss or other money owed; and
- an order to reduce rent for repairs, services, or facilities agreed upon but not provided.

On September 20, 2021, the Tenants applied to amend their application to:

- increase the compensation of \$5,125.00 sought, to an amount that was unclear; and
- increase the rent reduction sought, from \$1,050.00 to \$2,050.00.

On December 31, 2021, the Tenants applied to amend their application to:

- increase the compensation sought, from \$5,125.00 to \$10,000.00.

Procedural History

This hearing was reconvened after it was adjourned on January 18, 2022. This decision should be read in conjunction with the Interim Decision issued on February 8, 2022.

The Interim Decision and notices of reconvened hearing (containing the call-in numbers for this hearing) were sent to each of the parties using the contact information provided to the Residential Tenancy Branch.

Service of Documents

On January 18, 2022, I accepted service of the Tenants' Notice of Dispute Resolution Proceeding, evidence, and amendments as noted in the Interim Decision.

Dismissal of Claims

As the Tenants' claims for: 1) an order to cancel a Two Month Notice to End Tenancy, and 2) an order for the Landlord to comply with the Act, regulation, or tenancy agreement were dismissed in the Interim Decision, this decision contemplates only the Tenants' remaining two claims for: 1) an order to reduce rent, and 2) compensation for monetary loss or other money owed.

The Reconvened Hearing

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Issues to be Decided

- 1) Are the Tenants entitled to an order to reduce rent for repairs, services, or facilities agreed upon but not provided?
- 2) Are the Tenants entitled to compensation for monetary loss or other money owed?

Background and Evidence

The parties agreed on the following particulars of the tenancy. It began on March 1, 2020; rent is \$2,050.00, including \$250.00 for utilities, and is due on the first of the month; the Tenants paid a security deposit of \$1,025.00 and a pet deposit of \$1,025.00, which the Landlord still holds; and a move-in condition inspection was conducted.

The Landlords served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property, dated August 26, 2021, with a corrected effective date of October 31, 2021. The Tenants exercised their right to move out prior to the effective date of the notice, and the Tenants vacated the rental unit on September 16, 2021.

The Tenants testified that in addition to the claim for a \$2,050.00 rent reduction, their claim for \$10,000.00 includes the following:

- \$4,100.00 for double the security and pet damage deposits;
- \$2,050.00 for compensation equal to one month's rent following service of the Two Month Notice;
- \$900.00 for utilities overpayment; and
- \$900.00 for "pain and suffering, and for being forced out of their home during a housing crisis, and penalized for asking for the basics."

A) Testimony and evidence presented on rent reduction

The Tenants testified they are seeking a one-time rent reduction of \$2,050.00, as they had no running water or sink in the kitchen from May 26 to July 20, 2021, and had to live in the bedrooms due to the presence of mould in the kitchen. The Tenants testified they are seeking a half month's rent for each month. The Tenants submitted as evidence a photo of the hole in the counter where the kitchen sink used to be.

The Tenants testified they always told the Landlord immediately if there was an issue with the rental unit. The Tenants testified that they first notified the Landlord that the kitchen sink was leaking on or around March 1, 2021. The Landlord fixed the sink, but then around May 22, 2021, they noticed a strong mould or mildew odour, and discovered that under the sink, "way back," there was a small drip. The Tenants testified they told the Landlord "to come right away." The Tenants testified that the Landlord assessed the situation, then turned off the water and removed the sink the next day.

The Tenant testified there was "lots of mould," which she cleaned up. The Landlord testified that although Tenant YM said she would clean up the mould, he knew there would be more, and wanted to use special mould cleaning products after the counters were removed.

The Tenant testified that after about a month without a kitchen sink, the Tenants contacted the Landlords because YM was having major surgery on July 5, 2021, and they needed the kitchen sink functional to maintain necessary post-op hygiene.

The Tenant testified that following her July surgery, the repairs still had not been made, and as there was still mould and mildew behind the kitchen cabinets, the Tenants had to spend all their time in the bedrooms. The Tenant testified that although she was supposed to maintain a high level of hygiene following her surgery, they had to wash dishes in the bathroom sink.

The Tenants testified that on July 21, 2021, the Landlord indicated they were waiting for a specific piece for the kitchen, to allow them to complete the repairs.

The Landlord testified that the counter was warped, and they had to remove the cabinets due to water damage caused by a constant leak of the taps. The Landlord testified that the tap had been replaced, and a leak fixed twice.

The Landlord testified that, regarding the timeline of the repairs, he “couldn’t get his cabinet guy,” so bought a replacement cabinet, but did not have all the parts he needed to complete the repairs to the cabinet and kitchen. The Landlord testified that Tenant YM had texted saying she was okay with the time it was taking to complete the repairs; a copy of the text was not presented as evidence.

The Landlord testified that he and his spouse moved into the rental unit, but still have not finished the kitchen as they cannot match the original components.

B) Testimony and evidence presented on the security and pet deposits

The Tenant testified that although they provided a forwarding address to the Landlords in writing, they have not received the security and pet damage deposits back from the Landlords.

In their December 31, 2021 amendment, the Tenants submitted that they sent their forwarding address to the Landlord on September 27, 2021. The Tenants testified that the forwarding address is a P.O. box, and that it was sent by registered mail, accompanied by with a request for the deposits and compensation. The Tenants provided a Canada Post tracking number (as noted on the cover page of this decision).

The Landlord testified that they kept the deposits because they came to a verbal and written agreement with the Tenants to keep them.

The Tenants submitted as evidence an undated letter to the Landlord, in which it states that the Tenants are giving their 10 days notice, having been served the Two Month Notice, as they have rented another home. The letter states: “we have agreed (both parties) to security deposit to be used in lieu of rent for September (1-15).”

The Tenants also submitted as evidence an agreement dated September 6, 2021, written by the Landlord, which states that the agreement was struck on September 3,

2021, and that both parties requested it be put in writing and signed. The agreement terms include:

- “The tenants will vacate the property by Sept 15, 2021” and
- “If there are no further damages (excluding Kitchen cupboard/countertop damage already addressed) the tenants agree to forego their damage deposit of \$1020 for the deposit of ½ months’ [sic] rent, and \$1025 for pet deposit for pets (dog and cats).”

The agreement is signed by only the Landlord; it is not signed by either of the Tenants.

The Landlord testified that Tenant DH had suggested in a text that they “meet in the middle,” and proposed that the Landlords keep both the deposits and that the Tenants leave by September 15, 2021. A copy of the text was not submitted as evidence.

The Tenants submitted as evidence a letter dated September 10 or 16, 2021, which states that the Tenants “are relinquishing possession” of the rental, and “we request deposit to be returned once a condition report meeting between parties is complete.” A note at the bottom of the submission states that a copy of the letter was given to the Landlord’s sibling on September 16, 2021.

When I asked the Tenants if they came to an agreement with the Landlords about them keeping the security deposit and pet deposit, Tenant YM testified that Tenant DH said they would consider the Landlords keeping half, but then spoke with YM about it. YM testified that at that time she had undergone her major surgery, and DH just wanted to walk away from the rental situation. YM testified they did not sign the Landlords’ agreement to give up both the deposits.

The Landlords testified they told YM that DH was welcome to participate in a move-out inspection, but not YM, due to a “personality clash.” The Tenants’ December 31, 2021 amendment indicates that the “Landlord refused condition report.”

Both parties agreed that a move-out inspection was not done, and that there was considerable friction on move-out day.

C) Testimony and evidence presented on Two Month Notice compensation

The Tenants testified they are seeking \$2,050.00 as the Landlord did not provide them compensation equal to one month's rent after serving them in person with a Two Month Notice for Landlord's Use on August 26, 2021. Page 1 of a Two Month Notice was submitted as evidence. The Tenants testified they gave the Landlords 10 days written notice they would be vacating the rental unit early, and provided supporting evidence.

The Tenants' evidence was not disputed by the Landlords.

D) Testimony and evidence presented on overpayment of utilities

The Tenants testified they are seeking \$900.00 for overpayment of utilities.

The Tenant testified that the tenancy agreement said the Landlords would provide bills and would adjust the utility charges accordingly per consumption. The Tenant testified that though they had asked for copies of the utility bills, the Landlords did not provide them.

The Landlord testified that it says in the tenancy agreement that utilities would be \$250.00 per month, and that any reduction would be passed on to the Tenants. The Landlord testified that a \$2.00 credit on the bill indicated that the amount charged to the Tenants was correct.

The Tenants provided a copy of the tenancy agreement as evidence; on page 2 it says "hydro & propane limit of \$250/month averaged over the year. ... this amount may flex up or down when providers assess annual usage – this will be advised to tenant."

The Tenant testified she called the gas company and asked how much propane would cost to fuel a small fireplace and heat water for a 1,200 square foot home, and was told \$50.00 to \$150.00, which the Tenant calculated was \$75.00 a month, on average. The Tenant did not submit any documentation or call a witness in support of their claim that utilities at the rental unit were less than \$250.00 per month.

E) Testimony and evidence presented on non-pecuniary damages

The Tenant testified they are seeking \$900.00 for “pain and suffering, and for being forced out of their home during a housing crisis, and penalized for asking for the basics,” and provided no additional testimony or documentary evidence in support.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making that claim.

A) Considering the Tenants’ claim for \$2,050.00 in rent reduction

Section 32 of the Act provides:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The Tenants gave undisputed testimony that the rental unit did not have running water in the kitchen or a kitchen sink from May 26 to July 20, 2021. The Landlord acknowledged there was a delay in completing the repairs and there was mould throughout the kitchen. I find this evidence establishes that the Landlords breached section 32 of the Act, by failing to repair and maintain the rental unit accordingly. Furthermore, I find that a kitchen sink with running water meets the definition of “utilities and related services” and are essential to the Tenants’ use of the rental unit as living accommodation. The Landlord’s failure to provide running water and a sink in the kitchen is a breach of section 27 of the Act:

Terminating or restricting services or facilities

27 (1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

- (b) providing the service or facility is a material term of the tenancy agreement.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
 - (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
 - (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Policy Guideline 22 states that where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant. Given the significance of a kitchen sink for sanitary food handling, I find the Tenants' use of the rental unit was significantly affected by the Landlords' breach of sections 32 and 27, and the Tenants are entitled to their claim for a rent reduction.

Pursuant to section 65(1)(f), I order past rent to be reduced by 50 percent for June and July 2021 in the total amount of \$2,050.00.

B) Considering the Tenants' claim for \$4,100.00 for double the security deposit and pet deposit

The parties agreed that a move-in condition inspection was completed at the start of the tenancy. Section 35 of the Act requires the landlord to offer at least two opportunities for the tenants to participate in a move-out condition inspection and states the landlord is required to complete the condition inspection report, even when the tenants do not participate.

Condition inspection: end of tenancy

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

- (a) on or after the day the tenant ceases to occupy the rental unit, or
- (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
- (b) the tenant has abandoned the rental unit.

The prescribed manner for scheduling the inspection is set out in the regulations:

Two opportunities for inspection

17 (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

- (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
- (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

The Landlord acknowledged that only one Tenant was invited to participate in a move-out inspection and gave no evidence of providing the Tenants with proposed dates and times or a final notice in the approved form pursuant to section 17(2)(b) of the regulations. There is no evidence of a move-out condition report being prepared by the Landlords and provided to the Tenants. As a result, I find the Landlords breached the Act and regulations.

Pursuant to section 36 of the Act, by failing to comply with section 35, the Landlords extinguished their right to retain the Tenants' security deposit for the purpose of claiming against the security deposit or the pet damage deposit, or both, for damage to the rental unit.

The Tenants provided evidence to substantiate that they sent their forwarding address to the Landlord on September 27, 2021. Pursuant to section 90 of the Act, I deem the Landlord received the Tenants' forwarding address on October 2, 2021. The Landlord was required to return the deposits to the tenants by October 17, 2021 unless they had a lawful reason to retain the deposits.

Section 38 of the Act provides:

Return of security deposit and pet damage deposit

38 (1) 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.

...

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

...

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

After extinguishing their right to retain the deposit to claim against it for damages, the only lawful reasons for the Landlords to retain the deposits are if the Landlords applied for dispute resolution to claim against the deposits for compensation for the Tenants' damage to the rental unit, or if the Tenants agreed in writing for the Landlords to retain

an amount to pay a liability or obligation of the Tenants. The Landlords provided no evidence of either filing a claim to retain the deposits or obtaining the Tenants' written agreement for the Landlords to retain any amount of the deposits.

As the Landlords did not demonstrate a lawful reason to be holding the Tenants' deposits, the Landlords must pay the tenants double the amount of the deposits.

Pursuant to section 38(6), I order the Landlords to pay the Tenants double the value of their deposits: \$4,100.00.

C) Considering the Tenants' claim for \$2,050.00 as the Landlord did not provide compensation equal to one month's rent, having served a Two Month Notice

The Tenants provided undisputed evidence they were served with a notice to end the tenancy under section 49 of the Act, and this is the reason they vacated the rental unit.

Section 51 provides:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The Tenants provided undisputed testimony that they have not been compensated the equivalent of one month's rent payable under the tenancy agreement.

Pursuant to section 51(1), I order the Landlords to compensate the Tenants \$2,050.00.

D) Considering the Tenants' claim for \$900.00 for utilities overpayment

The Tenants signed a tenancy agreement requiring them to pay \$250.00 per month in utilities. As the Tenants agreed to this term of the tenancy agreement and provided no evidence of the actual amount of utilities consumed each month, the Tenants have not substantiated that they overpaid utilities.

The Tenants' claim is dismissed.

E) Considering the Tenants' claim for \$900.00 for non-pecuniary damages

The Tenants did not explain why their claim for a rent reduction under section 65, their claim for compensation under section 51 for being served a notice to end tenancy for landlord's use, and their claim for double the value of their deposits under section 38 are insufficient to compensate for "pain and suffering, and for being forced out of their home during a housing crisis, and penalized for asking for the basics."

The Tenants' claim is dismissed.

Conclusion

The Tenants are provided with a monetary order in the amount of \$8,200.00 to award them

- 50 percent rent reduction for two months (\$2,050.00);
- double the value of the security and pet damage deposits (\$4,100.00); and
- compensation for the section 49 notice (\$2,050.00).

The Tenants must serve the monetary order to the Landlords. Should the Landlords fail to comply with the order, the order may be enforced in the small claims division of provincial 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 16, 2022

Residential Tenancy Branch