



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S, MNDL-S, MNDCL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The landlord's agent and tenant P.K. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this decision and order.

Preliminary Issue- Amendment

Tenant P.K. testified that the landlord incorrectly spelled his last name in the landlord's application for dispute resolution. The above testimony was not disputed by the agent. Pursuant to section 64 of the *Act*, I amend the landlord's application to correctly spell tenant P.K.'s last name.

Preliminary Issue- Service

Both parties agree that the landlord served the tenants with a copy of this application for dispute resolution via registered mail. I find that the tenants were served in accordance with section 89 of the *Act*.

The agent testified that the tenants were served with the landlord's evidence via registered mail on April 5, 2022. Tenant P.K. testified that the tenants did not receive any evidence from the landlord.

The landlord did not enter into evidence any proof of service documents such as the registered mail receipt, Canada Post tracking printout, Canada Post customer receipt or a photograph of the serving envelope. In the hearing the agent provided two tracking numbers, but later testified that she did not know if the tenants were served with the landlord's evidence.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure (the "*Rules*") states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

[Emphasis added]

I find that the landlord has not proved that the tenants were served via registered mail as no proof of service documents were entered into evidence and tenant P.K. testified that the tenants have not received evidence from the landlord. While the landlord provided tracking numbers in the hearing, I find that the landlord has not proved that the tracking numbers are legitimate Canada Post tracking numbers or that the packages

that are associated with the tracking numbers were sent to the tenants' address for service. Pursuant to my above findings, the landlord's evidence is excluded from consideration.

The agent was provided with the opportunity to either continue with this hearing, without the landlord's evidence being considered or to withdraw the landlord's application, in which case the landlord's application would be dismissed with leave to reapply. The agent elected to continue with the hearing, excluding the landlord's evidence.

Tenant P.K. testified that he uploaded the tenants' evidence to the Residential Tenancy Branch online portal but did not serve the landlord because he believed the landlord would receive the evidence through the online portal.

Both parties agreed that the landlord served the tenants with the dispute resolution application materials, which include the Notice of Dispute Resolution Proceeding. On page two of that notice, under "Respondent Information", it states:

Each respondent has been assigned a unique Dispute Access Code for submitting evidence to the Residential Tenancy Branch. Evidence must be served to the Residential Tenancy Branch and to each applicant as soon as possible. Instructions for evidence processing are included in this package. Deadlines are critical. Intentional delay may affect the outcome of the hearing. Late evidence may or may not be considered by the arbitrator.

[Emphasis added]

Rule 3.15 of the *Rules* states in part:

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible.

Rule 3.16 of the *Rules* states:

At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

Pursuant to the above *Rules*, the tenants were required to serve the landlord with their evidence. As the tenants did not serve the landlord with their evidence, the tenants' evidence is excluded from consideration.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
4. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
5. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2021 and ended on August 31, 2021. Monthly rent in the amount of \$3,200.00 was payable on the first day of each month. A security deposit of \$1,600.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenancy agreement states that cable and electricity are not included in the rent.

Both parties agree that a joint move in condition inspection and report was completed on May 1, 2021. Both parties agree that a joint move out condition inspection and report was completed on August 31, 2021.

Both parties agree that the tenants provided the landlord with their forwarding address via text message on September 11 or 12, 2021.

The landlord filed this application for dispute resolution on September 14, 2021.

Landlord's claim for unpaid rent

The agent testified that the tenancy agreement did not include cable and that the tenants agreed to use the landlord's cable and to pay the cable bill. The landlord's application for dispute resolution states that the tenants owe \$121.80 per month for four months (the duration of the tenancy) for a total of \$487.20. The agent testified that this was a mistake and that the tenants actually owe the landlord \$96.81 per month for the duration of the tenancy for a total of \$387.24. No receipts were accepted into evidence for consideration

The landlord's application for dispute resolution states that the tenants owe \$110.65 in hydro charges for July and August 2021. The agent testified that this was a mistake and that the tenants actually owe \$73.97. Tenant P.K. agreed that the tenants owe the landlord \$73.97 for hydro.

Tenant P.K. testified that while the tenancy agreement states that cable is not included in the rent, the tenants never agreed to pay the landlord for access to the landlord's cable. Tenant P.K. testified that on the first day they moved in, they were told that they could use the landlord's internet and were provided with a password. Tenant P.K. testified that the landlord and landlord's agents never asked for payment for the cable during the tenancy and the tenants never agreed to pay anything to the landlord for the use of the cable.

Tenant P.K. testified that during the move out condition inspection the landlord's agent provided them with a printout of the landlord's bank statement and requested they pay \$121.80 for four months, which they refused as it was not agreed upon. Tenant P.K. testified that during the tenancy the landlord provided them with hydro invoices but did not provide them with cable invoices.

The agent testified that she did not provide the tenants with cable invoices during the tenancy because the cable provider did not provide invoices.

Landlord's Claim for damages and compensation

The agent testified that the tenants damaged the bathroom door and that it cost \$200.00 to repair. No receipts were accepted into evidence for consideration. Tenant P.K. testified that the door was already damaged when they moved in and that they did not damage it further.

The agent testified that the tenants damaged the shower spout in the bathroom and that it cost a total of \$108.76 to repair. No receipts were accepted into evidence for consideration. The agent testified that the shower spout was 12 years old.

Both parties agree that the tenant informed the agent that the shower spout stopped working properly in mid August 2021 and that when the tenant asked the agent to have someone come and look at it, the agent told the tenant to fix it himself or pay someone to fix it.

Both parties agree that the tenant fixed the problem temporarily but that the issue resurfaced on the move out date.

Tenant P.K. testified that he used the shower only for its intended purpose and that it broke due to regular wear and tear.

The landlord's application for dispute resolution also makes the following claims:

- \$80.00 for repair to a desk,
- \$5.59 for the cost of light bulbs, and
- \$33.59 for the cost of a new saucepan.

The agent testified that the landlord is not seeking compensation for the desk. After the agent provided testimony on the landlord's monetary claim for hydro, cable, bathroom door repair and shower spout repair, I asked the agent if the landlord is claiming any other damages and the agent testified that the landlord is not seeking any other damages. The agent did not provide any testimony on the landlord's claim for the cost of light bulbs and the cost of a new saucepan.

Analysis

Section 67 of the *Act* states:

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.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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 one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

No evidence from either party was accepted for consideration. I find that as no receipts, invoices or estimates were accepted into evidence, the landlord has failed to prove the value of the damage or loss allegedly suffered, for the following claims:

- cable in the amount of \$387.24,
- bathroom door repair in the amount of \$200.00,
- shower spout repair in the amount of \$108.76.

The above claims are dismissed without leave to reapply for failure to prove the value of the alleged loss.

The agent testified that the landlord is not seeking damages for repairing the desk. The landlord's claim for desk repair is therefore dismissed without leave to reapply.

The agent did not provide any testimony on the landlord's claim for the cost of light bulbs and the cost of a new saucepan and also did not provide proof of the value of the alleged loss. For the above reasons, the above claims are dismissed without leave to reapply.

As both parties agree that the tenants owe the landlord \$73.97 for hydro, I award the landlord \$73.97.

Section 38(1) of the *Act* states that 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.

Based on the testimony of both parties I find that the landlord was sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the tenants' forwarding address by September 12, 2021. The landlord filed this application for dispute resolution on September 14, 2021.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(a) and 38(1)(b) of the *Act*.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$173.97 from the

tenants' security deposit. I Order the landlord to return the remaining \$1,426.03 to the tenants.

Conclusion

The landlord is entitled to retain \$173.97 from the tenants' security deposit.

I issue a Monetary Order to the tenants in the amount of \$1,426.03.

The tenants are provided with this Order in the above terms and 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: April 29, 2022

Residential Tenancy Branch