



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding W&S BERNARD INVESTMENTS
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

On January 10, 2022, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

On January 19, 2022, this Application was set down for a Dispute Resolution participatory hearing to be heard on August 18, 2022, at 1:30 PM.

Tenant M.C. attended the hearing, and Landlord T.C. attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that he served a separate Notice of Hearing and evidence package to each Landlord on January 20, 2022, by registered mail. Included in this evidence package was a web link to their digital evidence; however, he did not check to see if the Landlords could view this evidence pursuant to Rule 3.10.5 of the Rules of Procedure (the “Rules”). T.C. confirmed that these packages were received; however, the web link could not be viewed. Based on this undisputed evidence, I am satisfied that the Landlords were sufficiently served the Tenants’ Notice of Hearing and evidence packages in accordance with the timeframe requirements of Rule 3.14 of the Rules. As

such, I have accepted the Tenants' evidence, with the exception of the digital evidence, and will only consider the documentary evidence when rendering this Decision.

T.C. advised that he served the Landlords' evidence to the Tenants by registered on July 26, 2022, and the Tenant confirmed that they received this on July 27, 2022. Based on this undisputed testimony, as this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules, I have accepted the Landlords' evidence and will consider it when rendering this Decision

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 1, 2015, and that the tenancy ended on or around October 28, 2021. Rent was established at an amount of \$965.00 per month and was due on the last day of each month. A security deposit in the amount of \$425.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The Tenant advised that they were seeking compensation in the amount of **\$808.75**; however, he could not explain how they came up with this figure that would justify the amount of loss that they suffered, other than it was the exact cost of their moving fees. He stated that this loss was as a result of three separate issues that occurred during the tenancy.

The first issue pertained to the Landlords' failure to comply with a previous Decision regarding an ant infestation that developed after a flood in July 2020. He referenced this Decision, dated February 18, 2021, where the Arbitrator Ordered "the landlord to **address the management of ants** in the rental building **as reasonable in the discretion of a pest control professional** including as to when the management is done, and how it is done." (the relevant file numbers are noted on the first page of this Decision). Furthermore, the Tenants were awarded a rent reduction for March 2021 rent of \$254.40, and then an additional \$19.30 reduction from each subsequent month of rent "until the ant infestation has been deemed resolved by a pest control professional as set out above."

He testified that the Landlords brought in a pest control company after this Decision was rendered, but this treatment disturbed the colony and exacerbated the problem. He referenced the pictures submitted as documentary evidence to demonstrate the prevalence of ants in the rental unit. He stated that he wrote a letter to the Landlords advising that the situation had worsened; however, he was not sure when he notified the Landlords of this, and he could not reference any documentary evidence to corroborate this position. He stated that there was no follow-up from the pest control company and that the Landlords never provided them with notification from the pest control professional that confirmed the ant infestation was completely remediated. As a result, they continued to deduct the \$19.30 from each month of rent until they gave up vacant possession of the rental unit.

The second issue that the Tenant raised was due to their belief that the Landlords were "retaliating" against them and serving them notices to end their tenancy. He advised that the Landlords served a One Month Notice to End Tenancy for Cause on June 30, 2021, and a 10 Day Notice to End Tenancy for Unpaid Rent on July 1, 2021. He submitted that they disputed these notices, and a hearing was set down for October 28, 2021. The Tenant did not provide a file number for this hearing, but he indicated that the Application to cancel the notices was dismissed without leave to reapply as they were giving up vacant possession of the rental unit anyways.

Finally, the third issue that the Tenant raised was due to a storage locker that was provided to them, but then subsequently taken away. He advised that it was their belief that a storage locker was included as per the tenancy agreement; however, it was not provided to them at the start of the tenancy. He testified that he asked T.C. for a storage locker in March 2017, and was permitted to use one. The tenancy agreement was never amended to reflect this. He confirmed that they never paid an extra amount for the use

of the storage locker. He stated that they were given a letter, from T.C., on July 1, 2021, informing them that they must remove their belongings from the locker by July 3, 2021. He acknowledged that they emptied the locker, and they returned the key. In addition, he confirmed that they never warned the Landlords that it was their belief that this storage locker was included as part of their tenancy and that the Landlords were not permitted under the *Act* to simply terminate this without the proper written notice, and compensation in an equivalent amount.

In response to these issues, T.C. advised that after the February 18, 2021 Decision was received, they brought in a pest control company to deal with the ant infestation on February 24, 2021, and March 4, 2021. He testified that the pest control company provided a letter indicating that the ant infestation was completely remediated; however, the only document that he could point to to support this claim was an email from this company dated July 23, 2021 indicating that they have received no complaints about any ongoing ant issue. In addition, he stated that the Tenants were hindering the pest company's ability to enter the rental unit to spray. Moreover, he submitted that they have not received any more complaints from any of the residents of the building about ants.

Regarding the Tenant's submissions pertaining to the notices to end the tenancy, he stated that he served one notice for unpaid rent, and that one was due to the Tenants damaging the carpet.

Finally, with respect to the Tenant's submission about the storage locker, he advised that their tenancy agreement indicated that the storage provided to the Tenants was in the rental unit. He testified that the Tenants requested a storage locker after they had a baby, and he let them use another unit's storage locker out of courtesy because it was not being used. He confirmed that the tenancy agreement was never amended to include this locker, nor were any monies paid by the Tenants for this use. He stated that he asked for this locker back as the tenant, in the unit that it belonged to, required it. He submitted that the Tenants knew that this locker was given to them as a favour.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Tenants' claims for compensation, Section 28 of the *Act* outlines the Tenants' right to quiet enjoyment, and Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

When establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlords fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenants prove the amount of or value of the damage or loss?
- Did the Tenants act reasonably to minimize that damage or loss?

In addition, Policy Guideline # 5 outlines a party's duty to minimize loss and includes the following excerpt:

A person who suffers damage or loss because their landlord or tenant did not comply with the *Act*, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

As well, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also need to turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Tenant's submissions regarding the ongoing ant infestation, while he indicated that he wrote a letter to the Landlords advising that the situation had worsened after the spraying in February 2021, he was unable to directly point me to this letter, and he indicated that he may have been doubtful about this as their personal life, at the time, took priority over the ongoing ant problem. However, in reviewing the Tenants' evidence, I found one letter dated July 30, 2021, which noted that there was still an ant problem in the rental unit.

Moreover, there was a signed statement from Tenant M.C. where she indicated that a note was placed on their door on September 17, 2021, stating that a pest control company would spray the rental unit for ants on September 19, 2021. She noted that T.C. arrived with an unidentified individual who sprayed the rental unit, but did not appear to have any identifying credentials as a certified pest control technician. She also noted that T.C. attempted to stop her from asking this individual about his knowledge of the ongoing ant infestation issue.

When I review the February 18, 2021 Decision, I note that the Arbitrator specifically determined the following:

While I accept the testimony of the parties that the landlord has taken some measures in response to the complaints of the tenants I find these steps to be insufficient and not reasonable given the nature and degree of the problems cited. I find the continued infestation of ants in Unit 105 since July 2020, nearly 8 months since the first complaint to be patently unreasonable and attributable to the landlord's lack of a reasonable and proportional response. I find the landlord's submissions blaming the occupants of the building for leaving food out in the common areas and water from faucets attracting pests to be an unreasonable position not supported in the evidence.

I find that the landlord has not maintained the rental property in a state of decoration and repair that meets the reasonable standard for a property of its age, character and location. I accept that the landlord is performing some pest control but find that an indefinite schedule is not reasonable. I am not satisfied the landlord has done what is reasonable to address the ant infestation in the rental property.

Moreover, I find it important to note that the Arbitrator specifically Ordered the "landlord **to address the management of ants** in the rental building **as reasonable in the**

discretion of a pest control professional including as to when the management is done, and how it is done. Furthermore, the Decision indicated that “If the landlord does not comply with the Order it is available for the tenants to apply for additional compensation as a result.”

In assessing T.C.’s submissions, while he claimed that they complied with the February 18, 2021 Decision, I do not accept his testimony that the July 23, 2021 email indicating that the pest control company has not received any more complaints about an ongoing ant issue would sufficiently satisfy the direction that was Ordered. Clearly, this Decision specifically required the pest control company to provide documentation confirming how and when the pest management was completed. Apart from this email, T.C. was unable to directly point me to any document that would confirm this.

More importantly, there was an invoice in the Landlords’ evidence package from the pest control company, dated September 19, 2021, and in the description of the work completed, it stated that treatment for ants was undertaken in the rental unit. As this document contradicts T.C.’s claim that the pest control company received no further complaints about any ongoing ant issues as of July 23, 2021, it is not clear to me why they would then go and conduct further treatment in the rental unit after this date.

Based on the assessment of the evidence before me, the previous Arbitrator already determined that the ant infestation was due to the “landlord’s lack of a reasonable and proportional response.”, and that the “landlord has not maintained the rental property in a state of decoration and repair that meets the reasonable standard for a property of its age, character and location.” This appears to be consistent with T.C.’s pattern of behaviour of addressing this issue in a negligent, disorganized, and/or inept manner. As the Landlords’ evidence is contradictory, I am doubtful of T.C.’s credibility or the truthfulness of his testimony. As such, I prefer the Tenant’s submissions on this issue on the whole.

With respect to their claims for compensation however, I note that the Tenant was not able to specifically indicate the exact amount of loss that they were claiming for, and as noted above, the burden is on the Tenants to prove the amount or value of their loss. In addition, I note that the Tenants have already had the benefit of reducing their rent by \$19.30 for each month of rent from April 2021 until the end of the tenancy. However, the previous Arbitrator did note that “If the landlord does not comply with the Order it is available for the tenants to apply for additional compensation as a result.”

Given that I am satisfied that the Landlords did not adequately comply with the Arbitrator's Order, I find that the Tenants are entitled to some compensation. While the Tenant could not explicitly demonstrate a quantifiable value of their loss, under the circumstances, I find that a reduction of an additional \$50.00 per month, from the time of the July 30, 2021 letter from the Tenants to the Landlords about the ongoing ant infestation, to be appropriate. As such, I grant the Tenants a monetary award in the amount of **\$150.00** for the months of August, September, and October 2021.

Regarding the Tenants' second issue of the Landlords "retaliating" against them by serving them notices to end their tenancy, as these notices were disputed, but the matters were not heard because the Tenants gave up vacant possession of the rental unit, I dismiss this claim in its entirety. The matter of whether or not these notices were valid would have been determined at that scheduled hearing. Had the Tenants remained in the rental unit, and had it been determined that these notices were frivolous, then I would more likely than not accept that there could be some consideration given to a claim of possible "retaliation".

Finally, with respect to the Tenants' third claim for compensation regarding the storage locker, there is no evidence before me that the Tenants were ever provided a storage locker as part of their tenancy. Furthermore, had the Tenants truly believed that this storage locker, that was provided to them for use two years after the tenancy commenced, was part of their tenancy agreement, it does not make any logical sense why they would not inform the Landlords in writing that this could not be taken away without 30 days' written notice, in the approved form, and without the proportionate compensation, pursuant to Section 27 of the *Act*. The fact that they just emptied their locker and returned it without complaint causes me to doubt the reliability of the Tenant's testimony on this issue.

When addressing the issues above, I am satisfied that T.C. has likely breached the *Act* in some instances. However, I also note that I am somewhat doubtful of the reliability of all of the Tenant's testimony as well. The concerns I have with the legitimacy of his testimony is consistent with the previous Arbitrator's finding that their testimony in that hearing on some matters was "hyperbolic". I find it more likely than not that there was a combination of factors involved in this tenancy, including personal differences between the parties, which contributed to the deterioration of this tenancy.

Regardless, as the Tenants were partially successful in these claims, I find that the Tenants are entitled to recover \$50.00 of the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlords to the Tenants

Ongoing ant infestation	\$150.00
Recovery of filing fee	\$50.00
TOTAL MONETARY AWARD	\$200.00

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$200.00** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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: August 25, 2022

Residential Tenancy Branch