



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT / MNDCL-S, FFL

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “Act”). The individual landlords’ application against the tenants for:

- authorization to retain all or a portion of the security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$1,695 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And the tenants’ application against the corporate landlord for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$3,390 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The tenants attended the hearing. Two agents of the landlords (BB and KC) attended the hearing on behalf of the landlords. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Each party confirmed that they had received the other’s notice of dispute resolution package and supporting documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue – Individual Landlords’ Application

During the hearing, the tenants stated that they did not dispute the individual landlords’ application and accepted that they were responsible for paying the amount sought (liquidated damages of \$1,695 for ending the tenancy agreement prior to the end of the fixed term). Accordingly, I grant the individual landlord’s application and order that the tenants pay the landlords \$1,695. In light of the fact the tenants consented to the relief sought, I decline to order that they reimburse the individual landlords the filing fee.

Pursuant to section 72(2) of the Act, the individual landlords may retain the entirety of the security and pet damage deposits in full satisfaction of the monetary order made.

The balance of this decision will address the tenant's application.

Issues to be Decided

Are the tenants entitled to:

- 1) a monetary order of \$3,390;
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The rental unit is a basement suite located in a single-detached house. The upper level of the house (the "**upper unit**") is rented by the landlords to other tenants who are not parties to this application. The parties entered into a written, fixed term tenancy agreement starting October 1, 2021 and ending March 31, 2022. Monthly rent was \$1,695 and was payable on the first of each month. The tenants paid the landlords a security deposit of \$847.50 and a pet damage deposit of \$847.50, which the landlords continue to hold in trust for the tenants.

The tenants vacated the rental unit prior to the end of the fixed term, on January 17, 2022.

On December 8, 2021, the tenants gave the landlords notice of their intention to end the tenancy via email. They wrote:

[We] would like to advise [the corporate landlord] that we will be vacating the [rental unit] as of Jan 31, 2022. We recognise that we have a 6 month agreement, which ends March 31st, 2022. We are hoping that with enough notice you may be able to fill the vacancy and release us of our contract prior to March 30th, 2022.

We would have been happy to complete the 6 month term, but the smell of pot and drugs from the tenants above us has been on-going and has never improved since my talk with [BB] (my call with [BB] was before Halloween). I understand the difficulties that may take place in Property Management, but we really felt the smoke free atmosphere, (which we choose for our family with asthma and allergies) was not upheld from the contract we signed with [the corporate landlord]. I hope you can understand our need in having to end this for our health and wellbeing.

If you are able to rent to someone else, we would be willing to sign off on our rental and ask we be released from further liabilities after Jan 31st, 2022 and we will return keys and do final inspection with one of your employees.

Tenant PJ testified that the tenants living in the upstairs until smoked marijuana in the upper unit and that the resulting smoke entered the rental unit by way of the shared ventilation system.

The tenants testified that tenant AJ and the tenants' son have asthma and the smoke caused them respiratory problems. They attempted to address the issue by blocking the vents, but this did not work. They testified that, on one occasion, they saw one of the upper unit tenants smoking in the kitchen which overlooks the backyard.

The tenants did not provide any documentary evidence (such as photographs of the upper unit tenants smoking, video of their reactions to the odor in the rental unit, or contemporaneous correspondence relating to the issue) corroborating their testimony.

The tenants testified that they did not speak to the upper unit tenants about the issue. Rather, PJ testified that he reported the issue to BB over the phone shortly before October 31, 2021 and that BB stated he would address the problem.

The tenants testified that there was no change in the situation and that smoke continued to disturb them. They did not repeat their request to BB to address the issue. Rather, the next time they raised the issue with the landlords was when they sent the corporate landlord the December 8, 2021 letter, notifying the landlord that they were ending the tenancy.

The tenants argued that the landlords breached the tenancy agreement by failing to provide them with a smoke-free environment.

The tenants seek a monetary order of \$3,390, representing the return of two months' rent, which they argue is adequate compensation for the landlords' breach.

BB stated that, following the phone call from PJ, an agent of the landlord attended the upper unit to conduct an inspection. He testified that no odor of smoke (marijuana or otherwise) was detected and that no drug paraphernalia was discovered. The agent advised the upper unit tenants of the complaint, and advised them that, if they did smoke, to smoke outside of the upper unit and far enough away from the rental unit to prevent any smoke from wafting into the rental unit.

BB testified that the tenants were the first long-term renters of the rental unit. However, he testified that he was onsite while the rental unit was converted from a basement into a basement suite, and during this time he did not smell any smoke coming from the upper unit. He also testified that the rental unit was rented on a short-term basis once

before the tenants moved in. This occupant did not report any issues relating to smoke coming from the upper unit.

Having inspected the upper unit, given a verbal warning to the upper unit occupants, and having not heard anything further from the tenants, BB testified that he believed the tenants' complaint as resolved. He argued that the landlords did everything that was required of them pursuant to the Act, and that they did not breach the tenancy agreement.

Analysis

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

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

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application.

As this is the tenants' application, they bear the onus to prove it is more likely than not that the landlords breached the Act or the tenancy agreement by allowing or failing to address their complaints regarding marijuana smoke entering the rental unit from the upper unit, that they suffered a quantifiable loss as a result of this breach, and that they acted reasonably to minimize their loss. The failure to prove any one of these elements will cause the tenants' application to fail.

As stated above, the tenants did not provide any documentary evidence to corroborate their allegations regarding smoke emanating from the upper unit. Such evidence should have been relatively easy to provide. Without such evidence, the tenants' sole evidence regarding the smoke and odor emanating from the upper unit is their oral testimony.

BB testified that upon investigating the tenants' complaint, he found nothing to substantiate it. Additionally, he testified that during the time he spent at the rental unit converting it into a basement suite he did not detect any smoke or odor. Additionally, he testified that the short-term renter preceding the tenants did not lodge any complaints relating to smoke or the odor. I found this testimony to be credible.

In light of BB's testimony, and the absence of any documents corroborating the tenants' testimony, I find that the tenants have failed to discharge their evidence burden to prove that the landlords breached the Act or tenancy agreement on a balance of probabilities.

Accordingly, I dismiss the tenants' application, in its entirety, without leave to reapply.

Conclusion

I dismiss the tenants' application without leave to reapply.

I grant the individual landlords' application.

As stated above, the individual landlords may retain the security and pet damage deposits in full satisfaction of the amount I ordered the tenants to pay.

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: September 14, 2022

Residential Tenancy Branch