



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNRT, MNDCT, RR, RP, AAT, PSF, LRE, OLC, FFT

Introduction

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

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- a Monetary Order for the cost of emergency repairs, pursuant to section 33;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- Order to Allow Access for the Tenant or their guests, pursuant to sections 30 and 70; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties 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.

Preliminary Issue- Service

The tenants testified that the landlord was personally served with their application for dispute resolution and evidence in August of 2022. The landlord testified that the above documents were left on her cooler but that she did receive them but could not recall when. I find that the above documents were sufficiently served on the landlord for the purposes of this *Act*, pursuant to section 71 of the *Act* because receipt was confirmed. I find on a balance of probabilities that the above service occurred in August of 2022.

Both parties agree that the landlord’s evidence was served on the tenants on November 10, 2022. The landlord’s evidence was also served on the Residential Tenancy Branch on November 10, 2022.

Section 3.15 of the Residential Tenancy Branch Rules of Procedure (the “*Rules*”) states that the respondent’s evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. Based on the testimony of both parties I find that the landlord’s evidence was served on the tenants and the Residential Tenancy Branch on November 10, 2022, four clear days before this hearing, contrary to Rule 3.15 of the *Rules*. The landlord’s evidence is excluded from consideration for failure to serve in accordance with Rule 3.15 of the *Rules*.

Preliminary Issue- Tenancy Ended

Both parties agree that this tenancy ended on or around September 1, 2022. The tenants testified that they are only pursuing their claims for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- a Monetary Order for the cost of emergency repairs, pursuant to section 33.

Pursuant to the tenants' above testimony, all other claims, excluding the tenants' claim for recovery of the filing fee, are dismissed with leave to reapply.

The tenants testified that in addition to the claims made in their application for dispute resolution, they are seeking compensation for vehicular damage and the return of their security deposit. As no amendment was filed with the Residential Tenancy Branch and served on the landlord, I find that to hear the additional claims would be prejudicial and procedurally unfair to the landlord who was not provided with an opportunity to respond to the additional claims. I therefore decline to amend the tenant's application, only the tenants' claims for a Monetary Order for damage or compensation under the *Act*, a Monetary Order for the cost of emergency repairs, and recovery of the filing fee, as set out in the original Application for Dispute Resolution, will be addressed in this decision.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Are the tenants entitled to a Monetary Order for the cost of emergency repairs, pursuant to section 33 of the *Act*?
3. Are the tenants entitled to recover the filing fee from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and 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 in 2020 and has ended. Monthly rent in the amount of \$1,300.00 was payable on the first day of each month. A security deposit of \$650.00 was paid by the tenants to the landlord.

Monetary Order for the cost of emergency repairs

The tenants testified that they are seeking to recover \$1,200.00 for emergency repairs they completed. The tenants testified that the pump in the basement broke, and the

basement flooded. The tenants testified that they had to build a trench in the basement and that while the landlord paid for the repair, they were left to install the pump. Tenant D.K. testified that that he had to take 2 full days off from work to complete the repair.

The tenants did not provide any testimony on how the \$1,200.00 sum was arrived at and did not provide any calculation of time to complete the repairs, rate for work completed or documentary evidence of lost wages.

The tenants testified that when they moved in the sink had a big crack in it and when their son dropped a plastic cup in the sink, the sink cracked. The tenant testified that she bought a new sink. No receipts for said purchase were entered into evidence. The tenant did not provide testimony as to how much the new sink cost.

The tenants testified that the tiles in the bathroom were held in place by caulking and that this resulted in mould, and that she had to pay to have someone clean it out. No receipts for same were entered into evidence.

The landlord testified that she agreed that she would never increase the rent and in exchange the tenants agreed to complete repairs on the property, and that she would pay for the materials.

Monetary Order for damage or compensation under the Act

The tenants' Application for dispute resolution states that they are seeking \$5,500.00 for:

seeking compensation for all my damaged possessions from the water flood. she failed to replace the water pump for to prevent which was a pre existing fixture included with the house at the time of my rental starting as she knew there was water issues with the basement. she illegally moved on to the property and for all of the damage done to our possessions and all of the money we have not bin reemberced for replacing essential necessites

[reproduced as written]

The tenants testified that the basement sump pumped failed causing a flood in the basement, photographs of the flood were entered into evidence. Tenant R.M.O. testified that she was saving up for a food truck and that food truck materials and electronics

were stored in the basement. Tenant R.M.O. testified that all of the above materials were destroyed in the flood and that she lost \$3,500.00 worth of food truck goods. No receipt or estimates for the items allegedly destroyed were entered into evidence. The tenants did not provide a breakdown of how the \$3,500.00 claimed was arrived at.

Tenant D.K. testified that his motorcycle was in the basement when it flooded, and his motorcycle was damaged. The tenants did not testify as to the cost to repair the motorcycle and did not provide estimates or receipts for the alleged damaged. The tenants entered into evidence a photograph of the motorcycle in the basement. The tenants did not specify how the remaining \$2,000.00 of the total \$5,500.00 claim was calculated.

The landlord testified that at the start of the tenancy the tenants were made aware that the basement could flood. The landlord testified that the tenants should have had tenants' insurance.

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 (PG 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.

The tenants did not submit any documentary evidence to support the quantum of damages sought for any of their monetary claims. No receipts, estimates or other documentary evidence proving the value of the loss they allegedly suffered were entered into evidence. I find that the tenants have not proved the amount of or value of the damage or loss they allege they suffered. Pursuant to section 67 and PG 16, I dismiss the tenants' application for a Monetary Order for damage or compensation under the *Act*, and a Monetary Order for the cost of emergency repairs, without leave to reapply.

As the tenants were not successful in this application for dispute resolution I find that they are not entitled to recover the \$100.00 filing fee, pursuant to section 72 of the *Act*.

Conclusion

The tenants' application for a Monetary Order for damage or compensation under the *Act*, a Monetary Order for the cost of emergency repairs, and recovery of the filing fee, are dismissed without leave to reapply.

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: November 16, 2022

Residential Tenancy Branch