



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, OLC, FFT (Tenants)
 MNDL, FFL (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenants filed their application June 24, 2022 (the “Tenants’ Application”). The Tenants applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property
- For compensation for monetary loss or other money owed
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

The Landlord filed their application August 22, 2022 (the “Landlord’s Application”). The Landlord applied as follows:

- For compensation for damage caused by the tenant, their pets or guests to the unit or property
- To recover the filing fee

This matter came before me November 10, 2022, and an Interim Decision was issued the same day. This Decision should be read with the Interim Decision.

The Tenants’ Application was withdrawn at the first hearing and therefore this hearing dealt with the Landlord’s Application. The Landlord appeared at the hearing. The Tenants did not appear at the hearing. I explained the hearing process to the Landlord.

I told the Landlord they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Landlord provided affirmed testimony.

The Landlord submitted evidence on their application. The Tenants did not submit evidence on the Landlord's Application. I addressed service of the hearing package and Landlord's evidence.

The Landlord confirmed they sent the hearing package to the Tenants as directed in the Interim Decision. The Landlord testified that they served their evidence on the Tenants in person in August 2022.

Based on the undisputed testimony of the Landlord, I find the Tenants were served with the hearing package as directed in the Interim Decision and therefore sufficiently served. I find the Tenants were served with the Landlord's evidence in accordance with section 88(a) of the *Residential Tenancy Act* (the "Act") in sufficient time prior to the hearing.

Given I was satisfied of service, and given the Interim Decision, I proceeded with the hearing in the absence of the Tenants. The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought \$2,400.00 in compensation being their insurance deductible.

The Landlord testified as follows. There was a verbal tenancy agreement between the parties which started two-and-a-half years ago. The tenancy was a month-to-month tenancy. Rent was \$1,300.00 due on the first day of each month. The tenancy ended September 01, 2022.

The Landlord further testified as follows. Tenant L.B. was filling a pot with water and hit off the kitchen faucet when turning to put the pot on the stove. L.B. did not turn off the water and instead went to find Tenant W.R. to address the issue. By the time W.R. got to the rental unit, water had flooded the area. The Tenants did not tell the Landlord about this incident for a day or two. The water damaged the counter and flooring. The Landlord made a claim through their insurance and a remediation company repaired the counter and flooring damage at a cost of \$6,666.87. The Landlord had to pay their insurance deductible to make the claim and are seeking reimbursement for this from the Tenants. The deductible was \$2,500.00; however, the Tenants purchased a new faucet and therefore the Landlord has deducted \$100.00 from the cost of the deductible.

The Landlord submitted documentary evidence to support their claim.

Analysis

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

Section 32 of the *Act* states:

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I accept the circumstances as stated by the Landlord because the Landlord's testimony is undisputed and supported by their documentary evidence. I find the Tenants breached section 32 of the *Act* by causing damage to the rental unit and not repairing it or paying to repair it. I find the Landlord had to have the damage repaired and that this cost the Landlord \$2,500.00, their insurance deductible. I find the Landlord mitigated the loss by having insurance and making a claim through their insurance. I award the Landlord the \$2,400.00 sought.

Given the Landlord has been successful in the Application, I award the Landlord \$100.00 for the filing fee pursuant to section 72(1) of the *Act*.

The Landlord is issued a Monetary Order for \$2,500.00 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is issued a Monetary Order for \$2,500.00. This Order must be served on the Tenants. If the Tenants fail to comply with this Order, it 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 *Act*.

Dated: November 29, 2022

Residential Tenancy Branch