



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, MNDL, MNDCL, FFL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for:

- an Order of Possession for cause, pursuant to section 55;
- a monetary order for monetary loss or money owed pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. As accommodations were made to allow the parties to appear in person rather than through the teleconference system, this hearing was not recorded by the Branch. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording.

At the outset of the hearing, both parties confirmed that the tenants have moved out on August 11, 2022 pursuant to a settlement agreement dated July 29, 2022. As the tenancy had ended, the landlord's application for an Order of Possession was cancelled. The hearing proceeded with the remaining monetary claims.

The tenants confirmed receipt of the landlords' application and amendment ('Application'). In accordance with section 89 of the *Act*, I find that the tenants duly served with the Application and amendment. All parties confirmed receipt of each other's evidentiary materials, and the hearing proceeded.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation as requested for losses or money owed?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on February 15, 2020, with monthly rent set at \$2,000.00, payable on the first of the month. The landlords had collected a security deposit in the amount of \$1,050.00, which the landlords still hold. A hearing was held on July 29, 2022 to deal with the landlord's application pursuant to section 56 of the *Act* for an early termination of the tenancy. During that hearing, a settlement was reached between both parties where the tenants agreed to move out by August 11, 2022 at 5:00 p.m. Both parties confirmed in the hearing that the tenants have moved out pursuant to that settlement agreement.

The landlord filed this application to recover money owed from this tenancy, which the landlord summarized on a monetary order worksheet dated October 12, 2022, and an additional worksheet dated October 19, 2022. The 15 monetary claims are set out in the table below:

Item	Amount
1) Filing fee	\$100.00
2) 2022-03-21 Letter Strata Bylaw Fine	200.00
3) Legal Fees Statement-April 21	617.27
4) Legal Fees Statement-April 28	660.67
5) Legal Fees Statement-May 30	1,213.44
6) Legal Fees Statement June 29	886.22
7) Lien Admin Fee	105.00
8) Chargeback of Interest	22.20
9) Unpaid Move-In Fee	100.00
10) Registered mail postage fees for service of documents	27.18
11) Documentation Fees for dispute	50.00

package	
12) Commuting Charges to RTB x 2	50.00
13)Quotation to replace kitchen countertop	800.00
14) Invoice-2022-09-02 -replacement of broken bathroom sink	404.25
15)Quotation to repaint damaged walls	700.00
Total Monetary Order Requested	\$ 5,836.23

In addition to the recovery of the filing fee, the landlords are requesting to claim the costs associated with filing of this application.

The landlords are also seeking reimbursement of unpaid strata fines and fees for this tenancy, as well as associated chargebacks charged to the owner by the strata corporation related to the tenants' behaviour including legal fees assessed by the strata. The landlords provided copies of the correspondence sent by the strata to the owner and the tenants, as well as a statements of account listing the balances owed. The landlords submitted a copy of the Form K signed by the tenants on February 19, 2020 agreeing to comply with the bylaws and rules of the Strata Corporation, and acknowledging that if the tenant or a guest of the tenant contravenes a bylaw or rule, the tenant is responsible and may be subject to penalties, including fines, as well as any costs incurred by the strata corporation for remedying the contravention.

The landlords called the property manager as a witness in the hearing who testified that one of the tenants was intimidating, threatening, and harassing others in the building, including staff and contractors. The property manager testified that they had to retain legal counsel in order to pursue the eviction of the problematic tenant. The landlords confirmed that the legal fees have not been paid by the tenants, nor the landlords on the behalf of the tenant as of the hearing date. During the hearing, the property manager confirmed that they were willing to reduce the chargeback of legal fees by half if payment was made immediately. An agreement was not reached during the hearing, and the landlords wanted to proceed with the claims.

The property manager testified that the lien referenced in this application is not related to this matter, but rather a special levy.

The landlords are also seeking monetary orders associated with repairing damage caused by the tenants. The landlords submitted photos of the rental unit, and submitted quotations for repairs of the damage. The landlords testified that no move-in or move

out inspections were completed as the tenants moved in on February 15, 2020, during the pandemic. The landlords testified that they could not complete all the repairs as they had no time to do so before re-renting the rental unit.

The tenants dispute that they had left the rental unit in damaged condition beyond regular wear and tear. The tenants argued that the building was approximately 50 years old, and numerous repairs were not addressed during the tenancy. The tenants testified that they had to use an alternate bathroom as the landlord failed to perform necessary repairs during the tenancy.

The tenants disputed the chargebacks for the legal costs, and argued that they had moved out pursuant to the settlement agreement, and that not after any orders or findings were made by an Arbitrator in relation to the actions of the tenants.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the landlords must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

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

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

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlords bears the burden of establishing their claims on the balance of probabilities. The landlords must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlords must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlords must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

In relation to the unpaid move-in fee, I am satisfied that the tenants were responsible for paying this fee, which remains unpaid as shown in the statement of account. I am also satisfied that the tenants had signed the Form K, and should have been aware of their responsibility to pay this fee. Accordingly, I allow the landlords' monetary claim of \$100.00 for the unpaid move-in fee.

In relation to the strata fine levied against the landlord due to the tenants' contravention of the rules and strata bylaws, I am satisfied that the tenants were provided with a written warning about the possible fine that would be levied for the contravention. As noted in Residential Tenancy Policy Guideline #27:

"The director does not have jurisdiction to determine whether a strata bylaw or rule is legally valid. The Civil Resolution Tribunal has jurisdiction to decide disputes about strata bylaws and rules. If there is a challenge to the bylaws before the Civil Resolution Tribunal, the director may adjourn the dispute resolution hearing concerning the Notice to End Tenancy until the Civil Resolution Tribunal has made a decision."

I am satisfied that the tenants have not disputed the strata fine, nor is there an active dispute before the Civil Resolution Tribunal about whether the bylaw is legally valid. I am satisfied that the strata had clearly communicated to the tenants that they had the opportunity to answer to the complaint, including a hearing before the Strata Council, if requested, and that failure to respond in writing within 21 days of the date of the letter will result in the Strata Council determining whether or not to impose a fine at the next meeting. I am satisfied that the tenants were given the option to respond and dispute the fine, which was clearly communicated to them, but did not do so. I am satisfied as consequence of the tenants' contravention of the rules and bylaws, the landlords were assessed a \$200.00 fine, which remains unpaid by the tenants. Accordingly, I allow the landlords this portion of their monetary claim.

The landlords also filed for reimbursement of the chargeback of legal fees, which the landlords argued were assessed due to the tenants' actions. I note the letter dated June 17, 2022, is clearly addressed to the landlord in relation to the eviction of one of the tenants. The letter begins by stating "It has come to our attention that the resident of

your strata unit has caused further problem..." and states that "this is notice to you that all of the legal costs incurred to deal with this circumstance, including any future costs if the Strata Corporation or the Association of [name withdrawn for privacy reasons] Councils has to take court action to remove this man from the premises, will be charged back to you.". The letter gave the landlords the opportunity "to respond to the allegations made against the occupant of your suite...in writing, or at a hearing before council, or both.". The deadline for a response was June 30, 2022. I note that although the landlords did file their application for an early termination of the tenancy on June 25, 2022, after receiving this letter, I am not satisfied that the landlords had demonstrated that they had responded to that letter in one of the manners stipulated in the letter by the deadline of June 30, 2022. As threatened by the strata council, the legal fees were charged back to the landlords, which remain unpaid by the landlords as of the hearing date.

Residential Tenancy Policy Guideline #5 addresses a landlord's duty to minimize loss and states the following:

"Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss¹. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation². Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed."

In relation to the legal fees, I am not satisfied that the landlords had made a reasonable effort to mitigate the tenants' exposure to these losses claimed, as required by section 7(2) of the *Act*. I find that the landlords were afforded the opportunity to respond to the letter dated June 30, 2022, but failed to establish that they did so. I also find that the strata council were agreeable to discussing a mutual settlement of the chargebacks, as supported by the property manager's offer during the hearing to reduce the chargebacks by half the amount. I further note that although the chargebacks were assessed by the strata council against the landlords, the landlords have yet to pay any portion of these chargebacks, and therefore have not yet suffered these losses claimed. For these reasons, I find this portion of the landlords' application to be premature, and I dismiss the landlords' claims for recovery of the legal fee chargebacks with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

As noted by the property manager in the hearing, the lien referenced in this application does not relate to bylaw infractions related to the tenants, but rather an unpaid special levy. I am not satisfied that the landlords have met their burden of proof to support that his monetary claim is due to the tenants' contravention of the *Act*. I therefore dismiss this claim without leave to reapply.

The landlords also filed a claim to recover a chargeback for interest that have been applied to the landlords' account. I am not satisfied that the landlords have met their burden of proof to support that this monetary claim is a direct result of the tenants' actions. Accordingly, I dismiss this claim without leave to reapply.

The landlords also applied to recover the cost of repairing the rental unit. Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The tenants dispute causing any damage beyond regular wear and tear, and noted that the age of building was a contributing factor.

It is undisputed that the landlords did not perform move-in and move-out inspections pursuant to sections 23 and 35 of the *Act*, and fill out condition inspection reports for both occasions. Although I accept the landlords' explanation for why a move-in inspection was not completed, I do not find that any Ministerial Orders issued during this period allowed for this exception. Furthermore, as noted in Residential Tenancy Policy Guideline #40, the onus is on the landlord to support the age and maintenance of an

item, especially when the item has possibly exceeded its useful life. Although there may have been damage to the rental unit, I am unable to ascertain how much of this damage can be attributed to wear and tear, and the general age of the item rather than the neglectful or intentional actions of the tenants. In light of the disputed claims and contrasting evidence, I am not satisfied that the landlords have proved, on balance of probabilities, that the tenants had caused the damage and losses in the amounts claimed by the landlords beyond what can be considered regular wear and tear. The landlords' monetary claims related to the damage are therefore dismissed without leave to reapply.

As the landlords' application contained some merit, I allow the landlords to recover the filing fee paid for this application. As the *Act* does not allow an applicant to recover the costs associated with filing an application other than recovery of the filing fee, I dismiss the remainder of the landlords' claims without leave to reapply.

The landlords continue to hold the tenants' security deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain a portion of the tenants' security deposit in satisfaction of the monetary awards. The landlord shall return the remainder to the tenants.

Conclusion

I allow the landlords the following monetary claims. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain a portion of the tenants' security deposit in satisfaction of the monetary awards granted. The landlord shall return the remainder to the tenants.

Item	Amount
Filing fee	\$100.00
Strata Bylaw Fine	200.00
Unpaid Move-In Fee	100.00
Less Security Deposit Held	-1,050.00
Amount to be returned to Tenants	\$650.00

The tenants are provided with a monetary order in the amount of \$650.00 for the return of the remainder of their deposit. 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.

I dismiss the landlords' claims for recovery of the legal fee chargebacks with leave to reapply. The remainder of the landlords' application is 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: December 12, 2022

Residential Tenancy Branch