



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

Landlord A.S., landlord M.S., tenant K.H.L., and tenant D.L. 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 they served the landlords with their application for dispute resolution and evidence via registered mail on May 19, 2022. The tenants entered into evidence a Canada Post receipt stating same. The landlords testified that they received

the above documents. I find that the landlords were served with the above documents in accordance with section 89 of the *Act*.

Landlord A.S. testified that he uploaded the landlords' evidence to the residential tenancy branch but did not serve it on the tenants. Pursuant to section 3.15 of the Residential Tenancy Branch Rules of Procedure the landlords were required to serve their evidence on the tenants. As the landlords' evidence was not served on the tenants it is excluded from consideration.

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 recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence of the tenants 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 landlords' claims and my findings are set out below.

Both parties agree that landlord A.S. is the father of landlord M.S. The tenants testified that on March 8, 2022 they viewed the subject rental property and met the landlords and landlord A.S.'s other daughter. The tenants testified that they witnessed landlord A.S. sign the tenancy agreement but were not sure if landlord M.S. signed the tenancy agreement. Tenant K.H.L. testified that she also signed the tenancy agreement on March 8, 2022. The tenancy agreement was entered into evidence and states that the tenancy was set to start on April 1, 2022 and was for a fixed term ending on September 1, 2022.

Landlord A.S. testified that he and tenant K.H.L. signed the tenancy agreement but that his daughters were not present and did not sign the tenancy agreement. Landlord M.S. testified that she was not present at the March 8, 2022 meeting and was staying with her boyfriend at that time. Landlord M.S.'s boyfriend testified that on March 8, 2022, landlord M.S. was at his house for the entire day.

The tenancy agreement was entered into evidence. Landlord A.S.'s signature appears beside his name and a nearly identical signature appears beside landlord M.S.'s signature.

The landlords submitted that the signature beside landlord M.S.'s name is not the same as the signature beside landlord A.S.'s name and that landlord A.S. only signed the document once. The landlords did not submit their copy of the tenancy agreement for comparison.

Both parties agree that on or around March 11, 2022 landlord A.S. called the tenants and told them that the landlords were not going to go forward with the agreement.

Landlord A.S. testified that after he signed the tenancy agreement, he spoke with landlord M.S. who did not agree with the rental rate or the term agreed to by landlord A.S. Landlord A.S. testified that when landlord M.S. did not agree, he called the tenants and advised them that they were not permitted to move in. Landlord A.S. testified that if one of the two landlords do not agree to the terms of the tenancy agreement then the landlord who signed the tenancy agreement is not bound by it.

The tenants testified that when the landlord backed out of the tenancy agreement they were essentially left homeless and had to temporarily move into their parent's two bedroom condo with their five year old daughter. The tenants testified that they were not able to find a new rental in the subject rental city and had to move out of province.

The tenants' application for dispute resolution states that the tenants are seeking the following damages:

Item	Amount
For buying furniture and truck rental (furniture deposit lost)	\$500.00
For 2 months rent - having to deal with finding another rental for my 7 year old daughter and husband at the last minute in an extremely difficult marketplace	\$5,300.00
For storage rental fees	\$815.00
For school registration (non refundable)	\$150.00
Total	\$6,765.00

The tenants testified that they made arrangement to buy a used mattress and put down a \$100.00 deposit on it which they lost because they had no-where to move the mattress to. Text messages and an interac money transfer evidencing same were entered into evidence.

The tenants testified that after the landlords reneged on the tenancy agreement they had to put their belongings into storage and that they are still in storage. The tenants testified that they are paying \$136.45 per month in storage fees. No receipts for same were entered into evidence. The tenants did not state for how many months they are seeking compensation for not how their claimed sum of \$815.00 was arrived at.

The tenants testified that they also spent money on fuel to drive to the subject rental property and to move their belongings into storage. No fuel receipts were entered into evidence. The tenants entered into evidence a credit card summary which states that the tenants paid \$146.00 for gas on March 10, 2022 and \$120.05 for gas on March 23, 2022.

The tenants testified that they had to rent a U-Haul to move their belongings to storage. No receipts were entered into evidence.

The tenants testified that they purchased sheets, bedding, linens and blankets from Costco for the subject rental property. The tenants testified that they did not return the items because they thought they would be successful in finding a new rental in the subject rental city but they were not. The tenants entered into evidence a credit card summary which states that the tenants spent \$157.46 at Costco on March 27, 2022. No receipts were entered into evidence.

The tenants testified that they bought dishes for their new rental from the thrift store. The tenants entered into evidence a credit card summary which states that the tenants spent \$28.84 at a thrift store on March 11, 2022. No receipts were entered into evidence.

The tenants testified that they purchased a side table and dresser for the subject rental property from kijiji. The tenants entered into evidence a credit card summary which states that the tenants spent \$8.35 on Kijiji on March 12, 2022. No receipts were entered into evidence.

The tenants testified that they purchased kitchen items from a dollar store for the subject rental property. The tenants entered into evidence a credit card summary which states that the tenants spent \$32.66 at a dollar store on March 27, 2022.

The tenants testified that part of the \$500.00 claim for buying furniture and truck rental is for their time. The tenants did not testify as to how much of the \$500.00 claim was for their time or at what rate they were seeking compensation. As noted about, not receipts for a truck rental were submitted into evidence.

The tenants testified that they registered their daughter in a school which had a \$150.00 deposit which they lost because they could not find a rental in the area. A receipt for same was entered into evidence.

The tenants testified that they are also seeking \$5,300.00 because being left out on the street is worth 60 days of rent.

Analysis

The *Act* defines a tenancy agreement as:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Section 16 of the *Act* states:

The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Based on the tenancy agreement that was entered into evidence and the testimony of the parties, I find that landlord A.S. and tenant K.H.L. signed the tenancy agreement on March 8, 2022. Upon review of the signature beside landlord M.S.'s name, it clearly starts with an A and tenant M.S.'s name does not. I accept the testimony of landlord M.S. that she did not sign the tenancy agreement. While it is not entirely clear how landlord A.S.'s signature became duplicated, I find that for the purposes of this decision,

that duplication is not relevant. I do not find proof of any forgery or other act of malintent.

Based on the evidence of both parties and pursuant to section 16 of the *Act*, I find that landlord A.S. entered into a valid tenancy agreement with tenant K.H.L. I find that from the moment landlord A.S. and tenant K.H.L. signed the tenancy agreement, they were bound by its terms. I find that landlord A.S. is not absolved of the signed tenancy agreement he signed simply because landlord M.S. did not sign it. Landlord M.S.'s failure to sign the tenancy agreement means that she is not bound by its terms, but her father, landlord A.S. who signed the tenancy agreement, is bound. Pursuant to my above findings, I dismiss all claims made against landlord M.S. because she did not sign the tenancy agreement and is not bound by its terms.

Tenant D.L. is not listed as a tenant on the tenancy agreement and did not sign the tenancy agreement. Based on the above, I find that D.L. is not a tenant. Pursuant to section 64 of the *Act*, I amend the application for dispute resolution to remove D.L. as a tenant.

Section 44 of the *Act* sets out scenarios in which a landlord may end a tenancy. Changing one's mind about the rental rate and term is not a permitted reason to end the tenancy. I find that landlord A.S. breached section 44 of the *Act* by terminating the tenancy contrary to section 44 of the *Act*.

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 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.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

I find that pursuant to section 67 of the *Act* landlord A.S. is responsible for damages arising from his breach of section 44 of the *Act* that pass the four point test listed above and set out in Residential Tenancy Policy Guideline #16.

I find that while it is clear that some loss was suffered by tenant K.H.L. as a result of landlord A.S.'s breach of section 44 of the *Act*, I find that tenant K.H.L. has done a poor job of proving the value of that loss. Minimal documentary evidence proving the alleged losses was entered into evidence and tenant K.H.L. did not set out how the majority of the monetary claims were arrived at.

I dismiss tenant K.H.L.'s claims for storage and U-Haul fees because tenant K.H.L. did not submit into evidence receipts or invoices proving the value of the loss alleged.

Tenant K.H.L. and D.L. testified that they learned of landlord A.S.'s breach of the tenancy agreement on March 11, 2022; however, tenant K.H.L. is claiming compensation for household items purchased after that date from the following stores, as stated on the credit card summary:

- Costco,
- Kijiji, and
- Dollar store.

I find that incurring damages after tenant K.H.L. became aware of the landlord's breach constitutes a failure to mitigate their damages and so the above claims are dismissed.

I also note that since the above items were not returned, tenant K.H.L. continued to be benefited from them and so a loss was not proved. I find that the same goes for the March 11, 2022 thrift store purchase. I find tenant K.H.L. has not proved that she did not

benefit from this purchase and has not proved what was purchased as no receipts were entered into evidence. Pursuant to my above findings, the thrift store claim is dismissed.

Tenant K.H.L. and D.L. testified that some of the \$500.00 claim was for their time. I find that tenant K.H.L. has not proved how much of their time landlord A.S.'s breach of section 44 of the *Act* caused as no time estimates or other documentary proof of time used was provided. I find that tenant K.H.L. has not proved the value of the loss. The above claim is therefore dismissed.

Tenant K.H.L. and D.L. testified that they are seeking 60 days or two months' rent compensation for the landlord's breach of the tenancy agreement. Tenant K.H.L. and D.L. testified that they are seeking the above amount because that's what their loss is worth. Simply stating how much you believe your inconvenience to be worth does not prove the value of that alleged loss. I dismiss the above claim for failure to prove the value of the loss claimed.

Tenant K.H.L. and D.L. testified that they spent additional money on fuel driving to the subject rental property and moving their belongings into storage. Tenant K.H.L. and D.L. did not provide any testimony regarding how many kilometers extra they were required to drive or how much gas per kilometer cost for the vehicle driven. I find that the tenant K.H.L. has not proved the value of the loss.

I accept that the tenant's credit card was charged for gas on March 10, 2022 and March 23, 2022; however, I find that tenant K.H.L. has not proved how much of that gas was used as a result of the landlord's breach of the *Act*. As such, I dismiss the claim for gas because Tenant K.H.L. has not proved the value of the loss attributable to the landlord's breach of the *Act*.

Based on the text messages and interac money transfer entered into evidence, I find that the tenant K.H.L. paid a \$100.00 deposit on a mattress and box spring and that because landlord A.S. breached section 44 of the *Act*, tenant K.H.L. lost the deposit because she had no rental to move the mattress to. I find that no legitimate mitigation issues were raised in the hearing. Pursuant to section 67 of the *Act*, I award tenant K.H.L. \$100.00 from landlord A.S.

Based on the testimony of tenant K.H.L. and D.L. and the school registration receipt entered into evidence, I find that tenant K.H.L. paid a non refundable fee of \$150.00 for her child to attend a school. I accept tenant K.H.L. and D.L.'s testimony that they were

not able to find alternate accommodation in the province and so their daughter did not attend that school and the registration fee was lost. I find that the above loss was direct result of landlord A.S.'s breach of section 44 of the *Act*. I find that no legitimate mitigation issues were raised in the hearing. Pursuant to section 67 of the *Act*, I award tenant K.H.L. \$150.00 from landlord A.S.

As tenant K.H.L. was successful in this application for dispute resolution, I find that tenant K.H.L. is entitled to recover the \$100.00 filing fee from landlord A.S., pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to tenant K.H.L. against Landlord A.S. under the following terms:

Item	Amount
Mattress deposit	\$100.00
School deposit	\$150.00
Filing Fee	\$100.00
TOTAL	\$350.00

Tenant K.H.L. is provided with this Order in the above terms and landlord A.S. must be served with this Order as soon as possible. Should landlord A.S. 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: January 23, 2023

Residential Tenancy Branch