



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCL, MNSD, FFL

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application.

The female Landlord stated that on June 19, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on May 30, 2022 and June 16, 2022 was sent to each Respondent, via registered mail, at the rental unit. The Landlord submitted a Canada Post receipt that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served to each Respondent in accordance with section 89(1)(c) of the *Residential Tenancy Act (Act)*, however the Respondents did not appear at the hearing. As the documents were properly served to the Respondents, the evidence was accepted as evidence for these proceedings and the hearing proceed in the absence of the Respondents.

On July 05, 2022 the Landlords filed an Amendment to the Application for Dispute Resolution, in which they increased the amount of their monetary claim in compensation for damage to the unit and they added an application to retain the security deposit.

The female Landlord stated that on July 06, 2022 the Amendment of July 05, 2022 was sent to each Respondent, via email, to the email provided for service by the female Tenant on the tenancy agreement and the RTB-51, both of which were submitted in evidence. In the absence of evidence to the contrary, I find that these documents have been served to each Respondent in accordance with section 89(1)(f) of the *Act*, and the amendment will be considered.

On December 07, 2022 the Landlords filed an Amendment to the Application for Dispute Resolution, in which they increased the amount of their monetary claim.

The female Landlord stated that on December 09, 2022 the Amendment of December 07, 2022 was sent to each Respondent, via email, to the email provided for service by the female Tenant on the tenancy agreement and the RTB-51. In the absence of evidence to the contrary, I find that these documents have been served to each Respondent in accordance with the *Act*, and the amendment will be considered.

On December 05, 2022, December 07, 2022, and December 09, 2022, the Landlords submitted evidence to the Residential Tenancy Branch. The female Landlord stated that on December 09, 2022 this evidence was sent to each Respondent, via email, to the email provided for service by the female Tenant on the tenancy agreement and the RTB-51. In the absence of evidence to the contrary, I find that these documents have been served to each Respondent in accordance with section 89(1)(f) of the *Act*, and the evidence was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

The Landlords submitted a copy of the tenancy agreement, which identifies the Respondents with the initials “MG” and “PG” as the Tenants. The agreement identifies the other three Respondents as “occupants” of the rental unit.

I find that the Respondents with the initials “MG” and “PG” are Tenants and that they must comply with their obligations under the *Act*.

The female Landlord stated that the other three Respondents are children of “MG” and “PG”. I find that the other three Respondents are not parties to the tenancy agreement and that they were merely occupants, who have no rights or responsibilities under the

Act. As the other three Respondents are not parties to the tenancy agreement, I dismiss the Landlords' claim for a monetary Order naming these Respondents.

Any monetary Order awarded to the Landlord as a result of these proceedings will only name "MG" and "PG", hereinafter referred to as the Tenants.

Issue(s) to be Decided

Are the Landlords entitled to costs associated to the Tenants disputing a Two Month Notice to End Tenancy for Landlord's Use?

Are the Landlords entitled to compensation for damage to the rental unit?

Are the Landlords entitled to retain the security deposit paid by the Tenants?

Background and Evidence

The Landlords submit that:

- the tenancy began on November 01, 2021;
- the Tenants signed a tenancy agreement with the previous owner of the rental unit;
- the Landlords purchased the rental unit in February of 2022;
- the Tenants paid a security deposit of \$2,000.00, which was transferred to them by the original landlord;
- the Tenants were required to pay monthly rent of \$4,000.00 by the first day of each month;
- on February 25, 2022 a Two Month Notice to End Tenancy for Landlord's Use was personally served to the female Tenant;
- the Two Month Notice to End Tenancy for Landlord's Use declares that the rental unit must be vacated by April 30, 2022;
- the Two Month Notice to End Tenancy for Landlord's Use declares that the tenancy was ending because the unit would be occupied by the landlord or the landlord's spouse;
- the Tenants filed an Application for Dispute Resolution to dispute the Two Month Notice to End Tenancy for Landlord's Use;
- on June 24, 2022 a hearing was convened to consider the application to cancel the Two Month Notice to End Tenancy for Landlord's Use;
- the Landlords were subsequently granted an Order of Possession which was effective on June 27, 2022; and
- the rental unit was vacated on June 27, 2022.

The female Landlord provided the file number for the hearing on June 24, 2022, which appears on the first page of this decision. During the hearing I viewed that decision and

determined that a Residential Tenancy Branch Arbitrator granted an Order of Possession for June 27, 2022 on the basis of a settlement agreement reached by the parties on June 24, 2022.

The Landlords are seeking compensation for the cost of renting alternate accommodations in April, May, and June of 2022 and for storage costs for May and June of 2022. The female Landlord stated that the Landlords would not have incurred these costs if the Tenants had vacated the rental unit on the effective date of the Two Month Notice to End Tenancy for Landlord's Use, rather than filing an application to dispute that Notice to End Tenancy.

The female Landlord stated that the female Tenant admitted at the hearing on June 24, 2022 and in a text message sent on March 21, 2022 that she only applied to dispute the Two Month Notice to End Tenancy for Landlord's Use because she did not want to move. The female Landlord described this as a "wrongful dispute". She submits that the Tenants "wrongfully extended" their occupancy in the unit because they were planning to travel on June 27, 2022.

The Landlords are seeking compensation of \$1,000.00 for cleaning the rental unit. The Landlords submitted photographs of the rental unit which were taken on June 27, 2022, which show several areas of the unit needed to be cleaned. The Landlords submitted an email in which they were quoted \$1,000.00 for cleaning the unit. The female Landlord stated that the individual who provided the cleaning quite was paid \$1,000.00 in cash, but a receipt was not provided.

The Landlords are seeking compensation of \$1,260.00 for repairing water damage. The female Landlord stated that the person below the rental unit reported that water was leaking into the lower suite from the rental unit. She stated that she went to the rental unit with a contractor and determined that the water was leaking from a clogged dishwasher.

The Landlords submitted an invoice that inspected the unit for water damage. In the invoice the contractor declared the dishwasher was clogged with food scraps. The female Landlord stated that she also observed plastic pieces lodged in the dishwasher, which contributed to the clog. The Landlord was charged \$1,260.00 to inspect and repair the water damage.

The Landlords are seeking compensation of \$926.04 for replacing the dishwasher. The female Landlord stated that after the aforementioned clog was cleared, the dishwasher

was tested and it continued to leak. She stated the dishwasher was approximately ten years old.

The Landlords are seeking compensation of \$680.16 for repairing several items that were listed as damaged on the final condition inspection report. The female Landlord stated that the Landlords paid this amount to replace a laundry cabinet, a sink, and an air vent that were damaged during the tenancy. The Landlords submitted a receipt to show these expenses were incurred.

SD

FF

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 49 of the *Act* allows a landlord to end a tenancy for a variety of reasons. On the basis of the undisputed evidence, I find that the Landlords served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use, which was served pursuant to section 49(3) of the *Act*. This Two Month Notice to End Tenancy declared that the rental unit must be vacated by April 30, 2022.

Section 49(8)(a) of the *Act* permits a tenant to dispute a notice to end tenancy served pursuant to section 49(3) of the *Act* by filing an Application for Dispute Resolution. On the basis of the undisputed evidence, I find that the Tenants exercised their right to dispute the Two Month Notice to End Tenancy for Landlord's Use when they filed an Application for Dispute Resolution on March 09, 2022.

There is nothing in the *Act* that declares a tenant requires grounds to dispute a notice to end tenancy nor is there anything in the *Act* that declares a tenant must be disputing a notice to end tenancy in "good faith". I therefore cannot conclude that the Tenants breached section 49(8)(a) of the *Act* when they disputed the Two Month Notice to End

Tenancy for Landlord's Use, even if I accepted the Landlords' submission that the Two Month Notice to End Tenancy for Landlord's Use was only disputed because the Tenants wished to remain in the rental unit past the effective date of the Notice.

Section 67 of the *Act* permits me to grant compensation to a landlord if the landlord suffers a loss as a result of the tenant breaching the *Act* and/or the tenancy agreement. While I accept that the Landlords experienced financial losses as the result of the Tenants disputing the Two Month Notice to End Tenancy for Landlord's Use, I cannot conclude that those losses were incurred as a result of the Tenants breaching the *Act* and/or the tenancy agreement. I therefore dismiss the Landlords' application to recover storage fees and rent for April, May, and June of 2022.

On the basis of the testimony of the female Landlord and the photographs submitted in evidence, I find that the Tenants failed to comply with section 37(2)(a) of the *Act* when they failed to leave the rental unit in reasonably clean condition at the end of the tenancy. I therefore find that the Landlords are entitled to \$1,000.00 for cleaning.

On the basis of the testimony of the female Landlord and a contractor's invoice submitted in evidence, I find that the Tenants failed to comply with section 37(2)(a) of the *Act* when they failed to repair the damage caused by the dishwasher overflowing. On the basis of the testimony and invoice I find, on the balance of probabilities, that the dishwasher was clogged by pieces of plastic. I therefore find that the Landlords are entitled to \$1,260.00 for repairing damage caused by the leaking dishwasher.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

Even if I concluded that the Tenants' actions damaged the dishwasher, I would dismiss the Landlords' claim to replace the dishwasher.

Residential Tenancy Policy Guideline #40 suggests that the life expectancy of a dishwasher is ten years. As the female Landlord testified that the dishwasher is ten years old, I find that the dishwasher has reached the expected length of its life and that the Landlords are not entitled to compensation for replacing it.

On the basis of the undisputed testimony of the female Landlord, I find that the Tenants failed to comply with section 37(2)(a) of the *Act* when they failed to repair a laundry cabinet, a sink, and an air vent that were damaged during the tenancy. I therefore find that the Landlords are entitled to \$680.16 for those repairs.

I find that the Landlords' Application for Dispute Resolution has merit and that the Landlords are entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlords have established a monetary claim, in the amount of \$3,040.16, which includes \$1,000.00 for cleaning, \$1,260.00 to repair water damage, \$680.16 for repairing a cabinet, sink and floor vent, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$2,000.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$1,040.16. In the event the Tenants do not voluntarily comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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: January 08, 2023

Residential Tenancy Branch