



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RR, FFT

Introduction

This hearing originally convened on October 13, 2022 and was adjourned after 63 minutes of hearing time due to time constraints. This hearing re-convened on February 27, 2023 and concluded after one hour and 54 minutes of hearing time. The tenants, the landlord and the landlord's interpreter/assistant manager (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. No additional hearing time was necessary for this dispute. The landlord's agent affirmed to translate to the best of his ability.

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;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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 personally served the landlord with their application for dispute resolution within the required time period. The agent testified that the landlord received the tenants' application for dispute resolution in the permitted service period. I find that the landlord was served with the tenants' application for dispute resolution in accordance with section 89 of the *Act*.

The tenants testified that in the package containing their application for dispute resolution, they included a piece of paper with a QR code and a link to a google drive. The tenants testified that the QR code and google drive link gave the landlord access to their evidence. The tenants testified that they never checked with the landlord to confirm she was able to access their evidence.

The landlord testified that she did not receive a piece of paper with a QR code or a link to a google drive.

Rule 3.10.5 of the Residential Tenancy Branch Rules of Procedure states:

3.10.5 Confirmation of access to digital evidence

The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence.

If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

I find that even if the tenants served the landlord with links to their evidence via a QR code or a google drive link, the tenants breached Rule 3.10.5 of the Rules by failing to confirm the landlord's ability to access the links. I accept the landlord's testimony that she has not accessed the tenants' evidence. I find that the tenants' failure to confirm the landlord's ability to view digital evidence results in the tenants' evidence being excluded from consideration.

The tenants filed an amendment to their application for dispute resolution on September 24, 2022 increasing their monetary claim from \$900.00 to \$5,200.00. Both parties agree that the tenants personally served the landlord with their amendment more than two weeks before this hearing. I find that the tenants' amendment was served on the landlord in accordance with section 88 of the *Act*.

The landlord testified that her evidence was personally served on the tenants, but she could not recall on what date. The tenants testified that they received the landlord's evidence in person on September 15, 2022. I find that the landlord's evidence was served on the tenants in accordance with section 88 of the *Act*.

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 an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65 of the *Act*?
3. Are the tenants entitled to recover the filing fee for this application 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 on September 1, 2021 and ended November 1, 2022. Monthly rent in the amount of \$1,200.00 was payable on the first day of each month. A security deposit of \$600.00 was paid by the tenants to the

landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the subject rental property is a suite within a two-story house. To access the subject rental property the tenants must enter the main house and walk through a common hallway, before coming to their front door.

The tenants testified that they filed this application for dispute resolution because of four main problems at the subject rental property:

1. cockroach infestation,
2. door length,
3. dripping ceiling water, and
4. unauthorized entry.

Cockroach infestation

Tenant A.F.P. testified that he and his wife have rented two previous units from the landlord and did not have cockroach problems in them, but they noticed cockroaches as soon as they moved into the subject rental property.

In the first hearing tenant A.F.P. testified that he first contacted the landlord about the cockroach infestation sometime between October and December of 2021.

In the second hearing tenant A.F.P. testified that on the day they viewed the subject rental property, before moving in, he saw two cockroaches on the wall and informed the landlord of same at that time.

Tenant A.F.P. testified that they sent the landlord many emails about the cockroach problem and that the landlord responded to some of their emails, but others were ignored. Tenant A.F.P. testified that after a while, the landlord provided three solutions to the cockroach problem: (1) peanut butter cockroach poison (2) a glue trap (3) cockroach spray.

Tenant A.F.P. testified that the cockroach extermination methods provided by the landlord did not work and the landlord was advised of same, but the landlord did not provide any further remedies to resolve the cockroach problem.

Tenant A.F.P. testified that whenever they informed the landlord about the cockroach problem, she told them the problem existed because the tenants don't keep a clean house and that they need to clean more often. Tenant A.F.P. testified that they keep a clean home and that there is no problem with their hygiene. Tenant A.F.P. testified that the landlord made racist comments.

Tenant A.F.P. testified that most of the other tenants living in the same house have the same cockroach problem. Tenant A.F.P. testified that they moved out of the subject rental property because of the cockroach problem.

The landlord testified that the subject rental house is over 100 years old and that she has someone come every year to complete maintenance at the house.

The landlord testified that when the tenants first viewed the subject rental property, they did not tell her about seeing any cockroaches. The landlord testified that the previous tenants did not inform her of a cockroach problem.

The landlord testified that the first time the tenants informed her of a cockroach issue was about one month after they moved in. The landlord testified that right after she was informed of the cockroach problem, she went to a local store and purchased a cockroach spray and provided it to the tenants.

The landlord testified that the second time the tenants complained about cockroaches, she contacted a pest control company who told her that if there is a restaurant nearby there will be cockroaches and that it was not worth it for them to attend. Tenant A.F.P. confirmed that there are restaurants nearby.

The landlord testified that the pest control company recommended that the tenants clean up the subject rental property and use something to kill the cockroaches. The landlord testified that the pest control company recommended the landlord to buy a paper that had a glue and pesticide on it to kill the cockroaches. The landlord testified that she purchased same and provided it to the tenants.

The landlord testified that when she received the third complaint from the tenants about cockroaches, she spoke with the pest control company who recommended a pesticide to be mixed with peanut butter. The landlord testified that she purchased the pesticide and prepared it with peanut butter. The landlord testified that at the time she prepared the above, the tenants were not home, so she left it outside their door. The landlord

testified that she informed the tenants about the peanut butter pesticide but they did not take it inside the subject rental property and left it at the door.

The landlord testified that after the tenants complained of cockroaches, their neighbour complained of same. The landlord testified that she provided the neighbour with the same cockroach treatments as the tenants and the neighbour's cockroach problem was solved. The landlord testified that she believes the cockroaches moved from the tenants' room to the neighbour's room.

The landlord testified that the tenants told her that the glue trap was for mice only, not cockroaches, but its actually for both. The landlord testified that she does not believe the tenants used either the peanut butter poison or the glue strips. The landlord testified that the cockroach products worked in the neighbour's room. Tenant A.F.P. testified that the glue traps are for mice, not cockroaches.

The landlord testified that the tenants have a responsibility to keep the inside of the subject rental property clean and that they did not do so. The landlord testified that she worked with the tenants to solve the cockroach problem, and did not neglect it, but the tenants didn't use the products provided and did not keep a clean home.

The landlord testified that she offered to allow the tenants to break their lease and move out but they decided to stay at the subject rental property. The landlord testified that she does not understand why. The landlord testified that in August of 2022, after filing for dispute resolution, the tenants asked to extend their lease. The landlord testified that she does not understand why they would want to extend their lease if the condition of the property was so bad.

Tenant A.F.P. testified that for the first 6-7 months the landlord told them that if they broke the lease they would lose their deposit, and they could not afford to do that. Tenant A.F.P. testified that the landlord only offered to let them out of their lease later but that moving is costly and they couldn't afford to move.

Tenant A.F.P. testified that he asked to extend the lease because, at that time, for a period of 3-4 weeks, the pesticide spray was working, the cockroaches were not present and they thought the issue was resolved. Tenant A.F.P. testified that the landlord should have had a professional attend.

Door length

Tenant A.F.P. testified that the door to their unit was very short and that there was a large gap between the floor and the bottom of the door. Tenant A.F.P. testified that mice easily move under the door and enter their suite and that he and his wife have witnessed same.

Tenant A.F.P. testified that he and his wife stuffed clothes under the door to stop the mice from entering their suite but this did not work well because the clothes were moved every time the door was opened. Tenant A.F.P. testified that they informed the landlord of the problem sometime between October and December of 2021 via email and the landlord responded that none of her previous tenants complained about the door. Tenant A.F.P. testified that one night the landlord brought a cat to the house to catch the mice, but this did not work.

The landlord testified that because this is a heritage house, every door and frame has its own size. The landlord testified that if you want to close the door without a space, that means the landlord would have to change the door and frame completely. The landlord testified that the door in question has a little space underneath it and that this is not a problem.

The tenant testified that other doors in the subject rental house do not have the same size gap at the bottom as the subject rental property.

Dripping ceiling water

Tenant A.F.P. testified that in the common hallway leading to their front door part of the ceiling was broken. Tenant A.F.P. testified that the problem is probably from an upstairs bathroom and water was leaking through to the shared hallway. Tenant A.F.P. testified that water dripping from the ceiling smelt badly.

Tenant A.F.P. testified that he let the landlord know of the problem when he first saw it, approximately nine months before the first hearing. Tenant A.F.P. testified that he emailed the landlord many times about the leak, but the landlord only took action shortly before the first hearing. Tenant A.F.P. testified that approximately one month before the first hearing the landlord cut out the water damaged portion of the ceiling but has not yet repaired the leak, which is now dripping onto the floor.

The landlord testified that she hired a technician to fix the leak. The landlord testified that the water leaking out of a ceiling pipe was clean water and did not smell. The landlord testified that the leak was fixed but the ceiling has not yet been repaired because the landlord wants to ensure the leak does not reoccur before the ceiling is repaired. The landlord testified that the hole in the ceiling is not big.

Unauthorized entry

In the first hearing both parties agreed that the landlord entered the subject rental property on two occasions without permission or notice to the tenants. Both parties agree that on one occasion the landlord delivered the tenants a new microwave. The landlord testified that the second occasion occurred when an insect control specialist visited the room. Tenant A.F.P. testified that they could not confirm that an insect control person ever visited the suite. Tenant A.F.P. testified that he has video surveillance of the suite and they believe the landlord was alone when she entered the suite. Tenant A.F.P. testified that a professional pest control person was not hired.

In the second hearing the landlord testified that the tenants gave her verbal permission to enter the subject rental property in their absence to deliver the microwave. This was disputed by the tenants.

In the second hearing the landlord testified that she did not enter the subject rental property for pest control purposes but left peanut butter poison outside their door. Tenant A.F.P. testified that they found a brown paste inside the subject rental property in a corner and the landlord confirmed that she came into the subject rental property to apply the peanut butter poison.

Monetary Claim

Tenant A.F.P. testified that they are seeking \$4,200.00 from the landlord for compensation for the four problems described above. Tenant A.F.P. testified that because of the terrible living situation they were not able to live in the subject rental property for the entire duration of the tenancy and spent most of their time at their friend's house. Tenant A.F.P. testified that they occasionally paid their friend to stay at his place because the landlord was not solving the problems with the subject rental property.

Tenant A.F.P. testified that they incurred additional food costs because they couldn't eat at their home due to the cockroaches which infiltrated their food stores in their cupboards and in the fridge.

Tenant A.F.P. testified that they are seeking $\frac{3}{4}$ of their rent (\$900.00 per month) in damages. I asked tenant A.F.P. for what months he is seeking the above damages he testified that he could not state what months he was seeking damages for because the problem was scattered all over the year. Tenant A.F.P. testified that for example, in one month they stayed at their friend's house for 14 days, and other months it was more and other months it was less, depending on the level of cockroaches at the subject rental property. Tenant A.F.P. testified that his claim is not based on a definite interval. Tenant A.F.P. testified that they are claiming \$900.00 per month for a period of 7 months, which were scattered over the duration of the tenancy.

Tenant A.F.P. testified that the total claim of \$4,200.00 is based on their estimated cost to live with their friend, eat out, and lost food costs. Tenant A.F.P. testified that he does not have any actual calculations of how the sum of \$4,200.00 was arrived at, and this was their estimated loss. The tenants did not set out what proportion of their claim was for each of the four problems raised in this hearing. The tenants did not present specific testimony or other documents setting out specifically when they were unable to stay at the subject rental property, how much they paid their friend, receipts for lost food, eating out or documentary estimates for same.

The landlord testified that she does not agree with their request for compensation. The landlord testified that she was happy to work with them to solve the issues but the tenants complained about everything, did not use all the cockroach products provided and did not keep a clean house.

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 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.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Part three of the test for damages set out Policy Guideline 16 states:

The party who suffered the damage or loss can prove the amount of or value of the damage or loss.

Tenant A.F.P. testified that their monetary claim was based on their estimate of loss from paying their friend to stay at his home, eating out, and the cost of food damaged by cockroaches. The tenants did not provide any calculations for how the sum of \$4,200.00 was arrived at. The tenants did not provide details of when they stayed with their friend or how much money they paid their friend to stay at his place. The friend was not called as a witness and no statement from said friend was entered into evidence.

Tenant A.F.P. also testified that their claim was based on $\frac{3}{4}$ of rent paid over the course of seven months, spread out over the course of the tenancy. $\frac{3}{4}$ of \$1,200.00 (rent) is \$900.00 X 7 months = \$6,300.00.

I find that the tenants have provided conflicting testimony regarding how their claim was calculated. It is not clear if the claim is based on the time they stayed at their friend's house, the amount of money they paid to their friend, the amount of money they lost in damaged food or additional costs of eating out, or some combination of all of the above.

I find that the tenants have not clearly set out what amount of money they are claiming for each of the four issues raised in this hearing as no testimony regarding this was provided in the hearings. The sum of \$4,200.00 claimed appears to be based on nothing other than the tenants' personal estimate of damages which they have not provided corroborating evidence for. I note that $\frac{3}{4}$ of rent for 7 months equals \$6,300.00 but the tenant's are seeking \$4,200.00 in this application for dispute resolution. I find that the math does not add up and it is unclear who damages were calculated.

I find that the tenants have not proved that the property was uninhabitable for 7 months as they were not able to state when they could and could not live at the subject rental property. I find that the tenants have not proved the value of their loss as no calculations of the estimate were provided and the alternative claim of a proportion of rent does not add up to the amount claimed in their application for dispute resolution.

As I have determined that the tenants have not proved the value of their loss, their application for dispute resolution is dismissed without leave to reapply.

Since 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 from the landlord.

Conclusion

The tenants' application for dispute resolution 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: March 1, 2023

Residential Tenancy Branch