



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held, by teleconference, on April 13, 2023. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for compensation for loss or other money owed; and,
- Recovery of the cost of the filing fee.

Both the Landlord and the Tenant attended the hearing and provided affirmed testimony. Both sides confirmed receipt of each other's documentary evidence. No service issues were raised.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that the tenancy started on March 1, 2021, and ended on or around May 31, 2022. Monthly rent was set at \$3000.00.

The Tenants are seeking compensation in the amount of \$4,500.00, which is \$300.00 per month for the duration of the tenancy (15 months) due to loss of use of the garage. More specifically, the Tenants pointed to the tenancy agreement to show that the use of the garage was included as part of the tenancy agreement. Further, the Tenants pointed to the condition inspection report (CIR) to show that at the start of the tenancy, it was noted on the relevant portion of the CIR that the garage was to be emptied.

The Tenants stated that when they moved in, they tried to be patient with the Landlord (who was moving out of the rental unit) as he cleared his things out of the garage. The Tenants stated that the Landlord cleared some of his things out of the garage, but he kept many of his items stored in the side of the garage for the entire duration of the tenancy. The Tenants stated that the landlord would come around once a month to grab a few personal items and then leave the remaining items in the garage. The Tenants provided a few photos into evidence which show the Landlord's belongings stored in the side of the garage.

The Tenants stated that they never had full use of the garage, even though their tenancy agreement provided for that, and they deny that they ever agreed to let the Landlord store his things, indefinitely, in the garage. The Tenants stated that the Landlord at one point told them it would cost him about \$300.00 per month for a storage locker to hold his things, so the Tenants are seeking this amount as a reduction in rent due to the loss of use of the space.

The Landlord acknowledged that he used to live in the house, prior to the start of this tenancy, and he had many belongings left in the garage when the Tenants moved in. The Landlord stated that he moved some things out, but he asserts he had a "gentleman's agreement" with the Tenants where he could keep some of his belongings in the garage, without issue. The Landlord acknowledged that he would occasionally come by to gather one or two of his items from the garage for personal use.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Residential Tenancy Policy Guideline #22 - Termination or Restriction of a Service or Facility states as follows:

C. RENT REDUCTION

Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.

[...]

Where there is a termination or restriction of a service or facility for quite some time, through no fault of the landlord or tenant, an arbitrator may find there has been a breach of contract and award a reduction in rent. I note the tenancy agreement clearly indicates that the Tenants rented the garage from the Landlord. There is no mention of this being only a partial rental of the garage. Further, the Tenants refute that there was any sort of verbal agreement for the Landlord to keep his things in the garage. Further, I note the CIR which shows that at the start of the tenancy, there was a note to empty the garage.

It appears some of the belongings were emptied out, but the Landlord kept numerous items stored against the wall of the garage for the duration of the tenancy.

I find the Landlord's failure to empty out his belongings led to a loss of a service or facility (storage space). As a result, I find the Tenants are entitled to a reduction in rent. However, it is difficult to ascertain what portion of the overall garage space was lost. The Landlord stated it was only 5% of the garage. However, the Tenants assert it was more than this. I accept that the Tenants still had use of most of the garage, and could still park their car in it. However, as per the photos, there were still many of the Landlord's personal items stored along the wall.

I note that an arbitrator may award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this case, I find a nominal monthly amount of \$100.00 is reasonable. I award \$100.00 per month x 15 months, for a total of \$1,500.00 over the duration of the tenancy.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenants paid to make the application for dispute resolution.

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$1,600.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: April 21, 2023