



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, RR, RP, PSF, LRE, LAT, OLC, FFT

Introduction

On April 11, 2022, the Tenants made an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking an Order to comply pursuant to Section 62 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, seeking to restrict the Landlords’ right to enter pursuant to Section 70 of the *Act*, seeking the provision of services or facilities pursuant to Section 62 of the *Act*, seeking authorization to change the locks pursuant to Section 31 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was the final, reconvened hearing from the original Dispute Resolution preliminary hearing set for August 12, 2022. The original hearing was adjourned as per an Interim Decision dated August 16, 2022, and then subsequently adjourned again as per an Interim Decision dated January 4, 2023. The final, reconvened hearing was set down for May 1, 2023, at 11:00 AM.

Both Tenants and Landlord A.G. attended the final, reconvened hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, neither party could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, the parties were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance

provided a solemn affirmation.

At the original hearing, the parties were informed, as per Rule 2.3 of the Rules of Procedure, that claims made in an Application must be related to each other, that I have the discretion to sever and dismiss unrelated claims, and that the hearing would primarily address the Landlords' One Month Notice to End Tenancy for Cause. However, as it was determined later, that matter will be reheard by the Residential Tenancy Branch at some point after being remitted back to the Branch as a result of a Judicial Review decision.

Regardless, the focus of the original hearing shifted to that of the Tenants' claims for monetary compensation. At the reconvened hearing of December 23, 2022, re-service of documents was discussed as the parties were Ordered to re-serve their evidence in accordance with the Interim Decision dated August 16, 2022.

At this point, I find it important to note that it is entirely evident that this is a contentious tenancy, with much animosity between the parties, and there have been at least two previous Decisions involving the parties (the relevant file numbers are noted on the first page of this Decision). This is pertinent in that the Tenants have chosen to submit what can only be described as an excessive and unmanageable amount of evidence for consideration, totalling over approximately 1130 separate files.

This is important to note because the Tenants were provided with an opportunity to re-serve the entirety of their evidence to the Landlords before the December 23, 2022, hearing. However, they were uncertain if they did so completely, and as a result, I only accepted the Tenants' documentary evidence that was printed and on the USB. I find it more likely than not that given the multiple disputes the Tenants have, they are unsure of what evidence has been submitted on which files, and this was a cause for their confusion, disorganization, or lack of compliance with the Interim Decision dated August 16, 2022. The Tenants were cautioned that this could be detrimental to their Application as they were required to point me directly to relevant documentary evidence that would substantiate their claims.

Moreover, as there was some dispute in the reconvened hearing of December 23, 2022, about a condition inspection report that was created by the Tenants, they were clearly Ordered to re-serve that report to the Landlords and also to upload a copy to the Residential Tenancy Branch. When the Tenants were asked if they did this at the May 1, 2023, hearing, they indicated that they did not do so as they "just forgot", and did not read this Interim Decision. Given that this was possibly a significant piece of evidence

that they would be relying on to support the legitimacy of their claims, it is not clear to me how they would simply forget. I find that this is another example of the ambivalence and disorganization on the part of the Tenants that further causes me to question the authenticity of their claims. In my view, it is apparent that the Tenants simply chose to upload as much evidence as possible, in the hopes that some of it would be possibly relevant in some fashion. However, they were cautioned during the hearings that they were required to point me directly to any relevant documentary evidence that would precisely substantiate their claims, and that it is not my role to comb through their unreasonable evidentiary submissions in an attempt to piece together their claims for them.

Moreover, during the May 1, 2023, hearing, A.G. requested an adjournment because he was on a cruise that was booked over a year ago. He stated that Landlord W.B. was on the ship as well, but was suffering from a medical issue, and that they would be returning to the country on May 10, 2023. However, he could not provide any explanation for how it would be unreasonable to proceed as he had already attended the hearing by phone, and had no apparent difficulties doing so.

The Tenants were asked for their position on this adjournment request, and Tenant M.C. stated that they only received this request three weeks ago and were not prepared to accept this request as the Landlords had sufficient time to make it earlier.

Rule 7.9 of the Rules of Procedure provides the applicable criteria for the granting of an adjournment. I note that the Landlords had ample time from the Interim Decision dated January 4, 2023, to make this request, as opposed to bringing this to the Tenants' attention three weeks prior to the hearing. I also find it reasonable to conclude that the Landlords were aware of the date of this trip well in advance of three weeks before the final, reconvened hearing.

As this hearing had already been adjourned twice, as A.G. appeared not to have any difficulty attending the hearing and making submissions, and as the criteria for an adjournment was not satisfactorily met by the Landlords, I determined that adjourning the hearing would be prejudicial to the Tenants. As such, I did not allow A.G.'s request for an adjournment.

Issue(s) to be Decided

- Are the Tenants entitled to Monetary Order for compensation?

- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on March 1, 2022, and that the tenancy was still ongoing due to the recent Judicial Review Decision. Rent was established at an amount of \$2,000.00 per month, and was due on the first day of each month. A security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

At the reconvened hearing on December 23, 2022, M.C. advised that they were seeking compensation in the amount of **\$2,000.00** for the first month of rent because the rental unit was provided to them in complete disarray at the start of the tenancy. She testified that they spent a majority of their time bringing the condition within the rental unit up to an acceptable, cleanliness standard. She indicated that the Landlords did not complete a move-in inspection report, as required by the *Act*, so they completed one themselves on March 3, 2022, and emailed this to the Landlords on March 5, 2022. She referenced documentary evidence submitted to support their position regarding the unacceptable state within the rental unit at the start of the tenancy. As well, she cited an email dated March 9, 2022, from W.B., where W.B. allegedly spent \$350.00 in an attempt to have the rental unit cleaned and brought up to a re-rentable condition.

A.G. confirmed that he did not complete a move-in inspection report with the Tenants, as required by the *Act*, and that he had a copy of the Tenants' condition inspection report that they completed. He acknowledged that he did not clean the rental unit "as best as [he] could", and while it was "not exactly dirty or filthy", he stated that the Tenants called him a "pig". He testified that they informed him that the rental unit was not given to them in an acceptable condition and that they sent him belligerent messages. He stated that he apologized, that he offered to reduce the rent, and that he hired a cleaner on March 10 or 11, 2022. However, he later contradictorily indicated that this was done on March 7, 2022, but he did not submit any receipt to substantiate this. Regardless, he confirmed that the cleaning that was completed was also "not the greatest". Although, he contradictorily stated later that this cleaner brought the rental

unit up to a re-rentable condition. He referenced a previous Decision where the Arbitrator indicated that the cleanliness of the rental unit was determined to be satisfactory.

W.B. advised that they attempted to offer compensation to the Tenants on March 2, 2022, but this was declined by the Tenants. She submitted that the Tenants only suffered seven days of loss as the cleaners rectified this cleanliness issue.

M.C. advised that it is their position that the Landlords did not bring in a cleaner as there was no evidence or a receipt provided. She referenced an email submitted as documentary evidence to support this position. She testified that they still engaged in cleaning of the rental unit after the Landlords' cleaner was allegedly in the rental unit. As well, she stated that the Decision that A.G. was referring to was set aside upon Judicial Review.

At the final, reconvened hearing on May 1, 2023, this is where M.C. indicated that they did not comply with the previous Interim Decision regarding re-service of their condition inspection report. When the Tenants were asked if they wished to make any more submissions regarding their claims, they stated that they had nothing further to add.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also need to turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Tenants' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlords fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenants prove the amount of or value of the damage or loss?
- Did the Tenants act reasonably to minimize that damage or loss?

When reviewing the totality of the evidence before me, the undisputed evidence is that A.G. acknowledged that he did not conduct a move-in inspection as required by the *Act* and that he did not clean the rental unit "as best as [he] could". In addition, I find that his testimony that it was "not exactly dirty or filthy" supports a reasonable conclusion that is consistent with the rental unit not being cleaned properly. Given these submissions, his acknowledgement of the condition that he apologized for, and the offer of a rent reduction, I am satisfied that the actual condition within the rental unit was, more likely than not, consistent with the Tenants' documentary evidence. As such, I am satisfied that the rental unit was not provided to the Tenants in a reasonably clean condition. Moreover, while the Landlords claimed that they hired a cleaner to rectify this matter, I do not find there to be any documentary evidence to adequately support this submission.

When assessing the Tenants' claim for compensation for this breach, I find it important to note that their rent was \$2,000.00 per month and that this claim for loss was related to the first month of the tenancy. As such, this claim in the amount of \$2,000.00 would equate to a loss where the Tenants would have been entirely unable to live in the rental unit, and thus, would have received zero value for the affected period due to the alleged breach. However, there was insufficient evidence substantiating that the Tenants did not live in the rental unit during this time. Consequently, I reject this amount as it does not

represent a reasonable estimation of the Tenants' actual loss for this breach, in my view.

As the burden of proof is on the Tenants to establish the amount of compensation owed, and as the Tenants have failed to do so in this regard because of the disproportionate nature of the claim, I reject the amount of remedy being sought. Regardless, as I am satisfied that the Landlords knowingly breached the *Act* by providing a rental unit that was not in a reasonably clean condition, I accept that the Tenants are entitled to some compensation for their losses. However, as the Tenants' claim was misaligned with what would be considered reasonable, I do not find that they have substantiated an amount close to what they were seeking. As such, I grant the Tenants a monetary award in the amount below, that I have determined to be commensurate with what the Tenants have presented.

As the Tenants were generally successful in this claim, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlords to the Tenants

Item	Amount
Uncleanliness within rental unit	\$1,000.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$1,100.00

Conclusion

The Tenants are provided with a monetary award in the amount of **\$1,100.00** in satisfaction of this claim. It is unclear if this tenancy is still continuing; however, if it is, the Tenants may deduct this amount from a future month's rent in satisfaction of this debt.

However, if this tenancy is over, the Tenants are provided with a conditional Monetary Order in the amount of **\$1,100.00** in the above terms, and 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. Again, this conditional Monetary Order will not be enforceable if the Tenants have already benefitted by withholding this amount from rent.

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: June 1, 2023

Residential Tenancy Branch