



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, FFT, MNDCL, FFL

Introduction and Preliminary Matters

This hearing dealt with cross-applications filed by the parties. On February 4, 2023, the Tenants made an Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to recover the filing fee for this Application from the Landlords under section 72 of the Act

On October 5, 2023, the Landlords made an Application for Dispute Resolution that pertained to:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to recover the filing fee for this Application from the Tenants under section 72 of the Act

These matters required being adjourned as per my Interim Decisions dated October 29, 2023, March 6, 2024, March 27, 2024, and April 18, 2024. These files were then set down to be heard on April 29, 2024, at 11:00 AM.

Tenant N.P. and E.P. attended the final, reconvened hearing. Both Landlords attended the final, reconvened hearing as well, with D.P. attending as an agent for the Landlords. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties 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, they 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.

During the hearing on March 25, 2024, D.P. advised that the person that the Tenants named as a Tenant on this Application (N.S.) was simply an occupant of the Tenants and should not be included on this Application. He testified that there was no written documentation that one of the Tenants on the tenancy agreement had moved out, and that N.S. had replaced this person. He stated that they became suspicious in April 2022 that N.S. was subletting from the Tenants.

N.P. advised that N.S. moved in after the Tenant on the tenancy agreement moved out, that M.P. met N.S. many times, that there were text communications and conversations between the parties, and that they even shook hands at one point.

When reviewing the totality of the evidence before me, I find there to be little documentary evidence demonstrating that the tenancy agreement was ever amended to remove the one Tenant that left and replacing this person with N.S. as a Tenant. As such, I am not satisfied that N.S. is a Tenant of this tenancy and I find it more likely than not that he would be considered an occupant of the Tenants. Consequently, N.S. has been removed from the Style of Cause on the first page of this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; 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 compensation?
- Are the Tenants entitled to recover the filing fee?
- Are the Landlords entitled to a Monetary Order for compensation?

- Are the Landlords 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 most current tenancy commenced on July 15, 2020, and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on October 1, 2022. Rent was established at an amount of \$2,550.00 per month and was due on the first day of each month. A security deposit of \$1,250.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The Tenants advised that they were seeking compensation in the amount of **\$15,473.00** for pests, mold, renovations, and hazardous debris in the yard; however, it was apparent that \$2,390.00 of this pertained to an issue of mold prior to when this tenancy started and occurred during a separate tenancy when Tenant N.P. lived in the basement in 2019. As this was a claim for a completely separate tenancy, this amount will not be considered and is dismissed. Tenant E.P. advised that they verbally requested that the Landlords remove construction debris from the yard in August 2020, and that they texted this request to the Landlords on May 8, 2022. She testified that there were many conversations with the Landlords regarding this debris, and she referenced documentary and digital evidence to support this claim. Moreover, the Tenants took issue with how frequently Landlord M.P. was on the property while intoxicated, and with his obscene and abusive behaviour towards them and their guests. They referenced documentary and digital evidence to support their position. As well, they submitted an excel spreadsheet outlining their breakdown of loss of value and quiet enjoyment due to these issues.

D.P. advised that the rental unit was located near the SkyTrain station, that there was a large homeless population there, that this contributed to a large amount of debris being left, and that this exacerbated a rat problem. He testified that the Landlords always maintained the property, and that the only written communication about this was the May 8, 2022, text message. He confirmed that there was drywall and renovation materials left on the property, but this was disposed of in a timely manner. He also noted that N.S. conducted construction on his camper on the property, and there was

debris associated with this. He referenced documentary evidence submitted to support the Landlords' position that the yard was maintained to the best of their ability.

Witness P.R. testified that he observed garbage and construction debris consistently in the yard, that this was not properly disposed of, and that appliances were also stored in the yard.

The Tenants then advised that they were seeking compensation in the amount of **\$3,660.00** for a loss of personal property; however, again, it was apparent that \$1,019.00 of this pertained to prior to when this tenancy started and occurred during a separate tenancy when N.P. lived in the basement in 2019. As this was a claim for a completely separate tenancy, this amount will not be considered and is dismissed. N.P. then advised that they were seeking compensation in the amount of **\$1,568.00** because N.S.'s tires were slashed on July 8 or 9, 2022, and he suggested that M.P. was responsible for this damage. However, they did not have any proof of this. He submitted that M.P. was in an angry mood prior to the tire slashing, and that he was frequently on the property. While this incident was reported to the police, they could not make a conclusive determination that M.P. was responsible. He referenced documentary evidence submitted to support this allegation.

D.P. advised that the police conducted an investigation and that there was no evidence that M.P. committed this crime.

As part of this claim for personal property damage, the Tenants advised that they were seeking compensation in the amount of **\$253.00** for the cost of security cameras that they purchased, as suggested by the police. They testified that feces was smeared on these cameras at some point; however, they are unsure of when this occurred or who was responsible for it as M.P. covered the cameras with wooden planks prior to this happening. They referenced evidence submitted to support their allegation that it was M.P. who had engaged in, and was negligent, for this damage.

D.P. advised that M.P. did not know that there were cameras installed by the Tenants and that the Tenants did not submit any evidence to substantiate that there was feces on these cameras.

In addition, as part of this claim for personal property damage, N.P. advised that they were seeking compensation in the amount of **\$600.00** for the cost of repairing damage to their car paint as it appeared as if someone keyed it on or around September 30, 2022. N.P. advised that M.P. was on the property that day, carrying cans of beer, and

that the car could not be viewed by the security cameras as it was obscured by a black truck that was parked in front of it. He stated that this amount claimed was quoted by a repair shop, that the car was painted at some point, and that he was not sure when this was done. He referenced digital evidence to support this allegation of vandalism.

D.P. advised that M.P. was not responsible for this damage, that the Tenants were told to call the police regarding this matter, that they did not do so, and that the Tenants did not provide an invoice for this arbitrary number.

Finally, as part of this claim for personal property damage, N.P. advised that they were seeking compensation in the amount of **\$220.00** for the cost of a glass patio table that was smashed. N.P. originally testified that this happened on or around September 9, 2022, and that M.P. was on the property every day. While they do not have any evidence that M.P. damaged the table, he indicated that M.P. was aware of the cameras and that he was “choosing” not to commit crimes in front of the cameras. He stated that the table was not brand new and that he paid “probably \$100.00” for it.

D.P. advised that he was on the property when the table broke on September 7, 2022, and stated that the umbrella was in the table in the open position. He assumed that this was actually broken due to the wind. He testified that this table originally belonged to the previous tenants.

Finally, the Tenants advised that they were seeking compensation in the amount of **\$15,000.00** for aggravated damages due to a loss of their privacy and freedom as M.P. was excessively on the property, while being intoxicated. E.P. testified that he would yell at them or their guests, that he would yell while using foul and offensive language, and that he would invite friends to stay in the garage. She stated that from June 2022, after which point the Landlords served a One Month Notice to End Tenancy for Cause (the Notice), his aggressive and intolerable behaviour increased. In addition, she stated that he would commence construction on the property from 8 AM to late at night, that there was substantial noise due to this, that they did not feel safe due to M.P.’s escalating questionable behaviours, that the police advised them to install cameras, and that M.P. assaulted a friend of theirs after the tenancy had ended. She stated that M.P.’s constant presence in the yard, especially due to his aggressive and escalating behaviour, prevented them from being able to enjoy its use. She noted that the Landlords admitted to M.P.’s questionable use of language and behaviours in their own evidence.

She stated that M.P. was on the property 25 days out of 29 in September 2022, and she referenced digital evidence of M.P. frequently on the property with alcohol. As well, she

cited videos that demonstrated the level of noise due to the renovations; however, these videos did not have any sound. She stated that the value of this claim is broken down as \$1,000.00 per month per Tenant, for five months of loss. She testified that they feared for their health and safety, that they were accused by M.P. of being racist, and that he directed other disparaging commentary at them.

Witness Y.O. testified that he would visit the Tenants approximately two to three times per week and he observed M.P. there at least 50 times. He stated that M.P.'s demeanour became increasingly unpredictable, that his language deteriorated and incorporated much profanity, and that his attitude and tone was unwelcoming and hostile. When Y.O. was asked to recount examples of what M.P. said specifically, he could not remember any exact language used. He advised that he had observed M.P. intoxicated and stumbling on the property at least three to four times. As well, Y.O. could not corroborate the specific details of what he included in his written statement that was submitted as documentary evidence for consideration.

Occupant N.S. advised that he moved in on April 1, 2022, that M.P. would come onto the property often without notice, and that his harassing behaviour became unpredictable and erratic especially after the Notice was served. He testified that in one interaction in July 2022, he could smell alcohol on M.P. and that M.P. appeared intoxicated as he was swaying, and his speech was slurred. He stated that M.P. became aggravated and started yelling, and he described the specific offensive and inappropriate words that M.P. had uttered. He submitted that he had seen M.P. intoxicated on the property at least twice, that his demeanour was generally irritable and agitated, and that M.P. would use foul language in every interaction generally, or directed at the Tenants or their guests.

Witness P.R. advised that he had visited the Tenants at least once per week, that M.P. was on the property at least half of these times, and that he observed M.P. frequently and aggressively hurling vulgar, expletive laden statements at the Tenants, guests, or strangers walking by the property. He testified that M.P.'s behaviour was erratic, and he assumed that M.P. was intoxicated. As well, he stated that he served some documents to M.P. after the tenancy had ended, that M.P. threw these documents back at him, and that M.P. hit him in the back. He testified that the police were contacted, and they confirmed that M.P. had assaulted him.

N.P. advised that the Landlords' evidence contains acknowledgement of M.P.'s use of obscene and profane language and the volume that was exhibited. E.P. advised that the Landlords acknowledged in their own evidence that M.P. had a "relapse with alcohol".

D.P. confirmed that M.P. frequented the property, that he was only in the common areas and the garage, and that he maintained the property. He testified that they received no written warnings from the Tenants about not accessing the property or complaints of construction noise. As well, he stated that M.P. felt “attacked” by the language used in texts and a phone call from the Tenants, and from harassment, so a \$2,550.00 settlement was offered. He submitted that the Tenants thanked them for this offer, which contradicts their claims of having issues with M.P.’s behaviour. Moreover, he stated that there was no digital evidence capturing M.P. swearing.

D.P. then advised that the Landlords were seeking compensation in the amount of **\$2,550.00** because the Tenants were served with the Notice on or around June 10, 2022, and the Tenants disputed it (the relevant file number is noted on the first page of this decision). He testified that the Tenants were offered \$2,550.00 to withdraw this Application; however, the Tenants accepted this money, then vacated the rental unit, and still proceeded with the Application. He referenced an e-transfer receipt submitted as documentary evidence to support this position.

N.P. advised that the original Interim Decision had addressed this matter, and he reiterated that the e-transfer receipt indicated that this \$2,550.00 offer was “contingent” on moving out only, and there was no agreement to withdraw the Application.

Finally, D.P. advised that the Landlords were seeking compensation in the amount of **\$5,000.00** because they had to obtain legal counsel to deal with the Tenants’ complaints and the respective Applications, which also aggravated their medical conditions. He stated that this claim was for stress, but he could not explain how the value of this amount claimed was calculated.

N.P. advised that the Landlords’ evidence demonstrates that M.P. already had pre-existing medical conditions. Furthermore, he questioned why M.P. would have been on the property daily engaging in heavy labour jobs while drinking alcohol and swearing, if his health was in doubt.

Analysis

Upon consideration of the evidence 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.

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

In addition, 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 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' claim for compensation in the amount of \$15,473.00, as noted, \$2,390.00 of this pertained to an issue prior to when this tenancy started. As such, this amount will not be considered and is dismissed.

When reviewing the totality of the evidence before me, I find it important to note that the Tenants submitted an excessive amount of evidence, to the point that they were unable to direct me specifically to which evidence was relevant, as they themselves were confused by their own documents and the mislabelled/generic file names. They were

informed that it was not up to me to review the entirety of their evidence and create their arguments for them. Given their disorganization with their own files, and that the burden was on them to justify their claims with relevant documentary and digital evidence, it was clearly evident that they were unable to adequately substantiate the legitimacy of their claims.

Regardless, it was apparent that M.P. was frequently on the property for the duration of this tenancy. It was also evident that M.P. had been engaging in renovations on the property as well. While the Tenants contest that there was much debris left and strewn about the property by M.P., I note that the Tenants also had their own debris, or that of their occupant's, on the property as well. Nevertheless, the Tenants have claimed a loss for as far back as August 2020, and a key component of the four-part test is mitigation of loss. Had these problems truly been such a significant and concerning issue at the time, it is not clear to me why they would not have filed this Application sooner to have any of their concerns addressed, instead of waiting until the tenancy had ended to make this claim. I do not accept that the Tenants can allege a loss in value of their tenancy, and an accrual of that loss for a period of over two years, when they could have simply addressed it at the time. I find that this lack of action causes me to doubt the reliability of the Tenants' claims of there being a true, significant, and actual loss.

However, I note that the Landlords acknowledged in their written submissions that M.P. was on the property frequently, that he had "relapsed with alcohol", and that he "does use vulgar language when he is frustrated and is hard of hearing, so he talks loudly." I do find this acknowledgment of M.P.'s behaviour to be consistent with the Tenants' documentary and digital evidence. I also note that there is one video of M.P. clearly becoming belligerent and hostile, and assaulting P.R., which in my view gives further weight to the Tenants' position of M.P.'s ongoing egregious demeanour and behaviour. While I am not satisfied that the Tenants' mitigated their loss above, I am also satisfied that M.P.'s incessant actions and behaviours were entirely inappropriate, unacceptable, and excessive. As such, I find it appropriate to grant the Tenants a monetary award in the amount of **\$2,000.00** only for this loss of quiet enjoyment. The remainder of their first claim of \$15,473.00 is dismissed in its entirety.

Regarding the Tenants' claim for compensation in the amount of \$3,660.00 for a loss of personal property, I note that \$1,019.00 of this pertained to a different tenancy and this amount will not be considered. With respect to their claim for compensation in the amount of \$1,568.00 for N.S.'s damaged tires, I do not find that the Tenants have provided sufficient or compelling evidence substantiating their allegation that M.P. was

responsible for this vandalism. As such, I dismiss this claim without leave to reapply.

Regarding the Tenants' claim for compensation in the amount of \$253.00 for the cost of security cameras that were smeared with feces, I also note that there is no compelling or persuasive evidence of if there was feces on the cameras, or who was responsible for this. Consequently, I dismiss this without leave to reapply as well.

With respect to the Tenants' claim for compensation in the amount of \$600.00 for the cost of repainting their car because it was keyed, I do not find that the Tenants have submitted any definitive evidence of who was responsible for this damage. Moreover, even if there was negligence established, there is no evidence substantiating the actual cost to repair this damage. Therefore, this claim is dismissed as well.

Finally, regarding the Tenants' claim for compensation in the amount of \$220.00 for a glass patio table that was smashed, I note that they even acknowledged that they were uncertain if M.P. damaged this table. It was apparent, much like the other claims above for property damage, that this was speculative and suggestive in nature and not borne out of, or based on, any definitive evidence. Furthermore, the Tenants were claiming for damages in excess of what it was originally paid for. As the burden of proof is on the Tenants to substantiate their claims, much like the other claims above, I am not satisfied that they have provided any evidence to support their allegations that M.P. was responsible for this damage. As such, I dismiss this claim in its entirety.

Finally, with respect to the Tenants' claim for compensation in the amount of **\$15,000.00** for aggravated damages, I note that N.S. was determined not to be a Tenant. As such, I will only consider a claim in the amount of \$10,000.00.

I find it important to note that Policy Guideline # 16 defines aggravated damages as an "intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application."

When assessing the Tenants' submissions regarding a request for aggravated damages, as noted above, I accept that M.P. was frequently on the property on multiple occasions, likely being somewhat belligerent and acting in an inappropriate and unacceptable manner. However, there is little evidence, if any, that the Tenants brought

these issues to the Landlords' attention and then demanded, in writing, that they correct them. Furthermore, there is no indication that the Tenants ever took any steps through the Residential Tenancy Branch to have these matters addressed or to mitigate this loss. Moreover, there is no documentary evidence submitted to support any ill health effects of alleged "mental injury" or from "exposure to hazardous materials." I do not find that the Tenants have submitted sufficient or compelling documentary evidence to support their submissions to corroborate a loss that would justify an award for aggravated damages. In my view, this clearly appears to be more of a frivolous and vexatious claim, and I dismiss it in its entirety, especially in light of the award above for a loss of quiet enjoyment.

With respect to the Landlords' claim for compensation in the amount of \$2,550.00 because the Tenants did not withdraw their Application despite their belief that a previous settlement agreement required them to do so, I have noted in the Interim Decision dated October 29, 2023, that there was "no documentary evidence of any settlement agreement in writing that outlines the specific terms of what the parties agreed to." Moreover, I found that the Landlords' lack of action after that hearing on November 2022 to be further determinative that this "belief" was fabricated after this hearing, as it was indicated in that same Interim Decision that "This delay in over half a year of responding to the tenants' Application causes me to suspect that this all-encompassing settlement submission was likely crafted in an attempt to portray an alternative scenario that did not truly exist." Furthermore, when the Landlords were afforded an opportunity to provide submissions on this point in the April 29, 2024, hearing, D.P. was unable to direct me definitively to any documentary evidence that specifically indicated the exact terms of the settlement agreement. As such, I reiterate the findings in the original Interim Decision that, on a balance of probabilities, I am not satisfied that "the parties engaged into a settlement agreement which precluded the parties from making additional claims against each other." Consequently, I dismiss this claim in its entirety.

Finally, regarding the Landlords' claim for compensation in the amount of \$5,000.00 for their costs in obtaining legal counsel and for stress, I find it important to note that it was not necessary to procure legal counsel as they could have represented themselves in this proceeding. However, it was their own decision to do so. Furthermore, there are no provisions in the Act to compensate for "stress", and given that D.P. was unable to adequately explain what this was for, or clarify the actual breakdown of how the value of this amount was calculated, I find that the Landlords have established no merit or justification for this claim. As such, this is dismissed in its entirety.

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

As the Landlords were not successful in their claims, I find that the Landlords are not 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

Loss of quiet enjoyment	\$2,000.00
Tenants' filing fee	\$100.00
TOTAL MONETARY AWARD	\$2,100.00

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$2,100.00** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlord 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: May 15, 2024

Residential Tenancy Branch