Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding 561748 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRT, MNDCT, FFT, MNRL, MNDL, MNDCL, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On November 30, 2022, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to sections 33 and 67 of the *Residential Tenancy Act* (the Act) and seeking to recover the filing fee pursuant to section 72 of the Act.

On August 10, 2023, the Landlords made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to section 67 of the Act and seeking to recover the filing fee pursuant to section 72 of the Act.

These Applications were adjourned multiple times as per my Interim Decisions. As was noted in the April 27, 2024, Interim Decision, these Applications were set down for **written submissions only** due generally to the manner with which the Tenants were unable to present their claims in an organized, efficient manner, resulting in the multiple previous adjournments. The parties were provided with explicit instructions regarding form, content, and requirements to serve their written submissions to the other party.

The parties were advised to submit a documentary submissions package in one continuous document, with a one-page introductory document that specifically outlines their position, their claims, and their arguments. This one-page introductory document must be double spaced, in no less than 12-point font.

Furthermore, this documentary submissions package containing their written submissions (not including the one-page introductory document) was limited to 6 pages, double spaced, in no less than 12-point font. The parties were required to have their written submissions directly and explicitly point to the evidence that was already submitted prior to the hearing, to support their position pertaining to **$750.00** for a

"potable water" issue, and **$3,870.00** for the rental unit being "Uninhabitable in Winter". They were also informed that "Any evidence that is not specifically directed to, or is not relevant, will not be considered", that "Any pages in excess of this 6-page limit will not be considered", and that "The evidence that will **only** be considered when rendering this decision must comply as per the instructions above."

On May 14, 2024, the Tenants uploaded a 75-page package, which clearly exceeded the explicitly indicated instructions for this package. This package consisted of the one-page introductory document, which complied with the instructions in the Interim Decision. However, as plainly noted in this Interim Decision, the Tenants' written submissions package must be limited to 6 pages in length, double spaced, in no less than 12-point font. Furthermore, it outlined that "Any pages in excess of this 6-page limit will not be considered". As such, I will only be reviewing and considering pages 2 through 7 of this package. Moreover, it should be noted that the submissions in this package did not specifically and directly point to any evidence that was already submitted, as required by the Interim Decision.

On May 21, 2024, the Landlord uploaded a 44-page package, which clearly exceeded the explicitly indicated instructions for this package. This package did not contain a one-page introductory document, contrary to the instructions on the Interim Decision. However, it did contain a written submissions package of six pages. As such, these are the only six pages that will be reviewed and considered. Moreover, it should be noted that the submissions in this package did not specifically and directly point to any evidence that was already submitted, as required by the Interim 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 for this Application from the Landlords?
- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to recover the filing fee for this Application from the Tenants?

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 May 1, 2021, and that the tenancy ended on August 31, 2022, when the Tenants gave up vacant possession of the rental unit. Rent was established at an amount of $1,395.00 per month and was due on the first day of each month. A security deposit of $1,395.00 was also paid; however, the Landlord was cautioned that not more than a half a month's rent may be collected as a security deposit in accordance with section 19 of the Act. The overpayment was deducted from rent in February or March 2022 pursuant to section 19(2) of the Act. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

At the adjourned hearing on March 19, 2024, the Tenants' advocate advised that they were withdrawing claims #1, #6, and #7 of the Monetary Order Worksheet. The Landlord did not oppose the withdrawal of these claims.

At the adjourned hearing on April 22, 2024, the Landlord was informed that their claim for $9,692.13 unpaid rent was dismissed with leave to reapply. Furthermore, C.F., who was counsel for the Landlords, advised that they were withdrawing their claims for $11,600.00 and $1,528.54. The Tenants did not oppose the withdrawal of these claims.

At the March 19, 2024, adjourned hearing, the Tenants' advocate, S.J., advised that the Tenants were seeking compensation in the amount to **$6,500.00** because the septic system was unsafe and unusable, which required repairs. Tenant C.B. advised that the toilet stopped flushing in July 2021, and they informed the Landlord of this verbally. He testified that the Landlord stated that it would be a waste of money to empty the tank if it was not solid enough. He submitted that the water and septic systems were unusable for the entire tenancy. He indicated that there were many emails and text messages to the Landlord about this issue, and stated that the first text was on September 9, 2021, but there was no response. He advised that the Landlord brought in a technician on or around September 23, 2021, who stated that there was a blockage that needed to be fixed. He stated that he raised this issue with the Landlord a week later, and the Landlord told him she would get to it, but nothing was ever done. He testified that as they only had one toilet, he purchased a portable toilet and also hired a company to empty the septic tank in December 2021; however, he did not submit an invoice to

corroborate this. He submitted that their claim for compensation is for $500.00 per month, for 13 months.

Tenant V.B. advised that she brought this issue to the Landlord's attention daily, and that the Landlord stated that it was too stressful but would get to it at some point.

When the Tenants were asked why they did not apply to the Residential Tenancy Branch to have this matter remedied if the Landlord did not take any corrective action within a reasonable period of time, C.B. stated that they had not heard of the Residential Tenancy Branch until they received legal advice just prior to the original hearing.

S.J. stated that the reason the Tenants did not initiate any dispute with the Residential Tenancy Branch was because C.B. had injured his back, and because the Tenants felt uncomfortable due to previous disputes with the Landlord.

C.F. advised that the Tenants were aware of the Residential Tenancy Branch because they had filed a previous Application against the Landlord, and there was a hearing regarding this matter on July 29, 2022. He stated that the septic issue was not brought to the Landlord's attention until September 2021, and that the Tenants sent an email to the Landlord on December 30, 2021, regarding hydro. However, he submitted that the Tenants indicated that there were no other problems, and he questioned how significant this septic tank issue was if it was not raised in this email.

The Landlord advised that she was informed by the Tenants of a septic issue in September 2021, that the Tenants believed the tank needed to be cleaned, and that they would contact a company they knew to deal with this matter. She stated that the company indicated that it would be a waste to pump this tank if it was just full of liquid. She testified that a company was hired to pump the tank on September 27, 2021, and that 250 gallons were emptied from the tank; however, she did not submit an invoice to corroborate this. She stated that she was not informed of any other problems with this tank until C.B. talked to her realtor in June or July 2022. She claimed that there were no discussions pertaining to the septic tank prior to September 2021, and that there was no communication from the Tenants about this tank after it was pumped.

At the April 8, 2024, adjourned hearing, S.J., advised that the Tenants were seeking compensation in the amount to **$3,000.00** because the Landlord informed the Tenants that she would open an access road for them, and would provide them with an ATV to navigate getting to the property. Otherwise, they would be trapped when it rained or

snowed on the main road.

C.B. advised that there was one, unpaved road to the rental unit, but it was illegally blocked off by the Landlord's employees, and the Landlord made promises at the start of the tenancy to speak with them about this. He testified that the Landlord provided them with keys to an ATV to use until mid-May 2021 because their truck was not equipped to handle the steep road. He stated that they did not have access to this road from May 2021 to August 2022, and they had sporadic use of the ATV. He indicated that the Landlord made few attempts to improve access to the rental unit. He initially claimed that the amount being sought was for the cost to repair damage to his truck; however, he did not submit any documentary evidence to corroborate this cost of repair. He then contradictorily stated that the compensation was for not having road access at a value of $200.00 per month for 15 months.

S.J. questioned the Landlord, and the Landlord stated that she informed the Tenants at the start of the tenancy that there would be no road access, and asked them how they would get to the rental unit in the winter. She testified that C.B. stated that they were fine with the access conditions to the rental unit, that he would leave his truck at the top and obtain a snowmobile, and that they never brought any issue with this road to her attention. She stated that the ATV was provided to the Tenants as an employee benefit and was not for their personal use. She submitted that the Tenants used a secondary path to get to the rental unit all the time.

In the adjourned hearing of April 22, 2024, C.F. questioned the Landlord, and the Landlord stated that the Tenants previously lived in a nearby manufactured home park. She testified that prior to starting the tenancy, C.B. was afforded an opportunity to view the property and he indicated that it would not be an issue for him to drive his vehicle on this road. As well, she stated that he noted that he would park his vehicle at the top and obtain an ATV to go up and down the road; however, she also provided him with an ATV for work purposes only. She stated that the Tenants never advised her of a problem with accessing the rental unit, and she noted that the Tenants' email in December 2021 indicated that there were no problems.

C.F. then noted that C.B. stated that the compensation was for damage to the truck, but then conversely stated that it was for a rent reduction. He questioned the legitimacy of this claim as this amount coincidentally happens to be the exact amount that is in dispute over a wage issue. He noted that at some point, the relationship between the Tenants and the Landlord soured, and that these issues started with the Tenants after their employment ended with the Landlord.

In the Tenants' written submissions, they indicated that they were seeking compensation in the amount of **$750.00** because the Landlord did not provide them with a safe source of water in the rental unit. They indicated that the Landlord was aware of this issue in May 2021, but this was not repaired until October 15, 2021. However, there were still issues with the well, which were then explained to the Landlord in February 2022. They noted that the Landlord did not correct this despite being aware of the issue. They indicated that they were forced to carry five-gallon pails of water to the rental unit in order to have safe drinking water. The compensation requested is broken down as $50.00 per month for 15 months.

They also noted in their written submissions that the Landlord was aware of issues with the well in May 2021 due to timesheets on May 6 and 7, 2021, which were attributed to work done "re water supply" and "to diagnose water issues". It was indicated that the Tenants became ill after drinking the well water in mid-May 2021, and that professional repairs on the well did not commence until October 2021. Despite this technician indicating that there were more deficiencies with the well, the Tenants did not advance this issue any further. However, they did send an email to the Landlord on February 22, 2022, with a request that bottled water be provided, but this email was ignored, and the well was not repaired. These written submissions noted the Landlord's obligation under the Act to provide potable water, and thus has breached the Act.

In the Landlord's written submissions, it was noted that the Tenants' evidence does not demonstrate any work conducted specifically on the well, that the Tenants did not provide any documentary evidence to support their claims, and that their actions are not consistent with their submissions. It was indicated that the Tenants had no issues with the rental unit until the employment arrangement ended with the Landlord. The Landlord indicated that the rental unit had the same access to water as the Landlord did, from the spring to the fall, but had well water access the rest of the year. As well, the Tenants were aware of this prior to the tenancy commencing. It was noted that the Tenants claimed to have melted snow for water; however, the Tenants contradictorily claimed to have carried pails of water instead, and there were no invoices provided to substantiate this, in any event. As well, it was highlighted that the Tenants attempted to submit additional evidence for consideration, contrary to the instructions on the Interim Decision.

Finally, in the Tenants' written submissions, they indicated that they were seeking compensation in the amount of **$3,870.00** because they did not have proper heat for six months. It was indicated that the Tenants were unaware that the rental unit was not properly insulated, and a livable temperature could not be maintained from October

2021 to April 2022. The Landlord was aware of this by her own admission that the rental unit was not permitted for winter use, as corroborated by a former tenant. The relevant sections of the Act, and a local bylaw, were highlighted with respect to the alleged breaches.

In the Landlord's written submissions, it was noted that the Tenants cited the wrong municipality and relevant bylaw, and there was no documentary evidence provided to support a conclusion that the rental unit could not reach a temperature of 22 degrees. The rental unit was provided with both electric and wood burning heating sources, and the Tenants paid the power bills. Again, there were no issues raised until after the employment arrangement ended. The Tenants have submitted no documentary evidence to meet their burden of proof of establishing their claim.

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.

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 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.

As well, 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' 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 Landlord 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?

With respect to the Tenants' claim of compensation in the amount to $6,500.00 due to the alleged issue with the septic system, I find it important to reiterate that the burden is on the Tenants to prove that there was this ongoing problem that the Landlord was aware of, and that she did nothing to repair. Moreover, a component of the four-part test is also mitigation.

When reviewing the totality of the evidence before me, I am not persuaded that there was this ongoing issue with the septic system. Given that the Tenants had one toilet, had it truly not been operational since July 2021, I can reasonably infer that this would have been a substantial inconvenience. While the Tenants allegedly purchased a portable toilet, this was not done until approximately five months later. In my view, I do not find it likely that the Tenants were living in the rental unit without a functioning toilet for this amount of time. This causes me to doubt the reliability of the Tenants' claims.

Furthermore, given that this appeared to be a significant inconvenience, the Tenants were asked why they did not pursue remedy for this issue through the Residential Tenancy Branch had the Landlord not rectified it within a reasonable period of time. I note that C.B.'s solemnly affirmed testimony was that they were not aware of the Residential Tenancy Branch until receiving legal advice just prior to the original hearing. However, this could not be accurate as the Tenants made this Application on November 30, 2022, so this statement is inconsistent with his testimony.

Moreover, there was a previous dispute that the parties were involved in, so it is entirely evident that the Tenants were aware, for a significant period of time, of this process by which they could have sought a remedy for this issue. In addition, their own advocate stated that the Tenants did not file for Dispute Resolution earlier because they felt uncomfortable due to previous disputes with the Landlord, which confirms that the Tenants were well aware of this system to resolve disputes. These inconsistent and

contradictory submissions cause me to doubt the reliability and truthfulness of the Tenants' testimony on the whole.

Given all of this information, in conjunction with how significant an inconvenience it would be not to have a working toilet, I am skeptical that the Tenants would have lived in the rental unit for such an extended period without this facility. As I have found the Tenants' testimony to be dubious, as noted above, and with a lack of corroborative and compelling evidence to support their submissions, I am not persuaded that the Tenants' portrayal of this issue is legitimate. Furthermore, the Tenants were seeking compensation for 13 months of loss, where again, I find it important to note that it is not reasonable to me to accept that the Tenants would go this amount of time without a working toilet. As well, even if I were persuaded that this was the case, not taking any action to have it corrected and then expecting to be compensated for 13 months does not meet the criteria of mitigating this issue. As I am not satisfied of the plausibility of what has been suggested, I do not find that the Tenants have met the burden of proof to substantiate this claim. As such, I dismiss it in its entirety.

Regarding the Tenants' claim for compensation in the amount of $3,000.00 due to a lack of road access to the rental unit, it is my view that it would be reasonable to expect that the Tenants do their due diligence to view a property to determine if it meets their needs and standards before choosing to rent it. While it may be plausible that there may have been some difficulties with this road, the Tenants should have anticipated this prior to renting. Regardless, I find it important to note that C.B. initially testified that this compensation was for repairs required for his truck; however, there was no documentary evidence submitted to indicate what damage was caused, how it was caused, or to support this exact amount of the cost to repair. He then later recanted this claim and testified that it was actually for $200.00 per month for 15 months of this lack of road access.

Firstly, I note that C.B.'s inconsistent submissions for what this claim was actually for was similar to the disorganized and uncertain manner with which they presented their case, as it was entirely evident that they knew little of the details of their claims. This was a significant reason for the multiple adjournments. Moreover, given that C.B. indicated that this claim was for two entirely different reasons, especially with no documentary evidence of a mysterious truck repair, I find that this further causes me to doubt the credibility of his testimony.

Secondly, I find it unfathomable that had the Tenants truly had difficulty accessing the rental unit, that they would not have taken action to seek remedy for this matter sooner,

instead of allowing it to continue for 15 months. This appears to me to be an excessively long time to have accepted this issue of a lack of access. It is not reasonable to me to accept that they would have lived in the rental unit for this length of time had they truly been unable to access the rental unit. As such, I am highly doubtful of the reliability and truthfulness of this scenario as portrayed. Furthermore, even if I were to accept that this was a likely situation, the Tenants did nothing to mitigate this issue and expect to be compensated for 15 months of loss, when they could have addressed this matter through Dispute Resolution a long time ago. Given the doubts created by the Tenants' submissions, I do not find that they have established the legitimacy of this claim, and it is dismissed without leave to reapply.

Regarding the Tenants' claim for compensation in the amount of $750.00 for not having potable water, the Act requires that the Landlord provide a rental unit that meets housing, health, and safety standards required by law, which would include the provision of potable water. As noted above, in my Interim Decision, the Tenants were provided with explicit instructions on how to submit their written submissions, and clearly they did not comply with these directions. Not only did they not comply with the form and content of what was required, they attempted to submit additional evidence for consideration, which was expressly noted that they were not permitted to do. Furthermore, as it was indicated in the Interim Decision that I would not be considering any submissions more than the allotted six pages, and as the Tenants did not comply by specifically directing me to the precise evidence that had already been previously submitted, there is no documentary evidence before me to substantiate their submissions on this issue.

Regardless, I find it extraordinarily unlikely that they would have carried five-gallon pails of water to the rental unit for a period of 15 months. As I have already determined that I am doubtful that they had difficulties accessing the rental unit by vehicle, I find these submissions to be outlandish at best. In conjunction with the above findings of their dubious credibility, I am not satisfied that the Tenants have substantiated this claim, and I dismiss it without leave to reapply.

Finally, with respect to the Tenants' claim for compensation in the amount of $3,870.00 for an apparent lack of heat for six months, I note that the same issue applies as above with respect to their written submissions package and the limitations they have put on themselves due to not complying with the Interim Decision. When reviewing these written submissions, I find that the Tenants have failed to direct me to any evidence which would corroborate their claim that the rental unit did not meet the minimum housing, health, and safety standards required by law. Furthermore, given the

consistent presentation of what appears to be questionable, uncredible, and unsupported submissions, I am not persuaded of the likelihood of the legitimacy of what has been suggested, on a balance of probabilities. As such, this claim is dismissed in its entirety.

As the Tenants were not successful in their Application, I find that the Tenants are not entitled to recover the filing fee paid for this Application under section 72 of the Act.

As the Landlords were not successful in their Application, I find that the Tenants are not entitled to recover the filing fee paid for this Application under section 72 of the Act.

Conclusion

As per my findings above, the Tenants' Application has been dismissed without leave to reapply.

As the Landlords withdrew their claims, these are dismissed with 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: June 29, 2024

Residential Tenancy Branch