



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC ERP FFT MNDCT OLC PSF FFL MNDCL-S OPC OPN

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- a monetary order for damage to the unit, site, or property, or for money owed or compensation for damage or loss pursuant to section 67;
- an Order of Possession pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- cancellation of the landlords’ 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for money owed or compensation for loss pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlords to make emergency repairs to the rental unit pursuant to section 33;
- an order to the landlords to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other's applications for dispute resolution hearing package ("Applications") and evidence. In accordance with sections 88 and 89 of the Act, I find that both the landlords and tenants were duly served with the Applications and evidence.

Both parties confirmed at the commencement of the hearing that the tenants moved out on September 23, 2018. As this tenancy has ended, all non-monetary aspects of both applications are cancelled.

Issue(s) to be Decided

Are the parties entitled to the monetary orders that they applied for?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Background and Evidence

This fixed term tenancy began on June 11, 2018, with monthly rent set at \$3,900.00. The landlords collected a security deposit in the amount of \$2,000.00, which they still hold. The tenants do not dispute the fact that this was a fixed term tenancy which was to end on June 10, 2019. The tenants moved out on September 23, 2018, prior to the end of this tenancy.

The landlords submitted a monetary claim for \$18,000.00 in order to recover their losses associated with the tenancy as listed below:

Item	Amount
Loss of Rental Income (3 months)	\$11,700.00
Rent for Occupied Room (3 x \$700.00)	2,100.00
Fees, Registered Mail, Printing Costs	200.00
Pain & Suffering	4,000.00
Total Monetary Order Requested	\$18,000.00

The tenants submitted a monetary claim for \$6,020.00 in monetary compensation as set out in the table below:

Item	Amount
Medical Costs & Summer Camp	\$520.00
Rent Reduction – safety issue (hole in floor)	1,000.00
Rent Reduction – health issue (worms)	500.00
Rent Reduction – health issue (smelly air)	2,000.00
Moving Expenses	2,000.00
Total Monetary Order Requested	\$6,020.00

The landlords testified that this was a 3 level home occupied by the landlords on the bottom level, and the tenants on the main and upper level. The landlords testified that there was a room that was not included in the monthly rent, but the tenants had access to for access purposes only in order to gain entry to the backyard. The landlords testified that they discovered that the tenants had decided to use the room without their knowledge or permission, and the landlords then gave written warning for the tenants informing them that they did not have permission to use the room or touch the landlords' belongings that were stored there. The landlords are seeking a monetary claim of \$700.00 per month for the use of the room.

The tenants do not dispute the fact that they had used the room, stating that they had permission to use the room. The tenants testified that they had just moved in, and were still unpacking their belongings. The tenants testified that they cleaned the room, and had notified that landlords of this.

The landlords are also seeking 3 months in lost rental income as the tenants moved out before the end of the fixed-term tenancy. The landlords testified that they mitigated their losses by advertising the home for rent, but as of the hearing date they had yet to find a new tenant. The tenants dispute this claim, stating that they were issued a 1 Month Notice on August 21, 2018 as the landlords were tired of their requests for repairs. The tenants decided to move out before the effective date of the 1 Month Notice, October 10, 2018.

The landlords are also seeking a monetary claim of \$4,000.00 for pain and suffering. The landlords testified that they suffered from high levels of anxiety due to the ongoing issues. The landlords submitted medical documentation to support that their treatment,

which included injection for tension and chronic back pain, including a note from the medical practitioner that stated the landlord MM was experiencing back pain due to stress, and that her acute stressful reaction was due to her interaction with her current tenants.

The tenants also made a monetary claim for unresolved issues during the tenancy. The tenants testified that their daughter was unable to attend summer camp due to a severe allergic reaction to insect bites on the daughter's face.

The tenants also made a monetary claim for the landlord's failure to address a hole in the floor. The tenants submitted that this hole was never repaired despite their requests, and their concern for the safety of all occupants. The landlords replied that this hole was not a maintenance issue as it was constructed as part of the home, and could not be removed.

The tenants made a further claim of \$500.00 for worms in the home, and \$2,000.00 for the poor air quality, which the tenants felt were a health risk. The tenants testified that the home was not clean, and filled with thick dust. The tenants also submitted a monetary claim of \$2,000.00 for moving expenses, which was an estimate. The tenants testified that their actual moving cost was \$4,500.00, which included the original relocation cost of \$3,000.00 and \$1,500.00 for moving out of the home.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on both applicants to prove, on a balance of probabilities that the other party had failed to comply with the *Act* and tenancy agreement, which contributed to the loss claimed.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

Section 44 of the *Residential Tenancy Act* reads in part as follows:

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44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

I find that the tenants moved out, before the end of this fixed-term tenancy, as a result of receiving a 1 Month Notice pursuant to Section 47 of the *Act*. However, the onus still falls on the landlords to demonstrate that the tenants failed to comply with the *Act*, and that this contravention of the *Act* contributed to the monetary loss claimed. Furthermore, I must be satisfied that the landlords mitigated made an effort to mitigate the tenants' exposure to the landlords' monetary loss of rent as is required by section 7(2) of the *Act*. In this case the tenants moved out on September 23, 2018, and the landlords applied for 3 months of loss of rental income as they were unable to find a new tenant as of the hearing date of September 28, 2018.

Although the tenants accepted the 1 Month Notice and moved out instead of disputing the notice pursuant to section 47 of the *Act*, I find that the landlords' application for rental losses is premature. I find that at the time of the hearing only 5 days have passed since the date the tenants moved out, and the 3 months of lost rental income was not supported by their claim. Accordingly, I dismiss this portion of the landlords' application with leave to reapply.

Although I accept the landlords' evidence that the tenants used the storage room to store their belongings, I find that that the landlord did give permission for the tenants to access that room for the purposes of entry into the backyard. As there is conflicting testimony about the terms of the access agreement, as there is not written agreement in place supporting the original agreement in place, I find that I am unable to ascertain whether the tenants acted out of miscommunication. Furthermore, I am not satisfied that the landlords had demonstrated that this breach caused them a monetary loss of the amount claimed. As the landlords did not provide sufficient evidence to support that they suffered a monetary loss due to the tenants' actions, I dismiss this portion of their claim without leave to reapply.

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's behaviour. They are measured by the wronged person's suffering.

The damage must be caused by the deliberate or negligent act or omission of the wrongdoer. However, unlike punitive damages, the conduct of the wrongdoer need not contain an element of wilfulness or recklessness in order for an award of aggravated

damages to be made. All that is necessary is that the wrongdoer's conduct was highhanded. The damage must also be reasonably foreseeable that the breach or negligence would cause the distress claimed.

They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought. The damage award is for aggravation of the injury by the wrongdoer's highhanded conduct.

The landlords requested \$4,000.00 for aggravated damages. Although I sympathize with the landlords, and accept that they suffered from anxiety and pain, I find that the landlords failed to establish how their pain and suffering was specifically due to the deliberate or negligent act or omission of the tenants. The note provided by the landlords simply state that the stressful reaction was due to the landlord's interaction with the tenants. Although the note does reference the tenants, I find that the medical note does not specifically attribute the pain and suffering to the tenants' behavior alone, but rather the interaction between both parties. On this basis I dismiss the landlords' monetary claim for pain and suffering.

As the landlords were not successful in their monetary claim, I dismiss their application to recover the cost of the filing fee without leave to reapply. As section 72 of the *Act* does not allow for the applicant to recover the costs of filing an application other than the filing fee, the remaining portion of their claim is also dismissed without leave to reapply.

The tenants also made a monetary claim for this tenancy.

Section 32 of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I have considered the testimony of both parties, and while it was undisputed that the “hole” did exist, I find that the landlords provided conflicting evidence about the purpose of that hole. Furthermore, despite the health and safety risks claimed by the tenants, I find the tenants failed to provide sufficient evidence to support these risks, including reports or expert testimony confirming the tenants’ claims. I find that the tenants did not provide sufficient evidence to establish that the landlords failed to fulfill their obligations as required by section 32 of the *Act* as stated above.

As stated above, the applicant bears the burden of establishing their claim. I find that the tenants failed to establish that it was due to the landlords’ neglect or deliberate actions that they suffered the losses claimed. On this basis, the tenants’ monetary claim for the medical issues, summer camp, and health and safety risks.

The tenants also made a monetary claim for moving costs. Although I accept the testimony of the tenants that their expectations were not met for this tenancy, I do not find that that they provided sufficient evidence to support that the landlords failed to comply with the *Act*. Furthermore, I find that the tenants made the decision to move out before the end of this fixed term tenancy, and not proceed with disputing the 1 Month Notice issued by the landlords. Accordingly, this portion of the tenants’ monetary claim is dismissed without leave to reapply.

As the tenants were not successful with their monetary claim, I dismiss their application to recover the filing fee without leave to reapply.

Conclusion

As the tenancy ended in September 2018, the non-monetary portions of both applications are cancelled.

The landlords' monetary claim for loss of rental income is dismissed with leave to reapply. Liberty to reapply is not an extension of any applicable limitation period.

The remaining monetary claims are dismissed without leave to reapply.

I issue a Monetary Order in the amount of \$2,000.00 in the tenants' favour, which allows for the return of the tenants' security deposit to them.

The tenants are provided with this Order in the above terms and the landlords must be served with a copy of this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims 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: October 30, 2018

Residential Tenancy Branch