



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR-S, MNDC-S, FF, CNR, OLC, LRE, MNRT

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The landlord and the tenants', C.P. and G.S. attended the hearing via conference call and provided affirmed testimony. All parties confirmed that the tenants additionally named two tenants, L.M. and N.P. were added in error by the tenants as they are not tenants, but the children of C.P. and G.S. who are occupants. As such, all parties agreed to remove their names from the application for dispute filed by the tenants.

Both parties confirmed the landlord served the tenants with the notice of hearing package and 4 out of 5 of the landlord's submitted documentary evidence package(s). The tenants argued that the last package was not received as they did not have enough time to pick it up before the scheduled hearing.

At the outset of the hearing both parties confirmed that the tenancy ended when the tenants vacated the rental unit on January 31, 2020. As such, the requests by both parties regarding possession (OPR and CNR) were cancelled by each party as this is no longer an issue.

The tenants also acknowledged that the requests for the landlord to comply (OLC) and to control the landlord's right to enter the rental unit (LRE) were no longer required as the tenancy had ended. As such, the tenants confirmed that these portions of the application are cancelled by consent.

Both parties confirmed that the hearing shall proceed with the landlord's monetary claims filed (MNR-S, MNDC-S, FF) for \$14,489.53 and the tenant's monetary claims filed (MNDC, MNR, FF) of \$5,029.25.

The hearing was adjourned to May 7, 2020 due to a lack of time after 74 minutes of extensive discussions on service of the evidence.

Both parties confirmed that during the adjournment period, the tenants would attempt to pick up the missing 5th evidence package from the rental unit mailbox. Both parties also agreed that the landlord would provide a copy via email to the tenants during the adjournment.

On May 7, 2020 the hearing was resumed with both parties but was adjourned for continuation after 178 minutes. The landlord's monetary claim was clarified as the application filed was for \$14,389.53 for which the landlord submitted an additional monetary worksheet in the body of her evidence package without filing an amendment to the application for dispute nor notifying the tenants. On this basis, the landlord's monetary claim is limited to the original claim filed. The landlord's additional \$1,551.00

monetary claim is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Both parties confirmed that they received the notice of hearing package and all of the submitted documentary evidence of the other party. I find based upon the undisputed testimony of both parties that both parties have been sufficiently served with the notice of hearing package and the submitted documentary evidence.

On June 25, 2020 the hearing resumed with both parties. The hearing was adjourned after 152 minutes due to a lack of time. The tenant's monetary claim was clarified and after extensive discussion, the tenants' monetary claim shall proceed based upon a claim of \$5,029.25.

On August 18, 2020 the hearing resumed with both parties and was completed after 65 minutes.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation, for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Are the tenants entitled to a monetary order for money owed or compensation, the cost of emergency repairs and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on October 1, 2016 on a fixed term tenancy ending on September 30, 2017 as per the submitted copy of the signed tenancy agreement dated August 12, 2016.

The monthly rent was \$4,100.00 payable on the 1st day of each month. A security deposit of \$2,050.00 was paid on August 12, 2016. Both parties confirmed the tenancy ended on January 31, 2020.

During the hearing both parties confirmed that the landlord provided monetary compensation of \$1,000.00 to the tenants.

The landlord seeks an amended monetary claim of \$14,389.53 which consists of:

\$4,250.00	Unpaid Rent, January 2020
\$8,847.83	Damages, Restoration Fee
\$225.06	Air Purifier
\$6.14	Sanitizer Spray
\$787.50	Air Testing Fee
\$273.00	Cleaning, after restoration work
\$14,389.53	Total

The landlord seeks \$4,250.00 in unpaid rent for January 2020. The tenants dispute this claim arguing that a verbal agreement was made with the landlord that no rent need to be paid for January 2020 if the tenants vacated the rental unit. The landlord argued that no such agreement was made with the tenants. The tenants argued that the landlord has a history of reneging on agreements with them. The tenants stated that a written offer was made to the landlord but was never returned by the landlord.

The landlord claims that on November 21, 2019 the basement was flooded. The landlords seek recovery of restoration costs from the tenants of \$8,847.83. The landlord stated that she had responded to the tenants reporting that the toilet water was not running in the basement. The landlord stated that the cause of the flood was an air valve malfunction which made the toilet over-flow and the bathtub back up with water. The tenants dispute the landlord's claim. The landlord was unable to provide any evidence of the air valve malfunction caused by the tenant, but referenced the submitted copy of the plumber's invoice dated December 2, 2019 which provides a description which states in part,

Service call for saniflow toilet overflowed, damaged carpets.

November 22/19- Tech attended site, found sani flow system air locked and over flowed prior to visit, air admittance valve was stuck closed causing air to not enter Sani Flow, took sani flow outside and cleaned, went to supplier picked up new valve and replaced, tested, pump at 6 amps = good, float= good, system is in good working order.

Recommend maintenance done on system annually.

[reproduced as written]

The landlord stated that the technicians did not provide any evidence of the cause of the air valve malfunction only that the air valve sani-flow system had failed because of the air valve. The tenants have argued that the landlord's plumber reported that the landlord did not maintain the sani-flow system and did note as per the submitted copy of a video provided by the tenant named "RTB_NO_Maintenance". The tenants claim that a review of video shows that the landlord did not know that regular maintenance is required for this system. The tenants also referenced a second video named "RTB_Plumber-An_Accepts_Responsibility". The tenants claim that a review of this video shows the landlord's plumber describing how he fixed the system by replacing the air vent and a demonstration of the toilet operating after being fixed. The plumber also describes that the vent was installed improperly as it needed to be installed and vented to the outside of the house instead of in the wall. The plumber also states that the air vent broke because it was not vented to the exterior allowing the flow of air. The plumber recommended to the landlord that regular maintenance every year was needed. The video concludes with the landlord stating, "OK, its my responsibility" while looking at the tenants.

The landlord seeks \$225.06 for the cost of an air purifier. The landlord purchased an air purifier at the request of the tenants to assist in after the over-flow of the sani-flush system. The tenants argued that the landlord failed to have a proper restoration company remediate the basement after the overflow of the toilet water. The tenant argues that landlord hired a construction company. The landlord argues that she paid for her contractor to clean up the overflow of the toilet water. The tenant disputes this claim arguing that the cost of an air purifier is the responsibility of landlord in properly restoring the premises.

The landlord seeks \$6.14 for the cost of sanitizer spray used for cleaning the basement after the overflow. The tenants dispute this claim arguing that the cost of sanitizing the basement should be part of who caused the overflow of the basement.

The landlord seeks \$787.50 for the cost of an air test fee. The landlord stated that the tenants argued that there was an odor in the air after the basement flood. The landlord stated that this air test was conducted by the landlord to prove to the tenants that there was no issue with the air prior to purchasing the air purifier. The tenants argued that at no time did they request an air test.

The landlord seeks \$273.00 for the cost of cleaning the basement after the renovation work. The landlord has submitted a copy of an invoice dated December 5, 2019 for the cost of cleaning. The tenants dispute this claim arguing that clean up costs after renovations were not their responsibility and should be part of the costs for the basement flooding.

The tenants seek a monetary claim of \$5,029.25 which consists of:

\$333.13	Air Purifier Cost
\$759.27	Emergency Restorations Costs
\$478.64	Restaurant Receipts
\$352.83	Yogibo Chair
\$449.00	Ikea Bed
\$199.00	Ikea Dresser
\$139.98	Ikea nightstands (x2)
\$2,125.00	½ months rent (\$4,250/2)
\$4,836.85	Total

The tenants could not provide an explanation of the \$192.40 difference between the amount filed of \$5,029.25 and the above noted total for the 8 items of claim for \$4,836.85. The tenants did clarify that the total claim of \$4,836.85 is adjusted to \$3,836.85 to allow for the landlord's \$1,000.00 compensation payment to the tenants.

The tenants seek recovery of emergency repair costs and compensation for replacement of damaged items from the basement flooding. The tenants stated that because of the landlord's inaction the tenants were forced to purchase an air purifier to help remove the musty smell in the air from the black water. The tenants confirmed that the landlord was not provided with the receipt or notified of the need for the air purifier. The landlord disputed this claim arguing that an air purifier was not necessary and had provided cleaning from the renovation company and the landlord herself. As well the landlord stated that despite this the landlord paid for an air quality test which resulted in no issues.

The tenants seek \$759.27 for the cost of emergency restoration costs (a Bio clean). The tenants have submitted a copy of the paid invoice. The tenants argued that the landlord chose to hire a renovation company instead of a restoration company to make the repairs. The tenants argued that the overflow source was from the basement toilet and as such was considered "black water" and contaminated. The tenants confirmed

that the landlord failed to have the basement properly “Bio Cleaned”. The landlord argued that “Bio Clean” was not necessary and that the basement was cleaned by the renovation company and the landlord herself. The tenants argued that using “Lysol” was not sufficient to clean up after “Black water”.

The tenants seek compensation of \$478.64 for recovery of costs associated with eating out. The landlord disputes this claim arguing that the kitchen was upstairs and the flood had occurred in the basement. The landlord argues that all restoration work was completed by December 5, 2019 and the majority of the tenants’ receipts were for before the flood took place on November 21, 2019. The tenant has submitted in support of this claim 8 restaurant receipts from April 9, 2019 to November 24, 2019.

The tenants seek compensation for:

\$352.83	Yogibo Chair
\$449.00	Ikea Bed
\$199.00	Ikea Dresser
\$139.98	Ikea nightstands (x2)

The tenants argued that because of the basement toilet flood, the tenant’s furniture in the basement was damaged by the “black water” and had to be disposed because they were unrestorable. The tenants stated that the majority of the furniture was made out of MDF or particle board which became wet. The landlord disputes this claim arguing that the tenants have not provided any evidence of damage or receipts for the replacement costs. The landlord argued that the “black water” did not reach the basement area where the furniture was stored. The tenants confirmed that no photographs were submitted showing the damaged furniture but that one receipt was submitted for the “Yogibo Chair” dated May 31, 2018. The tenants stated that the cost of items was found using the Ikea website during an online search of items.

The tenants also seek \$2,125.00 which is equal to ½ of the monthly rent for loss of use of 1 bedroom and the living room due to the basement flooding. The tenants state that their personal items stored in the basement were moved to these two rooms for approximately 2 weeks while the restoration work took place and as a result the tenants no longer had use of 1 bedroom and the living room. The landlord disputed this claim arguing that the basement area affected due to the flooding was equal to only 1/3 of the basement which totals approximately 1200 sq. ft. The landlord argued that the move of items was not necessary as the remaining portions of the basement were useable for storage.

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/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.

I find that the landlord has established a claim for unpaid rent of \$4,250.00. The tenant confirmed that January 2020 rent of \$4,250.00 was not paid. Despite the tenants arguing that an agreement was offered to the landlords in exchange for the tenants vacating the rental unit, the landlord disputed that such an agreement was made. The tenants were unable to provide any supporting evidence that such an agreement had been made. On this basis, I find on a balance of probabilities that the landlord has established a claim for unpaid rent of \$4,250.00 for January 2020.

On the landlord's claim for \$8,847.83 for damages, I find that the landlord has failed. Although it is clear that damage occurred based upon the landlord's restoration companies invoice, the true issue is the cause of the basement flooding. The tenants have provided video evidence of the landlord's repair contractor who has stated that the cause of the overflow was due to a broken air flow valve on the sani-flush system. Further explanations were provided by the contractor that the air-valve failed in part to the improper installation in the wall. The contractor stated that the air-valve is supposed to be venting with the exterior of the house instead of inside the wall. The video shows that the landlord was not aware of required maintenance of the system. The landlord has failed to provide sufficient evidence that the air-valve failed as the results of the negligence of the tenants.

On the remaining issues of claim by the landlord:

\$225.06	Air Purifier
\$6.14	Sanitizer Spray
\$787.50	Air Testing Fee
\$273.00	Cleaning Fee

I also find that the landlord has failed in the above claims. These items of claim are part and parcel of the root cause of how the overflow occurred for the sani-flush system. The landlord has failed to provide sufficient evidence that the tenants through their actions or neglect caused the air valve to malfunction and in turn caused the overflow of “black water” to damage the basement. The landlord’s claim for Air Testing Fee was undertaken at her own choice and was not a request made by the tenant. These portions of the landlord’s claim are dismissed.

On the tenant’s first item of claim for \$333.13, I find that the tenants have failed. Despite the tenants’ successful argument that the landlord failed to properly maintain the air valve for the sani-flow system, the tenants purchased the air purifier without the consent of the landlord. The landlord had an air quality test performed for which there were no issues reported, despite the tenants claims that there was a smell in the air. As such, on this basis, this portion of the tenants’ claim is dismissed.

On the tenant’s claim for \$759.27, I find that the tenants have been successful for recovery of emergency restoration costs. Section 32 of the Act states in part that a landlord must provide and maintain the residential property in a state of decoration and repair that complies with health, safety and housing standards required by law. In this case, the basement flooding occurred as a result of the air-valve on the sani-flow system from the toilet. The toilet water is considered “Black water” which is contaminated. This is reflected in the tenant’s video evidence from the landlord’s contractor. On this basis, the tenants have been successful for this claim.

I find that the tenants have failed to establish a claim for recovery of eating out at restaurants for \$478.64. The landlord provided an unchallenged argument that the flood took place on November 21, 2019 and that the majority of receipts submitted were for before and after the flood and the completion of the restoration work. The landlord also argued that the flood occurred in the basement and the tenants’ kitchen was located upstairs and was unaffected. This portion of the tenants’ claim is dismissed.

On the tenants’ claim for:

\$352.83	Yogibo Chair
\$449.00	Ikea Bed
\$199.00	Ikea Dresser
\$139.98	Ikea nightstands (x2)

I find that the tenants have failed. Despite the landlord disputing this claim, the tenants failed to provide sufficient evidence of damage to the above listed furniture. I also note save for a receipt for the Yogibo Chair dated May 31, 2018, the tenants failed to provide any evidence of replacement for these costs. On this basis, I find that the tenants have failed to provide sufficient evidence of damaged furniture caused by the basement flooding. These portions of the tenant's claim are dismissed.

On the tenants' final item of claim for \$2,125.00 for loss of use (1 bedroom and the living room) for a two week period to store the tenants' personal belongings during restoration, I find that the tenants have failed. The tenants failed to provide sufficient evidence of a loss equal to $\frac{1}{2}$ of the monthly rent. The tenants monetary claim is not based upon any calculation of loss, however, a loss of use did occur. On this basis, I find that the tenants are entitled to an arbitrary nominal award of \$250.00.

The landlord has established a claim for \$4,250.00. I also find that the landlord having been partially successful is also entitled to recovery of the \$100.00 filing fee. The tenants have established a total claim for \$1,029.27. I also find that the landlord having been partially successful is also entitled to recovery of the \$100.00 filing fee.

In offsetting these claims, the landlord is entitled to a monetary claim of \$3,340.73. I authorize the landlord to retain the \$2,050.00 security deposit in partial satisfaction of this claim.

Conclusion

The landlord is granted a monetary order for \$1,290.73.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the 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: September 3, 2020

Residential Tenancy Branch