# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDCT, RR, CNL, OLC, LRE, AAT, FFT

Introduction

The tenant filed an Application for Dispute Resolution on September 1, 2020 seeking the following orders:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice") issued on August 15, 2020, pursuant to section 49 of the *Residential Tenancy Act* (the "*Act*");
- the landlord's compliance with the legislation and/or the tenancy agreement, pursuant to section 62;
- a suspension or restriction to the landlord's right to enter the rental unit, pursuant to section 70;
- allowance of access to the tenants, pursuant to section 30;
- reduction in rent for repairs services or facilities agreed upon but not provided, pursuant to section 65;
- compensation for monetary loss or other money owed, pursuant to section 67;
- reimbursement of the Application filing fee, pursuant to section 72.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Act* on October 15, 2020. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

The tenants stated they delivered notice of the dispute via registered mail. This included the documentary evidence they presented in this hearing. They provided proof of this delivery in the form of a Canada post receipt and tracking number. This shows the delivery on September 11, 2020. In the hearing the landlord confirmed they received this information.

The tenants received the landlord's evidence on the day before this hearing. They confirmed the number of pages contained therein. I afforded the tenants the opportunity to refer to the materials in the entire duration of the hearing, and in their testimony the landlord provided page number references throughout. I find the tenants are not lacking documentary evidence prepared by the landlord. On this basis, the hearing proceeded.

Preliminary Matters

The landlord issued the Two-Month Notice on August 15, 2020. The reasons for their issuance of this document were the subject of the submissions of both parties in the hearing. After a full review of the evidence and both parties providing their testimony on the issue, the tenant stated they were moving out from the unit at the end of October. They decided to leave because "[they] don't want to be caught". The Two-Month Notice gives the final move out date of October 31, 2020.

On this basis, I dismiss the tenants' application to cancel the Two-Month Notice. Although there is disagreement and contention over its validity, this is no longer an issue where the tenants are moving out at the end of the month. This is an end to the tenancy by the specified date on the document itself. With the tenancy ending, the tenants do not have leave to re-apply on this issue.

There are three grounds on which the tenants applied that are contingent on a continuance of the tenancy. These are: the landlord's compliance with the legislation and/or tenancy agreement; a restriction on the landlord's right to enter; and, allowance of access to the tenants. The tenancy has ended; therefore, these are no longer at issue. I dismiss these portions of the tenants' Application without leave to re-apply.

The hearing afforded each party the ability to give submissions on the last three months of the tenancy. This was when the landlord returned to the property and started staying in the vacant suite, with the tenants in the upper rental unit.

The tenants also made monetary claims for utility amounts owing and a reimbursement for rent. At the end of the hearing, I advised the parties I would review the documentary evidence to determine whether that information was adequate. If, on my review, I determined there was not enough evidence on those two outstanding issues, I would re-convene.

I have reviewed the documents, and the hearing provided me with background to the situation and enough information to determine. On this basis, I weigh the evidence provided for the monetary components below and provide a decision. There is no need for the parties to re-convene.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for loss or compensation pursuant to section 67 of the *Act*?

Are the tenants entitled to an order that reduces the rent for repairs, services, or facilities agreed upon but not provided by the landlord, pursuant to section 65 of the *Act*?

Are the tenants entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord provided a copy of the tenancy agreement. This shows the tenants signed on September 3, 2019 and the landlord signed on October 3, 2019. This is for a fixed term to end on October 31, 2020. The rent amount is $1,900.00 per month. They also provided a message showing the landlord asking the tenants if they wished to renew the lease for one more year – this is dated August 9, 2019. Three times per year the landlord will forward water bills to the tenant and make the arrangement to pay. The agreement specifies that electricity, gas and water are paid for by the tenant.

On August 15, 2020 the landlord issued the Two-Month Notice. This gives the final move-out date of October 31, 2020. In the hearing the tenants stated they are vacating the unit by that date.

After extensive travel, the landlord returned to the property on July 16, 2020 and from that point on occupied the lower unit suite. They advised the tenants of this on July 10,

2020. They commenced various pieces of maintenance and repair on the property. There was particular focus on the patio, downspouts, and back deck. This work commenced in July 21 as shown in the evidence provided by both the landlord and the tenant. There are frequent emails from/to both parties that show the landlord giving notice and "heads up" of work commencing, the difficulties the work entails and estimated completion dates. Additionally, the landlord provided copies of handwritten notes to the tenants.

There are key pieces to the communication that appear in both parties' evidence. These are letters from the tenants to the landlord:

- On August 14, 2020 the landlord advised they will not renew the lease because they are selling the house;
- on that same date the tenants wrote to the landlord to give "official warning notice" of "unlawful entry into [their] upstairs rent unit/suite and all surrounding areas that are not shared."
- on August 16 the tenants delivered another letter – they request proper written notice of the landlord's entry, including the back-porch area. They asked for further notification of repairs that already, by that point, had been ongoing for approximately one month with "very little, or no safe access to the back-porch area, or the backyard"
- in this same letter the tenants state their concern that the landlord was "using [their] hydro and water utilities", asking for reimbursement "in full, the usage that is in excess to [their] monthly family average."
- on August 21 the tenants wrote again to follow up on "harassment, [the landlord's] constant disturbances and the police being called" – they request the landlord "refrain from banging loudly and screaming at [their] front door". They re-stated their concerns regarding the limited access, use of utilities and quiet enjoyment.
- on August 27, the tenants responded to a handwritten note from the landlord that requested specific information: names of additional parties in the tenants' unit; business taking place within the unit; and claims of further dirtying the backyard space. They again requested responses to their prior queries.

By mid-August, the landlord advised the tenants that they are selling the property, and they would require agents or potential buyers' access for viewings and presentation. The landlord included images of sales material in their evidence. The landlord also provided evidence that shows cross-border travel was restricted and not available to them as it normally would be. They also provided two letters that attest to their

character which stands in contrast to characterizations assigned to them by the tenants of.

On their Application dated September 1, 2020, the tenants seek the following monetary compensation:

- $3,800 – this is two months rent “in compensation for ongoing repairs . . . the continuous harassment & disturbances we are currently enduring, in addition to the ongoing restriction of areas, such as the back-porch, which is not shared, common areas, and the loss of value the rental property currently holds due to the poor repairs and lengthy process for which it is taking to complete the repairs on the residential premises by the landlord personally.”
- $250 – the landlord arrived on July 16, 2020 and since that time they were using water and hydro utilities that the tenants pay for. They provide a consumption report for hydro and a copy of the most recent water bill. They wish to show that the usage at the time the landlord stayed was higher than the previous year and the data sets this out side-by-side. On their prepared Monetary Order Worksheet, dated September 1, 2020, they labelled this amount “Reimbursement for usage.”

Analysis

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

From the submissions and evidence, I am satisfied that an agreement was in place between the landlord and tenants for the rental unit. The agreement contains the specific indications that the tenants pay hydro and water utility bills.

Under section 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to section 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

On the tenants' claim for two months' rent amount, I find they are not entitled to this amount as claimed.

Primarily, they did not show that access to the area was restricted or limited. I find there was a significant amount of work involved as set out in the multiple emails from the landlord to the tenant through July and August. The messages were detailed enough to give the time of day that work would commence. Though the relationship became strained and communication became direct and assertive, the communication did not stop, and the landlord continued to advise of work involved days in advance. There is a piece of evidence to show one of the tenant's sibling had undertaken work in the porch area prior to the landlord's arrival in mid-July; therefore, the work was not unannounced

or unexpected to the tenants and in this respect, the landlord minimized the impact it had to the tenants.

The landlord provided a detailed log on work undertaken and its duration on a daily basis. I give this evidence more weight than what the tenants presented here to support their claim. For this I focus on the three letters from the tenants to the landlord within a relatively short timeframe,

Secondly, communication and the relation between the parties became strained. On their Application, the tenants described “the continuous harassment & disturbances we are currently enduring. . .” For this I focus on the three letters form the tenants to the landlord within a relatively short timeframe. These ask for notification should the landlord enter, and a demand that the landlord stop banging and screaming at their front door. I find the documentation is unclear on whether the landlord encroached on the porch area, or if they actually entered into the rental unit. If the former, the tenants were given notification in advance; if the latter, I also see the landlord identified the need to enter, in line with a pending preparation for sale of the property.

The landlord listed “lease violations” to the tenants on August 24; the tenants responded that same day. I find by this time communication from both parties became defensive. This communication from the landlord sets out specific queries to the tenants and makes requests. Moreover, the landlord does not refer to or cite which sections of the lease are being violated or which laws are being broken. Though intimidating, and inappropriate, I don’t find this constitutes a continued pattern of harassment. This letter appears to be a one-off piece borne of landlord’s frustration with reciprocal strained communication and mistrust.

Finally, I find the tenants have not mitigated the damage or loss here. In comparison to the amount claimed, I find there is not significant interruption or a full stop to the tenants use of the unit, a bar to entry, or interruptions of such a nature as to make the situation essentially unlivable. They have presented they had difficultly accessing a discrete area on the property due to maintenance and repair of that area. The tenants have not presented sufficient evidence to show their lives were interrupted to an extreme degree. In this regard, I find they did not show that they mitigated the damage here.

On the amount of utilities claimed, I find the tenants provided sufficient evidence to show the impact of the landlord’s staying at the property. It is a legitimate claim that the tenants present here; they have established a reasonable approximation of the loss and demonstrated that this stems from the landlord’s occupancy and stay in the unit below.

Moreover, the presented this issue in a relatively short timeframe to the landlord; this evidence rests in their August letters to the landlord. Based on the bill amounts and comparison to the prior year consumption, I award $250.00 to the tenants for this part of their claim.

Because the tenants were successful on a part of their monetary claim, I award compensation of the Application filing fee.

Conclusion

Pursuant to section 67 and 72 of the *Act*, I grant the tenants a Monetary Order for $350.00. The tenants are provided with this Order in the above terms and must serve the landlord 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 *Act*.

Dated: October 16, 2020

Residential Tenancy Branch