Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNSD FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order in the amount of $2,942.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of the balance of the tenants' security deposit, and to recover the cost of the filing fee.

The tenants, an agent for the landlord, DM (agent) and a building manager for the landlord, KL (manager) attended the teleconference hearing. The parties gave affirmed testimony, and the parties were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to my decision has been included below. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The agent confirmed being served with the tenants' evidence and having the opportunity to review that evidence prior to the hearing. The agent also confirmed that the landlord did not serve any documentary evidence on the tenants or the Residential Tenancy Branch (RTB). As a result, I find the landlord was sufficiently served under the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an

investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

Issues to be Decided

- Are the tenants entitled to money owed for compensation for damage or loss under the Act?
- If yes, are the tenants entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on September 1, 2020 was not schedule to a revert to a month-to-month tenancy until August 31, 2021. Monthly rent was $2,075.00 per month and was due on the first day of each month. The tenants stated that they vacated the rental unit on April 26, 2021. The agent agreed with the date and indicated that the tenants breached a fixed-term tenancy by vacating the rental unit before the end of their fixed-term tenancy.

The tenants' monetary claim of $2,942.00 is comprised of the following three items:

1. $2,205.00 due to landlord failing to fix a broken dishwasher (84 days at 45 minutes per day (0.75 hours) @ $35.00 per hour).
2. $400.00 for the return of that amount withheld by the landlord from the tenants' security deposit of $1,037.50.
3. $100.00 for the recovery of the cost of the filing fee.

Regarding item 1, the tenants testified that first notified the landlord via text on February 5, 2021 that the dishwasher "doesn't seem to be getting water" and requested that it be looked at when they were available. The agent confirmed that the landlord received that text on the same day, February 5, 2021. The tenant also presented a document dated March 5, 2021 that reads in part:

> We are wondering if there has been any progress in fixing the dishwasher in Suite 201. It has been a month since we reported it and you had a look at it (February 5th). It is becoming a burden to deal with dishes every day, and we would really appreciate having access to our dishwasher again.
>
> [reproduced as written]

A landlord representative, R (representative) replied to the tenants' March 5, 2021 text via text which reads that due to Covid-19 and the related protocol the dishwasher could not be fixed at this time. On March 17, 2021, the tenant replied to the representative's text by asking if it was a building restriction and the representative replied back on the same day that it is not a building restriction; rather the appliance repair company that the landlord deals with will not repair dishwashers during the pandemic. The agent testified that the landlord was only able to respond to emergency repairs in March 2021 due to the provincial health orders in place and that a dishwasher was not considered an emergency repair.

The tenants stated that they arrived at $2,205.00 by assigning a value of $35.00 per hour, by using the hourly fee charged by the corporate landlord hourly rate and that the tenants estimate that they had to spend 45 minutes per day doing dishes for 84 days before vacating the rental unit and are seeking $2,205.00 due to the landlord failing to repair the dishwasher, which impacted the tenants by having to spend time washing dishes versus using the dishwasher.

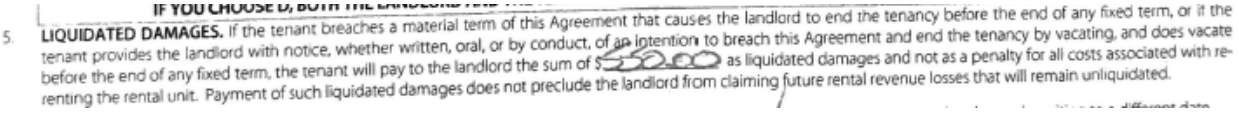
Regarding item 2, the tenants are seeking the return of the $400.00 amount withheld by the landlord from the tenants' security deposit. The agent referred to the outgoing Condition Inspection Report (CIR) where it states as follows in Part VI which was signed by the tenant dated April 26, 2021:

> JM OK'd 400.00 lease break fee rather than 550.00 because of unoperable dishwasher.
>
> [reproduced as written]

The tenant replied by drawing my attention to Part V of the outgoing CIR where the tenant signed that they do not agree that the report fairly represents the condition of the rental unit, for the following reasons:

> Disagreeing of the 400.00 lease break fee due to unoperable dishwasher.
>
> [reproduced as written]

There is no dispute that the tenants made the decision to break the lease and vacate the rental unit on April 26, 2021 as the fixed-term tenancy was not scheduled to revert to a month-to-month tenancy until August 31, 2021. The agent referred to the liquidated damages clause #5 on the tenancy agreement, which reads as follows:



5. **LIQUIDATED DAMAGES.** If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of $ 550.00 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated.

The agent stated that the tenant was issued a cheque for $637.50 on May 3, 2021, and that $400.00 was retained by the landlord due to the written permission of the tenants by signing the deductions section of Part VI of the outgoing CIR. The tenants affirmed that they have not deposited the $637.50 cheque from the landlord, which the parties were advised would have been stale dated and could no longer be cashed as of November 3, 2021, which is 6 months after the cheque was issued by the landlord on May 3, 2021.

The agent stated that the $550.00 liquidated damages amount was reduced by $150.00 to $400.00 as compensation to the tenant for having a dishwasher that was not operable for a portion of February, all of March and a portion of April of 2021 before the tenants broke the lease and vacated on April 26, 2021.

The tenants stated that it would have been cheaper to replace the dishwasher with a $1,000.00 dishwasher from Home Depot but that the landlord did not replace the dishwasher and as a result, the tenants are claiming for the full amount of $2,942.00 as a result. The agent stated that a dishwasher would not cost $1,000.00 and that the cost of the dishwasher is moot regardless it was not a financial decision given that only emergency repairs were being completed due to Covid-19 and that their company policy was to limit entry into rental units during the pandemic. The agent stated that repair companies were only going into rental units for emergency purposes and not to perform non-emergency repairs.

The tenants referenced a previous decision in their written statement, regarding compensation related to a dishwasher, which I will address later in this decision. The tenant also wrote in part:

> Finally, we think it is important to point out that any reward amounting to less than the cost to replace a dishwasher, roughly $1,000 for a Home Depot mid-range appliance plus installation and removal, only incentivizes future landlords to ignore similar instances. The cost analysis for the landlord will continue to

incentivize placating a tenant and only risk potentially costing them a few hundred dollars in filing fees and damage deposit returns.

The tenants did not supply a quote for a $1,000.00 dishwasher from Home Depot or any other supplier for my consideration.

Analysis

Based on the above, and on a balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlords. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenants did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I am not bound by previous decisions pursuant to section 64(2) of the Act, which applies and states:

> **64(2)** The director must make each decision or order on the merits of the case as disclosed by the evidence admitted **and is not bound to follow other decisions** under this Part.
>
> [emphasis added]

I find the tenants have failed to provide sufficient supporting evidence in support of their entire monetary claim and have failed to meet parts three and four of the test for damage or loss described above. Consequently, I find the tenants' claim has no merit and fails in its entirety for the following reasons.

I find the $35.00 hourly rate claimed by the tenants to wash their own dishes is excessive and unreasonable. The tenants' calculations of the amount of $2,205.00 for less than 3 months would equate to at most, $735.00 per month which represents approximately 35% of the monthly $2,075.00 rent. I further find that the value of a dishwasher in the rental unit **does not equal 35% of the monthly rent** as the tenants provided no evidence that they could not use the remainder of the rental unit including the bathroom(s), fridge, stove, bedroom(s) and other living space. Temporary inconvenience to wash their own dishes while waiting for a dishwasher to be repaired is not grounds to be paid an unreasonable hourly wage.

I afford significant weight to the agent's testimony that the decision not to repair the dishwasher was not a financial decision but was rather due to the landlord's policy to only deal with emergency repairs during a pandemic and to have minimal contact inside rental units during a pandemic for health and safety purposes.

In addition, the landlord was not notified of the problem until February 5, 2021 and the tenancy ended on April 26, 2021, which is 2.5 months, not 3 months. The landlord has already compensated the tenants the amount of $150.00, by reducing the amount of liquidated damages they were entitled to receive from the tenants for breaching the tenancy agreement. I find this amount to be reasonable in comparison with the tenants' unreasonable claim.

Accordingly, I do not grant the return any portion of the $400.00 deducted from the tenants' security deposit as I find the portion of the outgoing CIR indicates that the tenant agreed with the deductions. While the tenants also signed the portion of the outgoing CIR where they did not agree with the outgoing CIR, I find the tenants should not have signed part VI, which is the portion where the tenants agreed to the $400.00 deduction.

As the application before me has failed, I do not grant the tenants the recovery of the cost of the filing fee.

As the tenants' security deposit balance cheque in the amount of $400.00 is now stale-dated, I make the following orders pursuant to section 62(3) of the Act:

1. **I ORDER** that the tenants **must destroy and not deposit** the May 3, 2021 $400.00 cheque from the landlord as it is now stale dated.

2. **I ORDER** the landlord to re-issue a cheque to the tenants in the amount of **$400.00** to be post-marked no later than 15 days after the landlord receives this decision.

Should either party fail to comply with my orders above, the other party may apply for remedy under the Act.

Conclusion

The tenants' application is dismissed in full without leave to reapply due to insufficient evidence.

The filing fee is not granted as the tenants' application has no merit.

I have made two orders pursuant to section 62(3) of the Act described above.

This decision will be emailed to both parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 25, 2021

Residential Tenancy Branch