



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAGI SCALLION PROFESSIONAL SERVICES and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, MNDCT, FFT

Introduction

On March 24, 2022, the Tenants applied for a Dispute Resolution proceeding seeking a rent reduction pursuant to Section 65 of the *Residential Tenancy Act* (the “Act”), 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*.

Tenant F.M. attended the hearing, and M.S. attended the hearing as an agent for the Landlord/owner of the rental unit. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

F.M. advised that they served a separate Notice of Hearing and an evidence package to each Respondent by email on March 30, 2022. M.S. confirmed that these emails were received, and she had no position with respect to the manner with which they were served. Based on this undisputed testimony, I am satisfied that the Respondents were duly served with the Notice of Hearing and evidence packages. As such, I have accepted this evidence and will consider it when rendering this Decision.

M.S. advised that the Landlord’s evidence was served to the Tenants by email on July 2, 2022. The Tenant confirmed that this email was received, and he did not have any

position with respect to the manner with which this was served. As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a rent reduction?
- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to recover the filing fee?

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 when the Tenants gave up vacant possession of the rental unit on April 30, 2022. Rent was established at \$2,100.00 per month and was due on the first day of each month. A security deposit of \$1,050.00 was also paid. A copy of the signed tenancy agreement was provided as documentary evidence.

Given that the tenancy has already ended, I am unable to Order a rent reduction. As such, the only matter that I can consider in this Application is with respect to the claims for monetary compensation.

The Tenant advised that they are seeking compensation in the amounts of **\$124.85**, **\$179.07**, **\$176.46**, **\$374.38**, **\$419.58**, **\$331.38**, and **\$43.70** because the tenancy agreement required them to pay for the utilities. However, M.S. sent them an email just prior to the tenancy starting, informing them that there was a basement suite on the

property that they would also be responsible for paying the utilities for. He stated that he discussed this issue with M.S. at the start of the tenancy and that M.S. offered to pay for internet to offset the extra utilities, but the Tenants suggested a co-payment of utilities instead. There were further discussions about this suggested arrangement, but M.S. first initiated communication in writing about utilities via an August 17, 2021 email.

The Tenant submitted utility bills for the length of the tenancy, for which they paid the entire amount. He suggested that there should be a 60/40 split of the utility cost between the rental unit and the basement unit, and the amounts being claimed for are the 40% portion of each monthly bill. As well, he referenced the documentary evidence submitted to support their position. He testified that the basement suite was occupied by the Landlord or his acquaintances for at least nine months.

M.S. confirmed that she spoke with the Tenants on April 28, 2021 to inform them that the utilities would not be separated. She had only found this out herself and she was also surprised. She stated that she has the historical consumption records of utility consumption of the property and that the bills in question had an increase of 1000 kilowatts more than in the past. However, she did not submit these as documentary evidence. She noted that the Tenants used an air conditioner as well as charged their electric vehicle.

She acknowledged that the Tenants rejected the offer of the internet being paid for to offset the extra utility charges and she stated that she did not hear from the Tenants about the utility issue until receiving the Notice of Hearing package. She stated that the Landlord reserved the basement suite for his own personal use, that his friends stayed there "on and off", and that it was a stretch to suggest the rental unit was occupied for nine months. While she agreed that the Tenants should not have been paying for the utilities for the basement suite, it is her opinion that the split should be more in the realm of 70/30.

The Tenant advised that they are also seeking compensation in the amount of **\$3000.00** because there were deficiencies in the rental unit, as noted on the move-in inspection report. He stated that doorknobs required replacing, that he eventually did this himself, and that he was reimbursed by the Landlord for these. He testified that the washing machine and the dishwasher did not work, that the toilet seat was broken, and that the kitchen cooktop glass cover was broken. He stated that he brought these issues to M.S.'s attention and that they were fixed in September 2021, with the exception of the toilet seat which was never fixed.

As well, he testified that there was a leak in the roof and that he informed M.S. of this on June 15, 2021. He stated that she promised to check the deck, but the roof was never addressed and that he had to put a bucket down to catch water when it did leak. He referenced the documentary evidence submitted to support their claims of loss. When he was asked to break down their claims for compensation, he was unable to specifically quantify this loss. However, it was approximately calculated as \$400.00 X 5 months for the deficiencies at the start of the tenancy, and \$125.00 X 8 months for the roof issue.

M.S. advised that she attempted to address the Tenants' concerns as quickly as possible; however, the town is small so finding qualified repair people is challenging. As well, there were delays in receiving parts due to the pandemic. She stated that the washing machine issue was purely cosmetic and the functionality of it was not affected. The washing machine is still in the rental unit and the new tenant has not complained of any issues. She testified that the Tenants found a toilet seat cover on the internet, that they replaced it, and that they were reimbursed for it already. She stated that the dryer simply needed to be levelled, and this was done in July 2021. She also indicated that the cooktop was replaced in July or August of 2021. Finally, she submitted that there was a broken part to the dishwasher, and a new dishwasher was installed in the rental unit on August 13, 2021.

With respect to the roof issue, she advised that she only received one message from the Tenants, and after speaking with the Landlord, it was determined that this was an issue likely caused by a clogged drain. After this was addressed, and as she did not receive any further correspondence, she assumed that the problem was resolved.

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.

With respect to the Tenants' claim for damages, 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*.

Furthermore, 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?

Moreover, 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 also 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.

With respect to the Tenants’ claim for compensation for the cost of utilities for a space that was never part of their tenancy agreement, I accept that it is unreasonable to expect the Tenants to pay for these extra costs. As M.S. concurred that this was not appropriate, it should be noted in future tenancies what the division of utilities between the units should be. I find it reasonable to conclude that it is the Landlord’s obligation to know this, and to establish the equitable division of utilities at the start of each tenancy. As the Landlord has clearly erred in this circumstance, and based on the evidence and testimony before me, I accept the Tenants’ position that there should be a 60/40 split in utilities. As such, I grant the Tenants a monetary award in the amount of **\$1,649.42** for the cost of these extra utilities that have been paid for already.

Regarding the Tenants' claims for compensation in the amount of \$ 3000.00 because there were deficiencies in the rental unit, I give little weight to the submitted condition inspection report by the Tenants as it does not appear as if it is signed by M.S. or the Landlord. As such, it does not appear as if both the Tenants and the Landlord and/or agent ever conducted a move-in inspection together to document the condition of the rental unit. Moreover, the move-out portion of this report is not completed, which could support a finding that the Tenants simply filled this out after filing the Application for Dispute Resolution. Therefore, I am not satisfied that this document reflects an accurate depiction of the rental unit.

Regardless, I do accept from the undisputed testimony that there were some deficiencies at the start of the tenancy. Section 32 of the *Act* states that a "landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant." Given that there were some deficiencies in the rental unit and that the Tenants notified M.S. of these, I understand that sometimes repairs take some time to affect, but it is undisputed that the Tenants were without some services or facilities for some time. However, I acknowledge that most of these issues were either fixed eventually, or the Tenants were compensated when they dealt with some issues themselves.

Furthermore, as noted above, the burden of proof rests on the Tenants to substantiate their loss. When reviewing the documentary evidence and testimony before me, in conjunction with the Tenant's inability to accurately quantify the loss that they are seeking, I am not satisfied that the Tenant has corroborated the amount being sought. However, as I am satisfied that there was some loss suffered by the Tenants, I find it appropriate to grant a monetary award in the amount of **\$500.00**, which I have determined to be commensurate with the loss that has been established by their evidence.

As the Tenants were partially successful in this Application, I find that the Tenants are entitled to recover \$50.00 of the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Compensation for utilities	\$1,649.42
Compensation for loss of use of services and/or facilities	\$500.00
Filing fee	\$50.00
TOTAL MONETARY AWARD	\$2,199.42

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$2,199.42** in the above terms, and the Landlord must be served 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 *Residential Tenancy Act*.

Dated: July 18, 2022

Residential Tenancy Branch