A matter regarding Remax First Realty Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, MNR, FF

Introduction

This was a hearing with respect to applications by the landlord and by the tenants. The hearing was conducted by conference call. The landlord's representatives and the tenant called in and participated in the hearing. This matter was originally scheduled to be heard by conference call on January 17, 2013, but it was adjourned and rescheduled to be heard on March 6, 2013 to allow the exchange of evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for cleaning and repairs to the rental property and if so, in what amount?

Are the tenants entitled to a monetary award for compensation and damages, including punitive damages and if so, in what amount?

Background and Evidence

The rental unit is a house in Parksville. The tenancy began in November, 2007. The initial Monthly rent was $1,250.00 and the tenants paid a $625.00 security deposit at the commencement of the tenancy. The tenant testified at the hearing that the rental property was in poor condition. The tenant described the house and being in a terrible state, but he said that he felt that he could not complain to the landlord and rented the house without comment because of what he described as "an imbalance of power". The tenant said that he did not feel that he could complain because he had a large family and felt that he would be unable to find another landlord willing to rent to him.

The tenant said that they moved into the rental unit on November 27, 2007. The tenants videotaped the house before moving in. He described the house as being in really bad condition and dirty. In his written submission the tenant said that:

> The storage room is filthy, the screen door for the balcony is broken and in the storage room, there is fecal matter in the downstairs toilet, there is dirt in the

> kitchen pantry, dirt on the floor and the window sill above the sink is filthy. On the video I actually make a comment along these lines “They probably rented this house to us so they could blame us for it’s being so beat up, because we have lots of kids”. Additionally two of the fridge shelves are obviously damaged, as can be seen from the video.

The tenant testified that they began the cleaning and move-in process and after their first night in the house found that the entire family sustained flea bites. The tenants moved out of the house and the tenant said that he tried to treat the fleas with various remedies: “like vacuuming, chemicals, putting out bowls of soapy water in the corners. The tenant said the treatments were unsuccessful. The tenant said that in December, he took three days off work, moved out the furniture and treated the carpets with bags of borax and flea spray and then vacuumed up the powder. The tenants moved back to the house on December 17th, but again were inflicted with flea bites. For health reasons the tenants did not want to use an insecticide spray to eradicate the fleas. They decided that they could deal with the flea problem by getting a cat and then treating the cat for fleas. The tenants received permission from the landlord to obtain a cat, but the agreement was for a year only. On December 27, 2007 the tenants acquired a cat from the SPCA and gave it a flea treatment and a flea collar before putting the cat into the house alone.

The tenants participated in a condition inspection of the rental property on January 8, 2008. According to the tenant he learned that the house had a history of flooding in the basement. The tenant said that had he known that the house had a history of flooding he would not have agreed to rent and would not have signed the lease.

The landlord required the tenants to provide a pet deposit for the cat they acquired. The tenant said that after they had the cat for one year the owner of the rental property insisted that they get rid of the cat. The tenant’s children were upset to lose the cat. The pet deposit was returned to the tenants.

The tenant referred to the history of flooding. He said that there were two flooding incidents at the rental property in November, 2011 and in January, 2012.

On November 27, 2011 during a heavy rain there was water several centimeters high at the threshold of the front door and 1 centimeter of water in the storage room. The tenant said that the family worked for a few hours hauling water out of the flooded area to the city sewer. There was water in the foyer and in the storage area. The tenant sent an e-mail to the property manager reporting the flood. The landlord responded and sent a plumber to “Roto Root” the drain.

There was a second flood on January 4, 2012. The tenant rented a pump to deal with the flooding. The tenant sent an e-mail to the landlord to advise that there is a flood and the problem is not fixed. The tenant purchased his own pump in case there was a future flood. The tenant complained that the landlord responded by telephone, not by e-mail and took 17 days to respond.

On May 2, 2012 the tenant reported to the property manager by e-mail that the hot water tank was leaking. When he did not receive a reply, the following day the tenant sent a second e-mail concerning the hot water tank. The tank was replaced on or about May 5th. The landlord sent a restoration company to investigate for possible damage due to the leak. First it was reported to the tenant that the area needed to be treated with a fungicide. Later the tenant learned that the downstairs bathroom contained asbestos in the linoleum flooring. The landlord intended to remove the asbestos contamination. The tenants decided that they did not want to have the asbestos removal take place while they were living in the house. The tenants ceased use of the downstairs bathroom and laundry room and they commenced to look for a house to purchase. The landlord proposed to carry out the asbestos removal in August. The tenants refused to have the work done and requested an early end to the tenancy. According to the tenant the landlord agreed to an early termination of the tenancy. On August 12, 2012 the tenant sent an e-mail to the property manager wherein he advised that he intended to end the lease early and move out by the end of September. The tenant confirmed this in an e-mail dated September 13, 2012. The property manager responded, saying that the landlord did not intend to allow the tenants to end the tenancy early.

A meeting was had at the property manager's office on September 25, 2012. According to the tenant, it was agreed that:

- The property manager would speak to the landlord about ending the lease early;
- The tenants were to hold off on steam cleaning the carpets as they may be replaced;
- A prospective new tenant would view the property on September 29th;
- A move out inspection was scheduled for September 30th.

On September 26th the property manager advised that the landlord would permit the tenants to end the lease early. The tenant said that he assisted the property manager to measure the carpet throughout the rental unit and this was in anticipation of replacing the carpet.

The tenants said that they spent three days cleaning the house, but they did not clean the carpet because they had been led to believe that the carpet would be replaced.

The tenants attended for the scheduled move out inspection on September 30th, but the property manager did not attend.

On October 1, 2012 the tenant drove past the rental property and observed that workers were at the rental property performing asbestos abatement work. He said that the landlord performed a condition inspection on October 1st without his knowledge or participation.

The tenant complained that in early October the property manager left a telephone message at his office regarding booking an appointment for an inspection of the rental property. The tenant said he was embarrassed by the message because any employee or another lawyer might learn that he was not a home owner. The landlord's representative said that the tenant did not provide a forwarding address and that is why the phone call was made. The tenant wanted the property manager to communicate with him by e-mail only.

The tenants met for an inspection of the rental property on October 3rd. The tenant objected to the form of inspection report prepared by the landlord because it had been prepared when the tenants were not present and it lacked a space for the tenants to sign the report stating that they disagreed with the report. The tenants thought the property managers' standards of cleanliness were unreasonable and far exceeded the standard of the rental property when they moved in; nevertheless they agreed to perform some additional cleaning to the stove, and to the bathtub.

The tenant claimed the following:

Damages Calculation

Date	Description	Quantum
Nov. 27, 2007	Failure to disclose history of house flooding	$5,000.00 (punitive)
Nov. 27-30/07	Compensation for 8 hours spent cleaning	$200.00
Nov. 27 07- Jan 08	Loss of use of the home while flea infested	$2,400.00 (two months rent)
Dec 07-Jan 08	Lost earnings: Moving out, treating house with Borax, cleaning it, moving in.	$2,000.00 (four days lost earnings at $500.00/day)
Dec 07-Jan 08	Discomfort, embarrassment and clothes cleaning costs due to flea infestation	$4,000.00 ($500.00 per person times 8 in family)
Dec. 10, 2007	Borax purchase from Thrifty Foods	$6.77
Dec. 11, 2007	Flea spray from Petsmart	$67.78
Dec. 11, 2007	Borax purchase from Quality Foods	$15.22
Dec. 11, 2007	Dust mask purchase from Canadian tire	$4.51
Dec. 11, 2007	Vacuum bag for flea work from Wal Mart	$6.18
Dec. 21, 2007	Flea spray from Pet Mania	$45.36
Dec. 26, 2007	Cat scratch post and vacuum bags: Wal-Mart	$23.58
Dec. 27. 2007	Cost of buying Mason the cat from SPCA	$117.70
Dec. 27, 2007	Pre-emptive flea treatment for Mason the cat	$48.68
Dec. 27, 2007	Cat bed and cat pillow (receipt lost)	$40.00
Jan. 2, 2008	Kitty litter and cat food	$35.45
Jan. 2, 2008	Broom for kitty litter	$9.57
Jan. 2, 2008	Garbage bin for kitty litter	$14.62
Jan, 3, 2008	Flea shampoo from PetSmart	$8.95
May 25, 2008	Flea treatment from Vet	$50.85
Aug. 15, 2008	Worm pills for Mason from Best Friends Pets	$8.73
Aug. 16, 2008	Flea treatment? (unsure) from Vet	$11.05
Aug. 17, 2009	Flea treatment? (unsure) from Vet	$11.05
Nov. 27, 2011	Flood #1: Compensation for two hours emergency water moving by four people	$200.00 (2 hours per person at $25.00 per hour for four people)
Nov. 27, 2011	Flood #1 : Compensation for ½ day lost work	$250.00
Jan. 4, 2012	Flood #2 : Compensation for two hours emergency water moving by four people	$200.00 (2 hours per person at $25.00 per hour for four people)
Jan. 4, 2012	Flood: Rented a water pump to stop buildup	$22.18
Jan. 4, 2012	Flood #2: Compensation for ½ day lost work	$250.00
Jan. 5, 2012	Flood: Purchase of water pump	$83.99
Jan 4 –March 2012	Heating bill: Extra electricity to dry house	$500.00
May 2-5 2012	Leaking water tank: Loss of enjoyment of home while leaking, cleaning and removal	$129.60 (three days worth of rent [$1296/30 x 3])
May 17 – Sept 30	Loss of use of laundry room and of second bathroom due to asbestos in vinyl.	$2,916.00 (1/2 rent for time) (4.5 months x $1296.00 / 50%)
Oct. 2012	Leaving voice mail for Frank at work number	$500.00 (punitive)
Oct. 2012	Leaving Franks' work number as contact for RTB and the wrong fax number	$500.00 (punitive)
Jan.7, 2013	Filing fee	$100.00

Total claimed: $19,777.82

The landlord claimed a monetary order in the amount of $1,550.80 for the cost of house cleaning, carpet cleaning and damage to the refrigerator and a screen door.

The tenant disputed each of the landlord's cleaning claims. He referred to a video taken when the tenants initially rented the house and noted that there was a screen door that had been left lying in the garage. The carpets were dirty and frayed and much of the house required cleaning and fridge shelves were broken. The damage to the refrigerator was also noted in the property manager's report to the landlord in January, 2008.

Analysis

Some of the tenants' claims date back to the commencement of the tenancy and lack any legal foundation. The tenants claimed $5,000.00 as punitive damages because the landlord was said to have failed to disclose a history of flooding. The tenant provided no rationale for this claim. He claimed that he would not have rented the unit had he known of the history. He learned in January 2008 of some previous flooding yet he continued to rent without protest and he entered into several new lease agreements thereafter. An award of damages is intended to be compensatory and punitive damages are not awarded. There is no basis for this claim and it is dismissed.

The tenants claimed damages related to a flea infestation under a number of different heads; they included loss of use, loss of earnings and expenses for purchasing borax, flea spray, a cat and cat supplies. The claim included the sum of $4,000.00 for: "discomfort, embarrassment and clothes cleaning costs due to flea infestation".

The tenant testified that he was not prepared to have the fleas treated with an insecticide spray, because of health concerns, particularly with respect to one of his children who had a serious illness.

The tenant said at the hearing that he did not raise his concerns or claim with respect to fleas at the time of the occurrence because he was at an economic disadvantage and there was an inequality of bargaining power between the tenants and the landlord; he was concerned that if he raised the matter the landlord would not continue his tenancy or would choose not to renew it.

The limitation Act provides by section 3(2) as follows:

> (2) After the expiration of 2 years after the date on which the right to do so arose a person may not bring any of the following actions:

> (a) subject to subsection (4) (k), for damages in respect of injury to person or property, including economic loss arising from the injury, whether based on contract, tort or statutory duty;

The tenants declined an effective flea treatment offered by the landlord in order to pursue their own chosen and unorthodox remedies. I find that their claim is barred by the quoted provision of the Limitation Act and by the tenants' decision to pursue their own course of treatment for the flea infestation; I find they elected to pursue that course at their own expense and further, that the time for bringing their claim has expired. The tenants' excuse that there was a supposed inequality of bargaining power does not amount to a legitimate ground to delay notifying the landlord of their claim or justification for the tenants' decision to avoid disclosing potential disputes or claims and store them up until the end of the tenancy. The claims related to fleas, injury and damage due to fleas and treatments for fleas are dismissed without leave to reapply.

The tenants claimed compensation for the flood that occurred in November, 2011. They claimed compensation of $200.00 for emergency work moving water to keep it from entering the rental unit. The tenant claimed a further $250.00 for one day of lost work. The tenants did not advance the claim at the time of the occurrence. They chose to report the flood to the landlord by e-mail later on the morning of the flood, instead of making an emergency phone call to the property manager when the flood occurred.

There was a similar occurrence on January 4, 2012. The tenants advised the property manager by e-mail that there was a small flood; that they bailed water and later rented a submersible pump. The tenants did not telephone to report the flood and made no request for emergency assistance. They did not make a claim for compensation at the time, but waited until the tenancy had ended to make the claim. The tenant claimed $200.00 for emergency water moving and the tenant claimed $250.00 for a half day of lost work. The tenant claimed $22.18 for a pump rental and a further $83.99 for the purchase of a pump in case there was a future flood.

The tenant has a positive obligation to notify the landlord of an emergency so the landlord can take immediate steps to prevent damage. The sending of an e-mail message after the fact is not an appropriate response. I find that the tenants took some necessary steps to deal with the immediate flooding problem when it occurred, but they were remiss in not making an emergency call to the landlord to seek immediate help and intervention. I find that the tenants should be compensated for their flood abatement efforts on each occasion in the amount of $100.00, but no more than that, on

the basis that had they promptly called the landlord, help would have been forthcoming and further efforts by the tenants would not have been necessary. The tenants' purchase of a pump was unnecessary and the claim for the purchase amount is dismissed as are the claims for compensation for time lost from work.

The tenants claimed for loss of use and enjoyment due to the leaking water tank in the amount of three days rent. There was some inconvenience during the period but certainly not a total loss of use of the rental property for the days in question; I award the tenants the sum of $50.00 for the inconvenience for the three day period.

The tenants claimed for the loss of use of the laundry room and second bathroom due to the presence of asbestos in the linoleum flooring. The tenants claimed half of the monthly rent of $1,296.00 for a period of 4.5 months for a claim of $2,916.00. I accept that the tenants lost the use of a portion of the house due to the presence of asbestos, but it was nowhere near half the useful area of the house. The work could have been done at the latest in August, but the tenants refused to have the work done until after they had moved out. I find that an appropriate amount of compensation for the duration of the loss of use to be the sum of $750.00.

The tenant claimed punitive damages because the property manager left a voice message for the tenant at his office and a second sum for punitive damages because the landlord apparently used an incorrect fax number and gave the tenant's work number to the Residential Tenancy Office. These claims are devoid of merit and they are dismissed.

The landlord claimed payment of the sum of $1,550.80 for cleaning, carpet cleaning and repairs. After considering the documentary evidence and the testimony of the parties I find that the landlord has not shown that it is entitled to an award in any amount. The landlord claimed for a screen door, but the tenant's evidence established that the screen was damaged and stored in the storage are when the tenancy began. Similarly there was a claim with respect to damage to the fridge, but both the tenant and the landlord's former agent noted damage to the refrigerator at the beginning of the tenancy. This was contained in the landlord's report of a condition inspection in January, 2008.

With respect to cleaning, the evidence showed that the rental property was far from pristine at the commencement of the tenancy and the tenants expended time and effort to clean when they moved in. On the evidence I find that the rental unit was not left in a condition that was appreciably different than the condition it was in when the tenants rented it. With respect to the carpets, there is an obligation on the tenants to clean the

carpets, but I find that the tenants were led to believe that the carpets would be replaced and were told to hold off on carpet cleaning. For that reason I find that the tenants are not responsible for carpet cleaning. I note that the carpets had significant defects when the tenancy began five years earlier so their replacement would not have been unusual.

Conclusion

The landlord's application for a monetary order is dismissed without leave to reapply.

I have awarded the tenants the total sum of $200.00 for flood abatement efforts, $50.00 for inconvenience due to the lack of a hot water heater for several days and $750.00 for the loss of use of the second bathroom and laundry room, for a total award of $1,000.00. The tenants are entitled to the return of their security deposit and interest in the amount of $635.49 and I award them $50.00 of the $100.00 filing fee paid for their application. All other claims made by the tenants are dismissed without leave to reapply.

I grant the tenants an order under section 67 in the amount of $1,685.49. This order may be registered in the Small Claims 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: April 25, 2013

Residential Tenancy Branch