Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Preliminary Matters

The tenant present at the hearing was not included as an applicant; his spouse had made the application. The tenant explained that his spouse could not attend the hearing so he was in attendance to make submissions. The tenant asked if I would prefer to adjourn the hearing. As the tenant said he was prepared to present evidence and to proceed, I declined to interfere with the decision of the tenant and the hearing proceeded.

The tenant made the application on February 18, 2013 and it was not until May 10, 2013 that an 88 page evidence submission, that included 21 photographs, was supplied as evidence to the landlord and the Residential Tenancy Branch.

The tenant's evidence submission was late, but the landlord was willing to include that evidence. Therefore, I determined the late evidence would not be set aside.

At the start of the hearing I attempted to clarify the monetary claim made; the tenant could not provide a succinct, definitive explanation as to why ½ of rent was claimed, plus another ½ of rent. With the exception of several months it appeared that the tenant had claimed compensation equivalent to ¾'s of rent paid.

As the evidence submission was made outside of the required time-frame the tenant was told that any of the numerous emails supplied would need to be referenced during the hearing, or they would not necessarily be considered. The tenant concurred.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of $15,121.24 as compensation for damage or loss under the Act?

Background and Evidence

The tenancy commenced on November 16, 2012 for a 1 year and fifteen day term. Rent was $1,850.00 per month, due on the first day of each month. The deposits were retained by the landlord, by agreement, toward the last month's rent owed.

The tenancy ended by mutual agreement effective October 1, 2012.

The tenant has made a claim as follows:

November 2011 rent	$462.50
December 2011 rent	700.00
½ rent owed each month from January 2012 to September 2012	8,325.00
Mouse traps, fuel, pantry food destroyed	150.76
Hydro costs from May to September 2012	703.54
November 2011 to September 2012, ½ of ½ of each month's rent (231.25 November, $350.00 December, $462.50 for the balance of the months)	4,743.75
TOTAL	$15,085.55

The amounts taken from the application detailed calculation differed in total by $45.69.

The tenant listed a number of items that were malfunctioning during the tenancy, including:

- Cracked bedroom window;
- Dead plants and trees that were not replaced;
- Lack of notice of entry when repairs completed;
- Blinds not installed unit November 13, 2011 (3 days after move-in);
- Appliances installed 5 days after move-in;
- Owners belongings in garage for fifteen days;
- Dishwasher ran for 4 – 6 hours at a time;
- Fridge malfunctioned and leaked;
- Washing machine leaked;
- No dryer vent installed, tenants completed installation;

- Fifteen light bulbs were burnt out;
- House was dirty upon move-in;
- Heating and air conditioning system did not work properly;
- Leaked occurred through the 3 kitchen ceiling light fixtures;
- Mice were discovered in the home;
- Hydro usage was excessive as a result of the malfunctioning heat system; and
- Only 1 key was provided and no key were given for the garage and back door.

The tenants' written submission indicated that December 2011 rent was reduced by $450.00 for the inconveniences that occurred early in the tenancy. A November 30, 2011 email from the tenants indicated they planned on making a $925.00 deduction from the December 2012 rent owed, as a result of on-going heat systems problems.

The landlord pointed to a December 13, 2011 email sent to the tenants, outlining the rent payments received for that month. The tenant agreed that the email supports the landlord's position that ½ of December 2011 rent was paid and ½ was given as compensation for deficiencies that had impacted the tenants; the tenant said he could not disagree with this conclusion.

After the initial compensation was provided as the result of agreed deficiencies in the home the tenants continued to be in constant contact with the landlord's agent; requesting repair of the heat, washing machine and fridge, and asking when a scooter would be removed from the garage.

On February 13, 2012 the tenants sent an email complaining about the heat problems and that the fridge and washing machine continued to leak. During the hearing the tenant said the fridge was replaced in December 2011. The tenant said that he heating system fan constantly ran, consuming power, but that the heat would not reach all areas of the home.

The landlord responded on February 13, 2012, suggesting hydro costs should be in the $300.00 to $400.00 range each month. The tenants had also received an earlier email indicating hydro costs should not exceed $300.00 per month. The landlord said that as they had already given the tenants ½ month's rent as compensation and that the tenants would need to consider moving or going to the Residential Tenancy Branch (RTB) to resolve any outstanding disputes. The dishwasher was investigated and no evidence of malfunction was discovered.

On March 7, 2012 the landlord took the tenants some heaters and evidence shows that continuing into late March the landlord investigated the reported heat problems. The tenants told the landlord they could not continue to use space heaters and that those heaters did not adequately heat the home.

On April 9, 2013 arrangements were made to install a new heat pump during that week and that rent deduction could be discussed. Once all of the electrical breakers were

turned back on after the pump installation the tenants told the landlord that the system was heating areas where the heat was selected to be shut off and that the dishwasher and washing machine still needed attention.

On April 14, 2012 the landlord sent the tenants an email stating that hydro would be credited commencing that month, but that amounts would need to be calculated from the bills.

There was no dispute that a deduction in the sum of $1,019.81 was made from May 2012 rent owed, to compensate the tenants for excessive hydro bills that had been incurred from the start of the tenancy to April 19, 2012.

Beyond April 2012 the tenant alleged that problems continued to occur with the heating system. Either it would be too hot or too cold; the tenant believed that utility costs should be further subsidized.

Between April 23 and July 19, 2012 no email communication occurred between the tenant and landlord. Commencing July 19, 2012 email communication again began with the tenant asking about replacement of trees that were dead and a cracked window in the bedroom. The lease had indicated the window would be repaired.

On August 12, 2012 the tenants reported a leak that had begun from the kitchen ceiling, the landlord wanted to attend the home at 10 a.m. but the tenants asked he come at 1 p.m. The landlord said he just needed to take a picture so they could start to figure out what the problem was, but the tenant said 10 a.m. was not convenient and the landlord would have to come to the house on Monday.

On August 21, 2012 the tenant requested further hydro compensation as they had expected costs in the summer months to be lower than winter months. The tenant also expected compensation for the cost of mouse traps, containers and fuel; they offered to pay $1,465.36 for September 2012 rent. The landlord responded saying that hydro costs would be higher if they used air conditioning and that they were not going to discuss heat costs further, again suggesting he tenants go to arbitration.

On August 21, 2012 the tenants responded stating that the heating system had not been properly repaired, that the system would never shut off and that the temperature would not go below 94 degrees. The landlord quickly responded, requesting access to the home, at which point the tenants asked for twenty-four hours notice; the male tenant worked nights and needed sleep. The landlord replied that as heat was an emergency issue he should be allowed to enter the home; he again suggested the tenants apply for dispute resolution. The tenants went 4 days without being able to use the kitchen ceiling lights as a result of the leak.

By August 30 2012 the tenants determined that they must vacate and a mutual agreement was reached terminating the fixed-term tenancy effective September 30, 2012.

The tenant supplied a receipt for the cost of key cutting as only 1 key had been supplied. An invoice in the sum of $10.06 was supplied. The tenants also repaired the dryer vent and submitted a receipt in the sum of $20.81.

The tenant said that repairs were not made in a timely fashion, that the amount of rent paid relative to the problems they experienced was unfair and unjust.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Based on the testimony provided during the hearing I find that the landlord has previously compensated the tenants for inconveniences that occurred during the tenancy, up to December 2011 and for hydro costs to April 30, 2012.

In relation to the balance of the claim made by the tenant, I have considered section 7 of the Act:

Section 7 of the Act provides:

> ***Liability for not complying with this Act or a tenancy agreement***
>
> ***7*** *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
>
> *(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement* ***must do whatever is reasonable to minimize the damage or loss****.*
>
> (Emphasis added)

There is no doubt that a number of problems occurred during this tenancy; this is supported by the compensation that was given to the tenants up to May 2012. As early as February 2012 the landlord's agent suggested the tenants file an application with the tenancy branch, so that their claims could be adjudicated. On at least 2 other occasions the agent suggested the tenants apply for dispute resolution. The tenants did not file an application, but continued to make complaints to the landlord in relation to deficiencies in the home.

Residential Tenancy policy suggests that where a landlord breaches a term of the Residential Tenancy Act the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. When an applicant fails to mitigate then they will not be entitled to recover compensation for any loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs, as provided by the Act. Failure to take the appropriate steps to minimize the loss affects a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved.

From the evidence before me I find that the landlord did take steps to provide compensation for the deficiencies that occurred at the start of the tenancy and that the tenant were also compensated, by agreement, for utility costs.

In relation to the loss claimed beyond April 2012 I find that the tenant failed to mitigate the claim by bringing forward an application requesting repair. Once the tenant became aware that the new heat pump was not functioning, particularly given the previous problems, the tenant had a responsibility to initiate a claim requesting repairs. It appears that the landlord’s agent had encouraged the tenants to submit a claim via the dispute resolution process, so that they could obtain any orders an arbitrator felt necessary; while the tenants preferred not to take that adversarial route.

I find, after taking into account the compensation already provided, that the tenant has failed to show, on the balance of probabilities that they suffered a loss of value equivalent to a further $15.085.55. Further, it appears that the claim covers a period of time for which compensation has already been given by the landlord; at least partially duplicating compensation.

I have declined to decrease the claim made as the tenants had ample opportunity to address the problems early on in the tenancy by requesting Orders for repair, yet chose not to do so. I also considered the action of the tenant, who refused the landlord access to evaluate the ceiling leak. There was no evidence before me why the female tenant could not have shown the landlord the kitchen and attic areas while the male tenant slept. The tenants may have been frustrated, but a request for immediate attention to repair, followed by a refusal for access appears to be contradictory. If the tenant had truly been concerned about this leak, which she had wanted addressed immediately, it makes sense she would have given her approval for the landlord to enter the home.

I also find that the claim made was confusing and set out in a manner that not only duplicated the period of time during which compensation was requested, but increased the claim by a further ½ of rent owed; a calculation that the tenant present at the hearing could not adequately explain.

Therefore, I find that the claim is dismissed.

Conclusion

The application is dismissed.

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: May 28, 2013

Residential Tenancy Branch