Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cornerstone Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RP, RR, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The female tenant (the tenant) testified that the tenants handed a representative of the landlords a copy of their dispute resolution hearing package on February 5, 2014. The landlord's agent (the agent) confirmed that the landlords received the tenants' hearing package on February 6, 2014. I am satisfied that the tenants served their hearing package to the landlords in accordance with the *Act*.

The only written evidence that the tenants supplied, other than the limited details of their dispute resolution hearing package was a written and photographic evidence package submitted to the landlords and the Residential Tenancy Branch (the RTB) two days before this hearing. Although I had not yet received or reviewed the tenants' evidence package before this hearing, the landlords confirmed that they had reviewed this material and were prepared to proceed with this hearing. Subsequent to this hearing, I received and reviewed the tenants' written and photographic evidence package. I have taken this evidence into account in reaching my decision on this matter.

Preliminary Issue – Request for an Adjournment

At the beginning of this hearing, the tenants' counsel requested an adjournment of this hearing as he had only been retained by the tenants to represent their interests on

Saturday, March 15, 2014. He said that he had been in court since then and had been unable to submit a timely written request for an adjournment.

Rule 6 of the RTB's Rules of Procedure establishes how late requests for a rescheduling and adjournment of dispute resolution proceedings are handled. Since the tenants' counsel had not submitted a written request for an adjournment in sufficient time before this hearing, Rule 6.3 applies:

> ***6.3 Adjournment after the dispute resolution proceeding commences***
> *At any time after the dispute resolution proceeding commences, the arbitrator may adjourn the dispute resolution proceeding to a later time at the request of any party or on the arbitrator's own initiative.*

In considering this request for an adjournment, I have applied the criteria established in Rule 6.4 of the Rules of Procedure. I note that tenants applied for dispute resolution on January 30, 2014, and had 7 weeks advance notice of the hearing of their application on March 20, 2014. During that period, they did not retain legal counsel until five days before this hearing and did not submit any supporting evidence until two days before this hearing. As noted above and despite the tenants' very late provision of their evidence package, the landlords said that they were prepared to proceed with this hearing and were not interested in further delay.

Under these circumstances, it appeared to me that the tenants had ample opportunity prior to the hearing to retain legal counsel if that were their wish. Neither the tenants nor their legal counsel presented any satisfactory explanation as to why the tenants could not have retained legal counsel in sufficient time to avoid having to make a very late request for an adjournment. After considering Rule 6 of the Rules of Procedure, I advised the parties at the hearing that I did not find that the tenants had met the criteria established for granting an adjournment. I proceeded with this hearing.

This tenancy has ended and the landlords have conducted the requested repairs. There was no need to consider the tenants' application for repairs.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for losses in the value of their tenancy?
Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

This tenancy began as a fixed term tenancy on September 9, 2012, with a scheduled termination date of February 28, 2013. When the initial term expired, the tenancy

continued as a periodic tenancy. Monthly rent was set at $680.00, payable in advance on the first of each month. The tenants paid a $340.00 security deposit and $444.00 pet damage deposit on September 9, 2012.

At the hearing, I noted that the *Act* prevents a landlord from charging more than the equivalent of one-half month's rent as either a pet damage or security deposit. In this case, I advised the parties that the landlords had illegally charged $100.00 more than they were allowed to charge as the pet damage deposit for this tenancy. I told the parties that my decision would be ordering the landlords to return at least this $100.00 overcharging of the pet damage deposit to the tenants.

The parties agreed that the landlords issued two separate 10 Day Notices to End Tenancy for Unpaid Rent (the 10 Day Notices) on January 31, 2014 and on February 3, 2014. The agent said that one of these Notices called for the payment of $715.00, and the other 10 Day Notice was for $1,395.00, outstanding as of February 1, 2014. The parties agreed that the tenants vacated the rental unit on February 7, 2014, in apparent accordance with one of the landlords' 10 Day Notices.

At the hearing, the agent gave undisputed sworn testimony that the landlords did receive full rent payments from the tenants for all of December 2013 and January 2014. The agent gave undisputed sworn testimony that the tenants have not paid any rent to the landlords for February 2014.

The agent testified that the landlords had to undertake extensive repairs at the end of this tenancy to ready it for renting to a new tenant. The agent testified that the landlords were successful in locating new tenants for this rental unit who commenced a new fixed term tenancy on March 1, 2014, for the same $680.00 that the tenants were paying during their tenancy.

The tenants' application for a monetary award of $1,070.00 sought a retroactive reduction of 50% of their rent from December 3, 2013 until March 1, 2014, plus the recovery of their filing fee. In the Details of the Dispute in the tenants' application for dispute resolution, the tenants stated the following:

> *Pipe in bathroom leaking; 3 daily empties; large pot; mold growing in boards; was notified 3 months ago – Dec. 3/2013; (50% month's rent x 3) + (filing charge) = $1,070*
> (as in original)

I heard conflicting testimony from the parties with respect to the tenants' claim that Landlord HS (the landlord) did not take effective action to provide them with the full

value of the rental unit due to his lack of attention to their concerns about a leaking pipe under their bathroom sink. The female tenant testified that the tenants first notified the landlord of the leaking pipe on December 3, 2013. She said that the tenants asked the landlord multiple times to fix the pipe, but after initially looking at it and agreeing that he needed to have someone repair it, no adequate corrective action was taken. Both tenants testified that they had to place a large soup pot under the bathroom sink to catch the dripping water, which needed to be emptied three times per day in order to avoid an overflow and flooding in the bathroom. The male tenant said that on several occasions, the water did flow over the pot, causing flooding damage and a growth of mould in the damp conditions that were not repaired in a timely fashion by the landlords.

The tenant maintained that after the tenants raised their concerns about this ongoing problem with the landlord's manager and said they were planning to withhold paying their rent until the repairs were undertaken, the landlords issued two 10 Day Notices within short order. Although the landlord did post a notice on the tenants' door to arrange to have a repair person come to the suite during a 4 hour period on January 31, 2014, the tenant said that no one attended the suite when the tenants had arranged to be present. She also alleged that the landlord illegally entered the rental unit after being denied access to the rental unit. After the unsuccessful attempt to repair the pipe on January 31, 2014 and the tenant's insistence on receiving 24 hours of written notice to undertake the repairs, the tenant testified that the landlord asked for 24 hour per day/ 7 day per week access to the rental unit to undertake the repairs. The tenant said that the tenants rejected this request for unlimited access to the rental unit.

The tenant also testified that she is particularly sensitive to mould, as are other members of her family. She said that at the time of the pipe leakage problems, she was pregnant. She said that the mould caused her repeated episodes of nausea, leading her to vomit as many as 9 times per day. She said that she had not experienced nausea during her tenancy until the problems with the pipe occurred. She said that she consulted with her doctor about the effect that the leaking pipe and mould were having on her health. The tenants' late written evidence included documents signed by the doctor who was caring for her during her pregnancy, which she maintained confirmed her reaction to the mould problems in the rental unit. The tenant said that she had to obtain a prescription from the doctor regarding her reaction to the mould.

The male tenant testified that mould was growing on the walls and on the floor under the sink, where flooding sometimes occurred when the soup pot overflowed. He said that the dripping of the pipe often led to a lot of spray causing moist conditions under the bathroom sink. He said that the tenants had to clean up the mess almost every day

The landlords provided a very different account of their attempts to repair the pipe. The landlord confirmed that he received the tenants' December 3, 2013 text (a copy of which was entered into late written evidence) requesting plumbing repairs to the pipe. However, he maintained that when he inspected the rental unit, he found that a bolt needed some tightening. After tightening the bolt, he maintained that the tenants raised no further concerns about this pipe until January 29, 2014. He said that he thought that his tightening of the bolt had corrected the leakage problem. He testified that he could not recall the tenants ever speaking to him about the leaking pipe after he tightened the bolt until he heard about their concerns on or about January 29, 2014. The landlord admitted that he and the plumber were 20 minutes late for the appointment they had made to repair the tenant's pipe and were denied access to the rental unit. He also said that the tenants continued to make access to the rental unit difficult. He testified that he always gives 24 hours written notice to conduct any inspection or repair and denied having requested 24/7 access to the rental unit. He said that the plumber repaired a small leak on the valve system under the sink after the tenants vacated the rental unit on February 7, 2014. He denied that there was any mould in place.

Analysis

As noted above, I order the landlords to return $100.00 from the tenants' pet damage deposit, as the landlords overcharged this amount for the tenants' original pet damage deposit. I make no further order with respect to the pet damage or security deposits as neither party has made any application with respect to those deposits.

Section 32 of the *Act* establishes a landlords' obligation to repair and maintain rental premises in:

> ...*a state of decoration and repair that*
>
> > *(a) complies with the health, safety and housing standards required by law, and*
> >
> > *(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant...*

Section 65(1)(f) of the *Act* allows me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement." Section 65 of the *Act* reads in part as follows:

> ***65*** *(1) ...if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:*

(c) that any money paid by a tenant to a landlord must be

(i) repaid to the tenant,

(ii) deducted from rent, or

(iii) treated as a payment of an obligation of the tenant to the landlord other than rent;

(d) that any money owing by a tenant or a landlord to the other must be paid;...

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;...

In this case, I find it more likely than not that the landlords did not completely fulfill their responsibilities as landlords in ensuring that the leakage in the pipes initially reported by the tenants on December 3, 2013 was properly repaired. On a balance of probabilities, I find it unlikely that the tenants would have failed to notify the landlord that the tightening of the bolt shortly after December 3, 2013 had been unsuccessful in remedying the problem they identified in their December 3, 2013. The landlord's sworn testimony that he "had no recollection" of the tenants' speaking with him about this after he tightened the bolt is at stark contrast with the tenants' very clear and emphatic recollections that they asked him to fix the leak that was causing them problems multiple times. I find that the tenants were not authorized to withhold rent due to the leakage problem. However, I am satisfied that the landlords' failure to repair the leak in a timely fashion or at least check back with the tenants to ensure that the tightening of the bold had remedied the problem first reported in early December 2013 did reduce the value of their tenancy for a period of their tenancy.

Although I find that there has been some loss in the value of this tenancy, I do not accept the tenants' assertion that they were entitled to a 50% reduction in the value of their tenancy for the period from December 3, 2014 until the end of February 2014. I first note that the period of the tenants' entitlement to a retroactive decrease in the rent they paid would only be applicable to the period from approximately December 10, 2013 until January 31, 2014. I would expect that it might reasonably have taken one week after receiving the tenant's initial notification regarding the leaking pipe for the landlords to assess the situation and repair the pipe. The tenant's eligibility for a reduction in rent ended on January 31, 2014, as the tenants paid no rent for February 2014.

I have taken into consideration the tenants' photographic and written evidence, particularly the evidence from the tenant's doctor. I find that the tenants have not demonstrated to the extent required that the landlords' delay in attending to these repairs was responsible for the magnitude of health problems and disruption maintained by the tenants. I first note that the tenants' photographs were not of sufficient quality to substantiate that there was significant mould growing under the sink and in the tenants' bathroom. I can see a few spots here and there, which may or may not be mould. For the most part, the tenants' photographs reveal little of value other than confirmation that there was some leakage under the tenants' bathroom sink. This assertion was never denied by the landlords, although the landlord described the leak repaired as being a small leak on the valve system. I also find that the tenants' written evidence from the tenant's doctor provides little real support for the tenant's claim that her nausea and vomiting during this period of her pregnancy were directly attributable to mould caused by the landlord's inattention to necessary repairs in the bathroom. The agent correctly noted that the doctor had little knowledge of the alleged condition of the tenants' rental unit. The doctor's note also stated that the tenant's problems with nausea resurfaced later in her pregnancy, well after this tenancy ended and the tenants were living elsewhere. Under these circumstances and without any other meaningful evidence from a health care professional, I find little to support the tenant's claim that nausea during one portion of her tenancy, which recurred after the tenancy ended, was attributable to the landlords' failure to attend to the repair of the leak in a pipe in their bathroom. The tenant's nausea may have been attributable to many different factors during pregnancy. I find little evidence to support the tenant's claim that the landlord was responsible for her nausea during a portion of her pregnancy.

I find that the reduction in the value of this tenancy was limited to a 20 % reduction and not the 50% reduction requested by the tenants. I find little evidence that mould problems occurred during this period to the extent claimed by the tenants or that mould caused significant and documented health issues for the tenants. Rather the 20 % reduction allowed results primarily from the effort and stress that the tenants experienced because they were constantly needing to be available to empty the soup pot under the sink. Any failure to do so resulted in an overflow and extensive cleanup, which I accept the tenants had to do a number of times from December 10, 2013 until the end of their tenancy.

For the reasons outlined above, I find that the tenants are entitled to a reduction in monthly rent in the amount of $96.52 (i.e., $680.00 x 22/31 x 20% = $96.52) for the 22 days of December 2013 from December 10, 2013 until December 31, 2013. I find that the tenants are entitled to a monetary award of $170.00 in reduced rent for January 2014 (i.e., $680.00 x 20% = $170.00).

I dismiss the tenants' application for a monetary award for the loss in value of their tenancy for February 2014, as there is undisputed testimony that the tenants did not actually pay any rent for February 2014. As such, they have not proven that they have incurred any actual loss in the value of their tenancy for February 2014.

As the tenants were partially successful in this application, I find that they are entitled to recover their $50.00 filing fee from the landlords.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms, which allows the tenants to obtain a monetary award for the landlords; overcharging of their pet damage deposit, a loss in the value of their tenancy and the recovery of their filing fee.

Item	**Amount**
Tenants' Entitlement to a Monetary Award for the Landlords' Overcharging of the Tenants' Pet Damage Deposit ($440.00 - $340.00 = $100.00)	$100.00
Loss in Value of Tenancy December 10, 2013 until December 31, 2013	96.52
Loss in Value of Tenancy January 2014	170.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	**$416.52**

The tenants are provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: March 24, 2014

Residential Tenancy Branch