Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Colyvan - Urban Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the tenants Application for Dispute Resolution, in which the tenants have requested compensation for damage or loss under the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

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 evidence and testimony provided.

Issue(s) to be Decided

Are the tenants entitled to compensation in the sum of $2,833.79?

Are the tenants entitled to return of the $50.00 filing fee?

Background and Evidence

The tenancy commenced on August 15, 2013. Rent is $1,275.00 per month, due on the first day of each month. A copy of the tenancy agreement signed on July 22, 2013, was supplied as evidence.

The tenants have made the following claim:

Loss of use of unit due to painting, 10 days	$411.29
Piping project refit over 57 days	2,422.50
TOTAL	$2,833.79

A move-in condition inspection report completed on August 15, 2013 indicated that the unit needed painting. The tenants submit that they could not move into the unit until the painting was completed on August 24, 2013. The tenants confirmed that the painting took one day.

The tenants have claimed compensation for the period of 10 days they say they could not live in the unit. The tenants acknowledged that they continued to reside in their previous unit, which they were to vacate on August 31, 2013.

The landlord supplied copies of emails sent between the parties. On August 16 the landlord told the tenants the painter would contact them, with the tenants responding, thanking the landlord and stating they would like to enjoy the apartment as soon as possible. On August 16 the tenants sent a message asking if they had to wait a week to live in the unit and that they would not unpack if painting was going to take place. The landlord replied telling the tenants they could move in, but that the furniture would just need to be placed out from the walls when painting took place. On August 20 the tenants became aware that the whole unit would be painted; they again said they could not live in the apartment until it was painted. The landlord responded asking what the tenants meant by not being able to live in the apartment.

On August 26, 2013 the tenants wrote the landlord a letter asking for compensation. The tenants said the unit should have been ready for possession and that they could not completely move into the unit until the day after the painting was completed. A copy of this letter was submitted as evidence.

On August 28, 2013 the landlord replied; a copy of that letter was submitted as evidence. The landlord indicated that the tenants had said they would be moving in slowly as they continued to possess their previous rental unit. The landlord had recommended the furniture be placed in the middle of the rooms so that painting could be more easily completed. The landlord said the tenants had agreed to the painting during the move-in condition inspection. On August 20, 2013 the tenants sent an email indicating they would likely be out of town when the painting occurred, so the landlord should give the painter a key. The landlord responded asking that the tenants place their furniture toward the centre of the rooms. The landlord explained that they had taken steps to fulfill their duties and that if the tenants were dissatisfied they could approach the Residential Tenancy Branch.

On September 25, 2013 the tenants became aware of a re-piping project that was to take place in the multilevel building, over 9 floors. Work was set to commence on October 8, 2013. The schedule of work provided by the contractor indicated that in-suite work would occur during a cutting, plumbing, testing, inspection and drywall phase totaling entry of eighteen to twenty-one days in each suite.

The tenants supplied several photographs that showed the holes that had to be made in their dining area, to access kitchen pipes; and in a kitchen cupboard area. The tenants said the bathroom and ceilings were also opened to pipes could be accessed.

The tenants provided evidence of a meeting that was held at the building on July 17, 2013, to inform the occupants and owners in the building of the piping project details. The tenants said the property owner would have been aware of this project, yet this information was not disclosed to the tenants before they signed the tenancy agreement. If the tenants had been told the project was going to occur they may not have rented the unit.

The tenants first saw a September 25, 2013 notice to residents, that was posted in the building, informing them of the piping project that was about to commence. The work was to commence on October 16, 2013 and complete on December 11, 2013.

The tenants said they obtained the property owners contact information and toward the end of September 2013 called her to discuss the project and possible compensation as a result of the disturbance that would be caused to the tenants. The property management company then emailed the tenants to tell them not to contact the property owner. The tenants said this indicated that the owner had been in touch with the property management company but had ignored their request for some sort of compensation.

The tenants submit that the water was often turned off between 8 a.m. and 4 p.m., that entry was repeatedly made Monday to Friday, between 8 a.m. and 4 pm, that walls were cut open and that they had to move personal belongings during this time; which all resulted in discomfort. They would come home to find furniture had been moved and dust on their belongings, which they had to clean.

With the exception of the first week of the piping project, both tenants were at work throughout each week day. The project did not continue over weekends.

The property owner's agent who acts for the owner could not say when the owner would have become aware of the piping project. The property owner receives all unit notices and the agent can only assume the information related to the repair project would have been sent to the owner. When the agent signed the tenancy agreement on July 18, 2013 they had not been made aware of the piping project. The landlord provided a copy of a September 24, 2013 email sent to them by the owner, informing them of the piping project.

The landlord said that the tenant's have claimed compensation for the total number of days of the project, yet the work in each unit was estimated to be for not more than eighteen to twenty-one days. The tenants did not call or make any request for assistance and the landlord first found out about the claim when the hearing documents arrived. The only contact the tenants made was at the end of the project when they emailed the landlord to tell them they could now obtain the key from the contractor.

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.

In relation to the claim for return of rent paid from August 15, to 24th for painting, I find that the tenants have failed to show that they suffered any loss or that there has been a breach of the Act. The tenants knew on August 15, 2013 that the unit was going to be painted, yet there was no evidence before me that they immediately indicated this would cause an inconvenience. The furniture could have easily moved by the painter or the landlord just prior to painting. I find that a single day of painting does not entitled the tenants to any compensation and that the landlord was taking steps, as required under section 32 of the Act, to maintain the unit.

I do note that when a unit has not been painted in at least the past 4 years it would be prudent to arrange for painting on the final day or first day of a tenancy. This would not, however, entitle the tenants to compensation as there is a reasonable expectation that normal maintenance in any home will be required from time to time.

In relation to the piping project, I find, on the balance of probabilities that the owner of the property would have been privy to the building maintenance projects that were planned and would have been aware by July 22, 2013 that this project would occur. The project was not disclosed to the tenants, so they did have the opportunity to avoid the disruptions. If the tenants had known about this project they could then have made an informed decision as to whether they would rent the unit or negotiate some sort of compensation before signing the tenancy agreement.

However, the tenants also had a responsibility to ensure that they took steps to minimize the claim they have now made.

I have considered section 7 of the Act, which provides:

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.

Residential Tenancy Branch policy suggests this means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided. Policy suggests that when steps are not taken to minimize the loss, an arbitrator may award a reduced claim that is adjusted for the amount that might have been saved.

Outside of the call made to the property owner at the end of September 2013, I find that the tenants took no further steps to mitigate the loss they have claimed. Once the landlord's agent told the tenants to cease contacting the owner, the tenants made no efforts to have the landlord's agent respond to their concerns. Instead the tenants waited until the piping project was completed and then submitted a claim for all of rent paid over a 57 day period of time. The tenants had a responsibility to minimize the loss as soon as they became aware of the possibility of any loss that could reasonably be avoided. The tenants were told during hearing that compensation may not be awarded as a means of punishing a party.

The tenants could not provide any dates that entry was actually made to their unit. They have asked for return of all of rent paid during the whole term of the project, but there is no evidence that entry to their unit occurred on a daily basis or that entry was made on weekends, while the tenants were home. Further, with the exception of 1 week, the tenants were working during any times entry was made. There was no evidence before me that the water was turned off at any time when the tenants were at home. Therefore, at most, I find, on the balance of probabilities, that the tenants suffered a loss of enjoyment of their unit as a result of the holes cut in the drywall and dust that resulted. However, the tenants did not make any request for assistance to clean the unit during the time of the project; which would have allowed them to mitigate their claim.

In the absence of evidence of any attempt to mitigate the claim they have made and, in the absence of evidence that the tenants were denied use of their unit for a period of 57 days I find that the tenant's are entitled to a reduced sum of compensation. The tenants were able to fully utilize their unit and from the evidence before me, I find they would have had a loss of value of the unit as a result of the holes that were cut in the walls between October 16 and December 11, 2013. There was no evidence before me that the holes were made in the unit on the first day of the project. Therefore, I find, pursuant to section 65 of the Act that the tenants are entitled to compensation for damage or loss in the sum of $300.00 for the loss of value of the unit during the piping project as a result of the loss of aesthetic value of the home. The balance of the claim is dismissed.

As the tenant's application has some merit I find that the tenants are entitled to recover the $50.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Pursuant to section 65 of the Act, I find that the tenants are entitled to make a one-time deduction in the sum of $350.00 from the next month's rent owed, in satisfaction of the claim.

Conclusion

The tenant's are entitled to compensation in the sum of $300.00.

The tenants are entitled to filing fee costs.

The balance of the claim 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 1, 2014

Residential Tenancy Branch