Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC ERP RP LRE

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on February 15, 2016. The Tenant filed seeking the following: a $4,313.29 monetary order for money owed for damage or loss under the *Act,* Regulation or tenancy agreement; an Order to have the Landlord comply with the *Act;* An Order to have the Landlord make repairs and emergency repairs for health and safety reasons; and suspend or set conditions on the Landlord's right to enter the rental unit.

The hearing was conducted via teleconference and was attended by the Landlord, the Landlord's Agent, the Tenant, and the Tenant's Advocate. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

On March 17, 2016 the Tenant submitted 59 pages of evidence and 178 photographs to the Residential Tenancy Branch (RTB). The Tenant affirmed that she served the Landlord with copies of the same documents that she had served the RTB. The Landlord acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Tenant's submissions as evidence for these proceedings.

On March 24, 2016 the Landlord submitted 26 pages of evidence to the RTB. The Landlord affirmed that he served the Tenant with copies of the same documents that he had served the RTB. The Tenant acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Landlord's submission as evidence for these proceedings.

Section 59(2) of the Act stipulates that an application for dispute resolution must (a) be in the applicable approved form, (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and (c) be accompanied by the fee prescribed in the regulations.

The Residential Tenancy Branch Rule of Procedure 4.1 provides that the applicant may amend the application without consent if the dispute resolution proceeding has not yet commenced. The applicant **must** submit an amended application to the Residential Tenancy Branch and serve the respondent with copies of the amended application [emphasis added].

In the Tenant's March 17, 2016 evidence submission she included a Monetary Order Worksheet indicating she was seeking compensation in the amount of $5,351.96 which was comprised of different items than what was listed on the application. The Tenant did not file an amended application and simply listed the additional claim items and amounts in her evidence. During the hearing I explained the requirements to file an amended application as stipulated in the *Act* and Rules of Procedure, as listed above.

After a brief discussion, each party was given the opportunity to speak to whether they were prepared to proceed with the hearing today. The Tenant stated she understood if she proceeded with the hearing today I would only be considering the items listed on her application, as described in the Details of the Dispute, and all other claim items submitted or listed in her evidence would be dismissed without leave to reapply.

The Tenant was given an opportunity to discuss the aforementioned matters with her Advocate after which the Tenant stated she wished to proceed with her application as described in the Details of the Dispute. The Tenant confirmed a second time that she understood that the remaining items listed in her evidence would be dismissed, without leave to reapply. Accordingly, I declined to hear matters which involved any item(s) or amount(s) not stated or claimed on the Tenant's original application. The remainder of the Tenant's monetary claim items listed in her evidence were dismissed, without leave to reapply.

In addition to the above monetary claims, I noted the Tenant had not applied to cancel a 10 Day Notice which was submitted into evidence. Each party was provided an opportunity to present evidence regarding the 10 Day Notice to end tenancy issued January 20, 2016. The Tenant stated she had paid the rent on January 21, 2016 and she assumed the 10 Day Notice was cancelled. The Landlord confirmed he was of the opinion the 10 Day Notice was cancelled as of January 21, 2016. Accordingly, I find the 10 Day Notice to end tenancy issued January 20, 2016 is void and is of no force or effect.

During the hearing each person was provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Although all documentary and oral evidence before me has been considered, it is not all referenced in this Decision.

Issue(s) to be Decided

1. Has the Tenant proven entitlement to monetary compensation?

2. Should the Landlord be ordered to conduct emergency repairs and repairs to the unit, site, or property?
3. Should an Order be granted to suspend or set conditions on the landlord's right to enter the rental unit?

Background and Evidence

The Tenant and her former boyfriend entered into a tenancy agreement with the Landlord as co-tenants. The co-Tenants occupied the subject rental property as of March 1, 2012.

In November 2014 the female Tenant (the Tenant) vacated the rental property and gave the Landlord verbal notice that she had ended the tenancy. The Tenant's boyfriend continued to reside in the rental unit as a tenant.

On January 25, 2015 the Tenant entered into a women's transition house with her three children. The Tenant continued to reside at the women's transition house until October 11, 2015.

Sometime prior to August 31, 2015 the Tenant informed the Landlord she had entered into an agreement with her former boyfriend that he would move out of the rental unit so she and her three children could move back into the rental unit.

On August 31, 2015 the Landlord signed the Intent to Rent Form indicating one adult (the Tenant) and three children would be residing in the rental unit for the monthly rent of $1,000.00 and a security deposit of $500.00 was required to be paid.

A written tenancy agreement, listing only the one Tenant, was signed by both the Landlord and Tenant for a tenancy effective on September 2015. As per the tenancy agreement, rent of $1,000.00 was required to be paid on or before the first of each month and a security deposit of $500.00 was to be paid on September 1, 2015. Both signatures were dated October 16, 2015; however, there was a notation on the tenancy agreement indicating the Landlord had signed the tenancy agreement on January 6, 2016 and back dated his signature to match the Tenant's.

The Tenant testified she had intended on moving back into the rental unit as of September 1, 2015. However, when she first entered the rental unit she found that raw sewage had backed up into the laundry sink, the toilet, and the bathtub.
The Tenant argued she had paid the full month's rent for September and October and was not able to occupy the unit until October 11, 2015. She submitted the septic repairs were completed as of October 11, 2015.

The Tenant submitted evidence that her furniture and possessions had remained in the rental unit with her former boyfriend after she vacated in November 2014. Her former boyfriend had agreed to vacate the unit, as stated above, and the Tenant stated he moved his possessions out of the unit slowly during the first couple weeks of September

2015. The Tenant asserted the last time her former boyfriend was at the rental unit was September 14, 2015.

On December 29, 2015 a water pipe broke in the ceiling of the rental unit. The Landlord's son attended right away to fix the broken pipe. The Tenant asserted she was told that the Landlord's son would return in two days to clean up the mess he left and fix the ceiling. She argued he did not return for approximately one month.

On January 9, 2016 another water leak occurred at which time the ceiling tiles, insulation and rodent feces fell into the rental unit. The upstairs tenant contacted the Landlord and received approval to call a pest control technician who attended on January 10, 2016; January 19, 2016; and February 2nd or 3rd, 2016. The Tenant stated the pest control technician showed the Landlord's son the places the rodents entered the building and they were subsequently sealed off.

The Tenant argued she assumed there had been mice around the rental unit as it was on a farm. She stated she was not informed there were rats in the rental unit until the pest control technician attended on January 10, 2016.

The Tenant submitted a claim seeking $538.10 to replace a couch; $775.20 to replace her travel stroller; and $3,000.00 for the return of three month's rent (3 x $1000.00). The Tenant argued that when she entered the rental unit in early September she saw the back of the couch had been chewed by what she thought was mice at that time. She stated she pushed the couch outside in mid-September. Then on January 9, 2016 her stroller was covered with ceiling tiles, insulation, and rat feces when the ceiling fell down. She argued she could not clean up the stroller due to the hazards that could be caused by rat feces.

The Tenant asserted she was entitled to the return of $3,000.00 rent which was comprised of two separate six week periods she had paid rent and was not able to have full use of the rental unit. The first period was from September 1, 2015 to October 11, 2015 when she could not occupy the rental unit pending the repairs of the septic system. The second period was from December 29, 2015 to January 31, 2016 when she lost quiet enjoyment of the rental unit due to the presence of rats and repairs as a result of the water pipes that had been chewed through by the rodents.

Upon review of each item listed on the Tenant's application the Tenant confirmed the request for required repairs relating to her February 15, 2016 application had all been completed. She no longer needed a repair order for the aforementioned issues.

The Tenant submitted evidence the Landlord attends the rental unit without proper notice. She requested an Order be granted to suspend or set conditions on the Landlord's right to enter the rental unit because she said he was not giving her the required 24 hour written notice.

The Landlord testified he entered into the written tenancy agreement to start a new tenancy with the one Tenant. He stated he did not recall being paid a $500.00 security deposit in September 2015.

The Landlord confirmed there had been problems with the septic system prior to September 1, 2015. He asserted the Tenant had use of a second bathroom so they did not feel it necessary to rush in completing the septic repairs, as they were also busy on their farm. He argued the problems with the septic system were the result of the Tenant's children flushing objects down the toilet causing the pipes to plug. The Landlord confirmed he did not submit documentary evidence to prove there had been objects blocking the pipes.

The Landlord submitted the rental unit was a very old house and they had thought it may be settling and causing problems with the sewage pipes. As a result, the Landlord stated they decided to install brand new piping to resolve the issue. They asserted the work to repair the septic system took only about three weeks. The Landlord was not able to provide specific dates of when the repairs were conducted.

The Landlord argued they did not have a key to access the rental unit so they were delayed in completing the repairs as they had to co-ordinate their access with times when the Tenant could attend and let them into the rental unit. He stated they also had to co-ordinate the repair times with their farming scheduled as that was a busy time of year for them.

The Landlord disputed all items claimed by the Tenant. He asserted that he approached the Tenant in September 2015 and asked her why there was a couch and a mattress outside on the lawn. He stated the Tenant told them the couch and the mattress were her former boyfriend's and not to worry as someone from the city would be picking them up. The Landlord argued the Tenant did not mention the presence of mice or rats to him at that time.

The Landlord stated the former boyfriend is often at the rental unit, they constantly see his car there, and they continue to see him there. He stated they should not have to return rent money when the Tenant had full access of the rental unit and still had one working bathroom. They noted they had not seen the children around the rental unit lately.

The Landlord stated he was not aware of the water pipe issue that occurred on December 29, 2015 as his son looks after the rental unit now. He submitted they both have plumbing skills and did not need to hire a licensed plumber to conduct the septic or plumbing repairs.

The Tenant and Advocate submitted the Tenant ended her relationship with her former boyfriend due to violence. The former boyfriend cannot be with the children without supervision. Sometime after returning to the rental unit on October 11, 2015, the Tenant voluntarily assigned care of her children over to a friend. The Advocate clarified the

Tenant had also stayed in transitional housing between January 14 to 19, 2016 and January 23 to 24, 2016.

The Advocate pointed to the Intent to Rent Form submitted into evidence as proof a $500.00 security deposit had been paid directly to the Landlord in September 2015.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

> 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.
>
> 7(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.

Section 67 of the Residential Tenancy *Act* states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 44(1)(d) of the *Act* stipulates a tenancy ends on the date the tenant vacates or abandons the rental unit.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

In the absence of documentary evidence of a previous written tenancy agreement, and based on the submissions before me, I find the Tenant ended her previous tenancy when she vacated the rental unit in November 2014, pursuant to section 44 of the *Act*.

I further find a new tenancy was formed effective September 1, 2015 based on the undisputed written tenancy agreement submitted into evidence. In addition, I find there was sufficient evidence to prove the Tenant paid $500.00 as a security deposit on or around September 1, 2015, pursuant to section 62 of the *Act.*

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item.

In regards to the Tenant's claim for $538.00 for damages to a couch, I favored the Landlord's evidence that the couch was pushed outside of the rental unit and left in the yard because he was told the couch was the Tenant's former boyfriend's couch and not because it was damaged by rats or mice.

Furthermore, there was no evidence before me to support the actual purchase price or age of the couch that was the subject of this claim. In addition, I find there was insufficient evidence to prove the couch was damaged during the tenancy which began on September 1, 2015. Rather, the evidence supports it was damaged prior to when it was pushed outside in early September 2015 and prior to the start of this tenancy. Accordingly, the claim of $538.00 for a damaged couch is dismissed, without leave to reapply, due to insufficient evidence.

Regarding the claim of $679.99 for a stroller, I find there was insufficient evidence to prove the Tenant took steps to mitigate or minimize the loss of the stroller. Notwithstanding the Tenant's submissions that rat feces may be hazardous to her children's health, there was insufficient evidence before me to prove the stroller could not have been cleaned and sterilized rather than simply thrown out. Furthermore, there was insufficient evidence to prove the age and actual cost of the affected stroller. Accordingly, the claim of $679.99 for a stroller is dismissed without leave to reapply.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the Landlord to make the rental unit suitable for occupation which warrants that the Landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdowns of the building envelop or septic system would deteriorate occupant comfort and the long term condition of the building.

Residential Tenancy Policy Guideline 6 stipulates that it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. That being said a tenant may be entitled to reimbursement for loss of use of a portion of the property or loss of quiet enjoyment even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

Section 32 of the *Act* requires a landlord to 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.

Section 32(5) of the *Act* stipulates a landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I accept the Tenant's submissions that she and her children could not reside in a rental unit that had raw sewage backed up into the laundry sink, tub, or toilet, due to health and safety reasons. As such, I find the Landlord failed to make the rental unit suitable for occupation in breach of section 32 of the *Act.*

I was not convinced the Landlord was delayed in completing the repairs solely because they did not have a key to the rental unit. Rather, by their own submission the Landlord took their time, based on their own farming schedule, when completing the repairs because they knew the Tenant had access to a second bathroom.

Based on the foregoing, I find it undeniable that the Tenant suffered a complete loss of quiet enjoyment for the period of September 1, 2015 to October 11, 2015. Accordingly, I grant the claim in the amount of **$1,348.08** which is comprised of 41 days at a daily rental rate of $32.88 ($1,000.00 x 12 months' ÷ 365 days).

Regarding the balance of the Tenant's claim for loss of quiet enjoyment, I accept the Tenant suffered a loss of quiet enjoyment on December 29, 2015 when the water pipe broke and again on January 9 and 10th, 2016 when the ceiling tile fell down and the presence of rats was detected.

I conclude there was insufficient evidence to prove the Tenant lost a full six weeks of quiet enjoyment between December 29, 2015 and February 15, 2016 due to the actions of the Landlord or due to the conditions of the rental unit. Rather, the evidence suggests the Tenant and her children may have left the rental unit as a result of the violent relationship between the Tenant and her former boyfriend, who is still regularly being seen at the rental unit by the Landlord.

After consideration of the above, I find the Tenant is entitled to an additional three days for loss of quiet enjoyment for December 29, 2015, January 9, and January 10th, 2016 in the amount of **$98.64** (3 x $32.88).

Based on the above, the Landlord is ordered to pay the Tenant **$1,446.72** ($1,348.08 + $98.64). In the event the Landlord fails to comply with this order, the Tenant has been issued a Monetary Order for $1,446.72, which must be served upon the Landlord and may be enforced through Small Claims Court.

If the Tenant pays rent directly to the Landlord, the Tenant is at liberty to deduct the one time award of $1,446.72 from future rent payments, in accordance with section 72(2)(a) of the *Act.* For clarity, the Tenant would not pay rent for May 2016 ($1,446.72 - $1,000.00 May rent leaves a balance of $446.72) and the Tenant would pay only $553.28 for June ($1,000.00 - $446.72), in full satisfaction of the monetary award.

The Tenant confirmed the required repairs and emergency repairs have been completed. Accordingly, I decline to order the Landlord to conduct emergency repairs and repairs to the unit, site, or property.

Section 29 of the *Act* stipulates a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

> (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
>
> (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
>
> (i) the purpose for entering, which must be reasonable;
>
> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
>
> (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
>
> (d) the landlord has an order of the director authorizing the entry;
>
> (e) the tenant has abandoned the rental unit;
>
> (f) an emergency exists and the entry is necessary to protect life or property.

Although there was some indication there had been problems with proper notice of entry in the past, there was insufficient evidence before me to grant the Tenant an Order to suspend or set conditions on the Landlord's right to enter the rental unit. Rather, I find there was evidence to support the Landlord needed to be reminded he was required to follow section 29 of the *Act,* as listed above. Accordingly, the Tenant's request to set or suspend the Landlord's access is dismissed, without leave to reapply.

The Tenant was informed during the hearing that the Landlord was entitled to acquire copy of the key for the rental unit if he chose to do so. It is important to note that landlords may have to enter a rental unit during emergencies, in absence of a tenant, which is why landlords are entitled to have keys to their rental properties.

Conclusion

The Tenant was partially successful with her application and was granted monetary compensation in the amount of **$1,446.72.**

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 11, 2016

Residential Tenancy Branch