Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O, FF

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- other unspecified remedies; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and his lawyer (collectively "landlord") and the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his lawyer had authority to speak on his behalf at this hearing. This hearing lasted approximately 118 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the amendment to their application and the tenants confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and amendment and the tenants were duly served with the landlord's written evidence package.

At the outset of the hearing, the tenants confirmed that they applied for "other" unspecified remedies in error. Accordingly, this portion of the tenants' application is dismissed without leave to reapply.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to reduce their monetary claim from $22,804.41 to $11,204.41. The tenants filed an amendment form confirming that they wanted to reduce their claim because the landlord returned $11,600.00 to them and because they removed claims which they found out from the

Residential Tenancy Branch that they could not claim for including photocopying fees of $32.89 and mail fees of $13.91 associated with hearing documents for this application. The landlord received a copy of the tenants' amendment form and confirmed that he was aware of the reduction in the tenants' monetary claim. I find no prejudice to the landlord in amending the tenants' application because it is a reduction, rather than an increase, in the monetary order sought.

Issues to be Decided

Are the tenants entitled to a monetary award for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement arising out of this tenancy?

Are the tenants entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Both parties agreed that this tenancy began on September 1, 2016. The tenants claimed that the tenancy ended on September 2, 2016, before they moved in to the rental unit. The landlord claimed that the tenancy ended on September 9, 2016 when the tenants returned the keys to the landlord. Both parties agreed that the tenants signed a six month fixed term tenancy agreement beginning on September 1, 2016 and ending on February 29, 2016 (I find that the tenancy agreement indicates February 29, 2016 in error, since the six month period would properly end on February 28, 2017 since February only has 28 days in the year 2017). A copy of the written tenancy agreement was provided for this hearing. Both parties agreed that the rental unit is a house. Both parties agreed that monthly rent in the amount of $2,900.00 was payable on the first day of each month. Both parties agreed that a security deposit of $1,450.00 and a pet damage deposit of $1,450.00 were paid by the tenants and the landlord returned both deposits to the tenants. Both parties agreed that a move-in condition inspection report was completed but a move-out condition inspection report was not completed for this tenancy.
The tenants seek a monetary order of $11,204.41 plus the $100.00 filing fee paid for this application.

The tenants stated that they viewed the rental unit on August 9, 10, and 29 of 2016, prior to beginning their tenancy. Both parties agreed that the tenants provided the

landlord with the security and pet damage deposits, totaling $2,900.00, on August 10, 2016, during their second visit to the rental unit. Both parties also signed the tenancy agreement on August 10, 2016.

The tenants seek a reimbursement of two months of rent, totaling $5,800.00, from the landlord for September and October 2016. The tenants testified that they voluntarily prepaid six months of rent, totaling $17,400.00, to the landlord on August 29, 2016, in order to secure the fixed term tenancy agreement, without the landlord requesting the prepayment. They said that they had recently sold their home and had difficulty finding an adequate place for their family in the busy rental market. They claimed that when they found the rental unit, they wanted to guarantee the tenancy by prepaying rent since the landlord initially wanted them to sign a one-year fixed term tenancy agreement but the tenants asked for a shorter term of six months. Both parties agreed that on November 1, 2016, the landlord returned four months of this prepaid rent, totaling $11,600.00, to the tenants, for the period from November 2016 to February 2017. The tenants seek back the remainder of the two months of rent that was not returned to them.

The tenants testified that the landlord breached material terms of the tenancy agreement because the place was unclean, the master bedroom smelled and had an unusable shower, the entire rental unit had mold and mildew, needles and condoms were left by the landlord, and old entrance door locks were not changed by the landlord. They said that the above were security and health concerns for their family, which includes young children, so they decided to terminate the tenancy and move out. They said that they had to move in with their parents on an urgent basis because they had nowhere else to go. They stated that they asked for a meeting with the landlord on September 2, 2016 to resolve their issues but he was out of town and proposed September 5 or 6, 2016. They said that they made multiple offers to the landlord to resolve this matter but the landlord was unable to meet or settle the issues.

The landlord disputes the tenants' entire claim, stating that there was no breach of material terms of the tenancy agreement. The landlord maintained that failing to properly clean a unit, the presence of needles and condoms, and issues with the locks are not material terms of the tenancy agreement. The landlord said that even if there was a material breach, the tenants failed to provide proper notice and allow the landlord time to rectify the issues. The landlord said that he was unable to re-rent the unit to new tenants until November 1, 2016. The landlord provided a copy of the written tenancy agreement with the new tenants, showing a one year fixed term starting on November 1, 2016 and ending on October 31, 2017, with monthly rent of $2,900.00 per month and a security deposit of $1,450.00 payable. The landlord said that the new

tenants applied to rent the unit on October 8, 2016 and they signed the new tenancy agreement with the landlord on October 13, 2016. The landlord said that there was no mold in the unit and the new tenants who moved in after did not complain of mold.

The landlord testified that the new tenants were permitted to move into the rental unit early on October 17, 2016, without paying rent. The landlord said that this was simply a courtesy that he extended to the new tenants, same as he did with the tenants when they were given the rental unit keys on August 29, 2016. He said that the new tenants simply put some furniture at the rental unit but did not physically move in themselves until November 1, 2016. The tenants said that they and other neighbours saw the new tenants move in on October 17, 2016, and they provided photographs of the items that were already in place at the rental unit, photographs which the landlord did not dispute.

The tenants also seek cleaning fees of $1,872.50, based on 53.5 hours of cleaning at a rate of $35.00 per hour for them and their family to personally clean the rental unit over a three-day period. The tenants provided a written breakdown of the dates of cleaning, the people who cleaned, and the amount of time it took to clean per person. The tenants claimed that the $35.00 rate was based on their own professional company estimate for this type of cleaning. They provided coloured photographs of the condition of the rental unit when they moved in. Both parties agreed that the tenants did their own inspections of the rental unit on August 9, 10 and 29, 2016 and received the keys for the unit early before their tenancy began on September 1, 2016. The tenants testified that the landlord failed to properly clean the rental unit, such that even with three days of cleaning, it was still dirty, smelly and filled with mold. The tenants claimed that even though they saw the unit three times prior to moving in, they did not want to insult the landlord by telling him it was unclean since he personally lived there.

The landlord said that he lived in the rental unit prior to the tenants moving in. He stated that he adequately cleaned the rental unit before the tenants moved in. He asserted that if the tenants felt that he did not adequately clean the unit, they should have provided him with notice in order for him to rectify the situation, rather than just moving out. He stated that he did not notice the condoms and needles because they were located up high in a kitchen cupboard and they were left by previous tenants, not the landlord. The landlord said that the tenants inspected the rental unit three times before they moved in, voiced no complaints, and signed the move-in condition inspection report, failing to mention that any cleaning was required. The tenants said that the landlord told them that the condition inspection report was only to record damages for him to fix, they were not aware that it was to record any necessary cleaning. The tenants claimed to be first-time renters, stating that they were unaware of the tenancy rules.

The tenants seek storage fees for their belongings, totaling $845.90. The tenants provided two receipts for the above amount. They said that after they moved all of their personal belongings into the rental unit, they had to remove all of it and place it in storage from September 2 to November 1, 2016, because they could not live at the rental unit.

The tenants seek mileage and travel costs of $2,671.20. They claim that they had to live with their parents in another city, which was further away from their children's school and work locations. They provided a handwritten breakdown of their estimate of the total kilometers travelled for two vehicles seven days per week at a rate of $0.53 per kilometer from September 14 to October 31, 2016.

The tenants seek registered mail costs for having to send the keys and remote for the rental unit back to the landlord by mail for $14.81. They said that they attempted to meet with him to deliver the above items in person but the landlord refused and insisted that they mail it. The tenants provided emails between the parties to support their above claims. The landlord did not dispute the above allegations and said that he also had to incur costs to mail the tenants' security and pet damage deposits back to them but he had not claimed these costs from the tenants.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Rent Reimbursement

Section 45(3) of the *Act* states that if the landlord has breached a material term of the tenancy agreement and failed to correct it within a reasonable period after the tenants

provide written notice of the failure, the tenants may end a tenancy effective on a date after the date the landlord receives the notice.

I find that the tenants did not provide the landlord with proper written notice to end the tenancy for breach of material terms, in accordance with the requirements of sections 45(4) and 52 of the *Act*. The tenants testified that they provided a letter, dated September 2, 2016, to the landlord. The letter indicates that the tenants are terminating the tenancy immediately and they vacated the unit on the same date. This is not a "reasonable period" of time as per section 45(3) of the *Act* in order for the landlord to be notified or even attempt to rectify the issues. I find that the tenants were not permitted to end their fixed term tenancy prior to the end date of February 29, 2017.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Although the landlord did not file an application for dispute resolution to claim for rent or other losses, I find that I do have to consider the landlord's efforts to mitigate rent loss in the context of section 7(2) of the *Act*, in order to determine whether the tenants are entitled to a rent reimbursement. Based on the evidence presented, I find that the landlord failed to mitigate his losses in his efforts to re-rent the unit to prospective tenants. I find that while the landlord initially advertised that his rental unit was available immediately, he changed it to become available on October 1, 2016. I accept the tenants' affirmed testimony, that it was not until the tenants advised the landlord to change it back, that he did. The tenants provided documentary proof of the dates and times of the landlord's posted advertisements, showing the change in availability from immediately to October 1, 2016.

I find that the tenants are not entitled to a refund of their September 2016 rent of $2,900.00. I find that the landlord is entitled to retain this money, due to the fact that the tenants did not provide adequate notice to end their tenancy. I find that the tenants provided notice to end the tenancy on September 2, 2016 by way of their letter to the landlord. The landlord had until September 30, 2016, in order to find new tenants for the rental unit and I find that his advertising changes regarding the availability date for the unit may have contributed to a delay in finding new tenants. I find that September 2 to 30 is a reasonable period of time for the landlord to find tenants for this rental unit. I also find that the tenants, having completed significant cleaning of three days before

vacating the unit, left the rental unit in a better condition than they found it, as the landlord did not dispute that the cleaning was done by them. Therefore, I find that there was likely less preparation required by the landlord in order to have the unit ready for new tenants.

I award the tenants $2,900.00 for a rent reimbursement for their October 2016 rent. As noted above, I find that the landlord had a reasonable period of time from September 2 to 30, in order to re-rent the unit. I also find that the landlord permitted the new tenants to move in early, without having to pay rent, on October 17, 2016, which is two weeks earlier than the start date of November 1, 2016 in their tenancy agreement. The landlord cannot expect the tenants to pay for the cost of new tenants living in the rental unit. The landlord said that this was simply a courtesy that he extended to the new tenants, same as he did with the tenants when they were given the keys on August 29, 2016. However, moving in two days early, rather than two weeks early, is a significant difference of a half month of rent. The landlord could have mitigated his costs by starting the new tenancy earlier on October 17, 2016, rather than November 1, and asking for the half month of rent from the new tenants, since they were clearly able to move in earlier. Instead the landlord chose to retain the tenants' prepaid rent money that he already had in his possession.

Cleaning

RTB Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

> *An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.*

I award the tenants nominal damages of $200.00 to clean the rental unit. I find that this a reasonable amount, given the size of the house and the amount of cleaning that the tenants completed. I find that the tenants suffered an infraction of their legal rights because the landlord provided them with an unclean rental unit, contrary to section 32 of the *Act* and RTB Policy Guideline 1. I find that the landlord failed to properly clean the rental unit by leaving it in a state of disrepair with needles, condoms, and other

various cleaning issues. The landlord is required to properly clean the rental unit before providing it to the tenants to occupy. The tenants provided photographs of the condition of the rental unit when they were permitted occupation of the unit from the landlord.

Although the tenants signed a move-in condition inspection report on August 29, 2016, before they began occupying the unit, the report was not on the standard RTB form but drafted by the landlord. The report did not include all of the elements required as per section 20 of the *Regulation*. It did not include information regarding how to describe cleaning or the state of cleanliness of the unit anywhere on the report. The tenants claimed that the landlord told them that they were not looking at the cleanliness of the unit, but rather the physical damages when completing the move-in condition inspection. I find that since the tenants were new renters, they focussed on damages, which were noted in the report, rather than cleanliness. Therefore, they did not note the issues with cleaning, which they noticed upon inspection, because they believed it was not the appropriate form to do so.

I find that the tenants spent a significant amount of time to clean, three days, which demonstrates the level of uncleanliness of the unit. However, I find that they were unable to properly demonstrate the cost of the cleaning, using their own numbers and estimates to justify the work that they did themselves, when they are not professionals in cleaning. Accordingly, I find that the tenants are entitled to nominal damages, rather than the $1,872.50 claimed.

Other Costs

I dismiss the tenants' claims of $2,671.20 in mileage and travel costs and $845.90 in storage costs. As noted above, I find that the landlord did not breach material terms of the tenancy agreement and the tenants moved out voluntarily. I find that they voluntarily incurred the above costs for moving to their parents' house at a further location and for storing their belongings.

I award the tenants $14.81 for registered mail costs for having to send the keys and remote for the rental unit back to the landlord. The tenants provided emails and the landlord testified at the hearing that he wanted the above items sent back by mail, rather than meeting with the tenants in person, in which case no extra mailing costs would have been incurred.

As the tenants were partially successful in this application, I find that they are entitled to recover the $100.00 filing fee from the landlord.

Conclusion

I issue a monetary order in the tenants' favour in the amount of $3,214.81 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenants' application is dismissed without leave to reapply.

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 27, 2017

Residential Tenancy Branch