



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH 350 & 360 DOUGLAS APARTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC OLC PSF RP RR FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, dated July 12, 2017 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord comply with the *Act*, regulation, or the tenancy agreement;
- an order that the Landlord provide services or facilities required by the tenancy agreement or law;
- an order that the Landlord make repairs to the unit, site, or property;
- an order allowing the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided; and
- an order granting recovery of the filing fee.

The Tenants were represented at the hearing by T.G. The Landlord was represented at the hearing by legal counsel, K.H., and the Landlord's agent, G.S. All parties giving testimony provided a solemn affirmation.

On behalf of the Tenants, T.G. testified the Landlord was served with the Tenants' Application package and digital evidence by registered mail. K.H. acknowledged receipt of both packages and confirmed the Landlord was able to view the digital evidence.

In response to the Tenants' Application, the Landlord submitted documentary evidence, which was received at the Residential Tenancy Branch on July 24, 2017. T.G. acknowledged receipt on behalf of the Tenants.

No issues were raised with respect to service or receipt of the above documents and evidence during the hearing. The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

During the hearing, K.H. requested that the Tenants' Application be amended to reflect the correct legal name of the Landlord. T.G. agreed with the amendment on behalf of the Tenants. Accordingly, pursuant to section 64 of the *Act*, I amend the Application to reflect the correct legal name of the Landlord.

Issues to be Decided

1. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to an order that the Landlord comply with the *Act*, regulation, or the tenancy agreement?
3. Are the Tenants entitled to an order that the Landlord provide services or facilities required by the tenancy agreement or law?
4. Are the Tenants entitled to an order that the Landlord make repairs to the unit, site, or property?
5. Are the Tenants entitled to an order allowing them to reduce rent for repairs, services or facilities agreed upon but not provided?
6. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

Submitted with the Landlord's documentary evidence was a copy of the tenancy agreement between the parties. It confirmed the tenancy began on November 30, 2016. Rent in the amount of \$1,420.00 per month, plus a parking fee of \$40.00, is due on or before the first day of each month. The Tenants paid a security deposit of \$710.00 and a pet damage deposit of \$710.00, which the Landlord holds.

First, the Tenants claimed \$1,420.00 for concerns about health in the rental property. T.G. testified that work took place on the north wall of the building as part of scheduled renovations and repairs. He submitted that he perceived a risk associated with the presence of asbestos but confirmed there were no health impacts. He confirmed his claim was with respect to the Landlord failing to follow the correct procedure for posting signs that warn of a risk.

In reply, K.H. repeated T.G.'s testimony confirming there were no health impacts. K.H. also submitted there is no evidence before me of elevated or hazardous asbestos levels.

Second, the Tenants claimed \$710.00 for being unable to use the pool and hot tub during the tenancy, testifying that the advertisement for the rental unit indicated the pool and hot tub were available. T.G. testified he would have used these amenities occasionally, and that N.G. is an avid swimmer who would have used it more regularly. Upon being questioned by K.H., T.G. testified that he has free access to another pool facility.

In reply, K.H. suggested the amount claimed is excessive. She suggested the pool and hot tub were unavailable since October 2016, and that the Tenant would have seen that when he viewed the rental property.

Third, the Tenants claimed \$142.00 due to issues arising when mail was redirected as a result of construction work.

In reply, K.H. submitted that the mail issue arose due to a stop work order. However, mail was still available to tenants in the building during business hours. K.H. further submitted that T.G. did not provide testimony as to why mail could not be collected during these times.

Fourth, the Tenants claimed \$710.00 for issues with the corridors. He testified they are not regularly swept, that walls remain unpainted, and that exposed wiring is visible. In support, the Tenants submitted photographic and digital evidence depicting the condition of the hallways.

In reply, K.H. testified that the Tenants signed a document entitled Rental Application, Schedule "A", at the time of entering into the tenancy, which documented the Tenants' acknowledgement that "maintenance, repairs and capital work", including "[c]orridor, lobby and entrance refurbishment" would be taking place over the ensuing 24 to 36 months. Further, K.H. testified the Tenant has not mitigated any loss by advising the Landlord of the Tenants' concerns.

Fifth, the Tenants claimed \$426.00 for issues with a window in the rental unit. T.G. testified that the window leaked during rain storms. He submitted a Request for Service to the Landlord on April 26, 2017, and acknowledged the Landlord addressed his concern in mid-May 2017. However, he stated he is not sure if the repair was effective because it has not rained much since that time.

In reply, K.H. noted the Landlord addressed the Tenants' concern in a reasonable time after being made aware of it.

Sixth, the Tenants claimed \$426.00 for a crack in the bedroom ceiling that is still visible after the Landlord took steps to repair in on July 21, 2017. In support, he submitted photographic evidence depicting the crack in the ceiling.

In reply, K.H. confirmed the Landlord attended to this concern in July 2017, and suggested that the Tenant has not made further concerns known to the Landlord.

Seventh, the Tenants claimed \$426.00 because the rental unit did not come supplied with window coverings. He testified the Tenants did borrow some but could not install them, claiming it was the Landlord's responsibility to do so. T.G. testified there was a loss of privacy in the rental unit, particularly due to workers outside the building. The Landlord did provide window coverings by February 2017.

In reply, K.H. indicated the window coverings were not provided in a more timely fashion because of a stop work order that was in place. G.S. added that the previous testimony of T.G. was that he was at work during business hours, which is when the workers may have been outside his rental unit. Accordingly, there would have been no loss of privacy.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Tenants' claim for \$1,420.00 for concerns about health in the rental property, I find there is insufficient evidence before me that there were elevated or hazardous asbestos levels. Further, I confirm the testimony of T.G., who advised there were no health impacts. Accordingly, I find that the Tenants did not suffer any losses. I also find there is insufficient evidence before me to confirm the Landlord or its agents did not follow the correct procedure with respect to signage. Even if sufficient evidence had been provided, I am not satisfied the Tenants would have suffered any loss as a result. This aspect of the Tenants' Application is dismissed.

With respect to the Tenants' claim for \$710.00 for loss of use of the pool and hot tub, I find there is insufficient evidence before me to conclude the Tenants suffered any loss. Although T.G. testified N.C. is an avid swimmer who would have used the pool regularly, she did not attend the hearing to provide testimony. T.G. testified that he mitigated his losses, if any, by using another facility that is available to him at no cost. In addition, I accept the submissions of K.H., who advised that the pool was not operating at the time the tenancy began, and that the Tenants would have been aware of this when they viewed the property. If access to the pool and hot tub were as important to the Tenants as claimed, they could have raised the issue with the Landlord at that time. There was insufficient evidence submitted that they did so. This aspect of the Tenants' Application is dismissed.

With respect to the Tenants' claim for \$142.00 due to issues arising when mail was redirected as a result of construction work, I find there is insufficient evidence before me that the Tenants experienced any loss. Further, I find that the minor disruption was caused when a stop work order was issued, but that the Landlord took reasonable steps to make mail available to tenants by another means. This aspect of the Tenants' Application is dismissed.

With respect to the Tenants' claim for \$710.00 for issues with the corridors, I find there is insufficient evidence before me that the Tenants are entitled to the relief sought. The Rental Application, Schedule "A", signed by the Tenants, documented the Tenants' acknowledgement that there would be disruptions due to maintenance and repairs throughout the building, including the corridors, in the ensuing 24-36 months. This aspect of the Tenants' Application is dismissed.

With respect to the Tenants' claim for \$426.00 for issues with a window in the rental unit, I find there is insufficient evidence before me to confirm the Tenants have experienced any loss. I find the Landlord addressed the Tenants' concern in a reasonable timeframe by repairing the window within weeks of their request. Further, as acknowledged by T.G., there have been no further issues with the window. This aspect of the Tenants' Application is dismissed.

With respect to the Tenants' claim for \$426.00 for a crack in the bedroom ceiling, I find there is insufficient evidence the Tenants experienced any loss. Although a crack in the ceiling might be unsightly, I find it does not entitle the Tenants to compensation. Further, I accept the submission of K.H., who advised that the Landlord took steps to repair the crack in July 2017, and that no further concerns have been raised by the Tenants. This aspect of the Tenants' Application is dismissed.

With respect to the Tenants' claim for \$426.00 because the rental unit did not come supplied with window coverings, I find there is insufficient evidence before me that the Tenants suffered any loss or that they took sufficient steps to mitigate their losses. I note that T.G. testified that the Tenants obtained window coverings that were not installed because the Tenants felt it was the Landlord's obligation to do so. This aspect of the Tenants' Application is dismissed.

T.G. did not provide sufficient testimony or direct me to documentary evidence relating to the following requests of the Tenants: that the Landlord comply with the *Act*, regulation, or the tenancy agreement; that the Landlord provide services or facilities required by the tenancy agreement or law; that the Landlord make repairs to the unit, site, or property; that the Tenants are entitled to an order allowing them to reduce rent for repairs, services or facilities agreed upon but not provided. These issues were raised during the hearing only in the context of the Tenants' request for monetary relief. Accordingly, these aspects of the Tenants' Application are dismissed.

I find the Tenants have not provided sufficient evidence to enable me to conclude they are entitled to the relief sought. The Tenants' Application is dismissed, without leave to reapply.

Conclusion

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: October 5, 2017

Residential Tenancy Branch