Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT
MNDL, MNDCL, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the "*Act*"). The matter was set for a conference call.

The Tenant's Application for Dispute Resolution was filed on January 23, 2020. The Tenant applied for a monetary order for compensation for my monetary loss or other money owed.

The Landlords' Application for Dispute Resolution was made on May 25, 2020. The Landlord applied for a monetary order for losses due to the tenancy, and to recover their filing fee.

Tow parties for the Landlords (the "Landlord") and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlords were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all evidence and testimony 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.

Issues to be Decided

- Is the Tenant entitled to a monetary order for compensation under the *Act*?
- Are the Landlords entitled to a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit?
- Are the Landlords entitled to recover the cost of the filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Landlord and Tenant agreed that this tenancy started on November 1, 2015, and that rent in the amount of $950.00 was to be paid by the first day of each month. The Parties also agreed that the Tenant had paid a $425.00 security deposit at the outset of this tenancy. The Tenant submitted one page of the four-page tenancy agreement into documentary evidence. The Landlord also submitted one page (different page) of the four-page tenancy agreement into documentary evidence.

The Landlord and Tenant testified that they signed a mutual agreement to end this tenancy on December 15, 2019, that end the tenancy as of December 28, 2019, and agreed that the security deposit would be used as partial payment for of the last months rent for this tenancy. The Tenant submitted a copy of the mutual agreement to end tenancy and a copy of the move-in/move-out inspection report into documentary evidence.

The Tenant testified that there had been a rodent infestation in the rental unit that the Landlord had not appropriately treated, which caused the end of this tenancy. The Tenant testified that in the summer of 2016, they had verbally advised the Landlord that they had seen a rodent in their rental unit and confirmed that the Landlord had adequality dealt with the 2016 complaint.

The Landlord testified that they received the verbal request from the Tenant to treat a rodent infestation in the rental unit in the summer of 2016 and that they had dealt with that infestation at the time

The Tenant testified that they saw a rodent in their rental unit again in July 2019, but that they had not advised the Landlord of that sighting.

The Tenant testified that the next rodent sighting was on November 23, 2019, and that on that day, they decided that they could no longer live in the rental unit due to the rodents and started staying with friends and family. The Tenant testified that they attended the rental unit every day between November 24, 2019, until the end of tenancy on December 28, 2019, but they never spent the night in the rental unit again.

The Tenant testified that they advised the Landlord of the November 23, 2019, rodent sighting by a letter they sent the Landlord on December 4, 2019, requesting the treatment of the rodent infestation in the rental unit.

The Landlord confirmed that they received no complaints from the Tenant regarding rodents on the property between July 2016 and December 3, 2019. The Landlord testified that after they received the Tenant's written request, on December 4, 2019, to treat another rodent problem in the rental unit, they immediately took steps to deal with the problem, by setting traps in the rental unit.

The Landlord testified that the Tenant had told them that they would often leave the sliding glass door open in the rental unit and that the Tenant had reported to the Landlord that they had seen a rodent come into their rental unit through the open door. The Landlord testified that the problem existed in the Tenant's rental unit alone and that the Tenant had caused the problem themselves by leaving the sliding glass door open, which allowed the rodents to get into the Tenant's unit. The Landlord confirmed that they had received no other complaints of rodents in the building form the other renters living on the property.

The Landlord testified that the traps that they had installed were sufficient to catch the rodents that had gotten in through the sliding glass door left open and that the Tenant had not provided sufficient time for the traps to work before sending the second request for rodent treatment to the Landlord on December 10, 2019.

The Tenant testified that they did not believe that the Landlord was taking the correct steps to deal with the rodent infestation in their rental unit and that they suffered a loss of quiet enjoyment and loss of the use of the property due to the problem. The Tenant is requesting $3,600.00 in loss of quiet enjoyment and $1,221.48 in a prorated rent return for the period between November 23, 2020, to December 28, 2020, as they were not able to live in the rental unit during this time. The Tenant testified that there were rodent droppings throughout the rental unit and that they were no longer able to stay there due to health reasons.

The Landlord disagreed, stating that the Tenant was able to stay in the rental unit during the treatment of the rodent problem and that the Tenant had caused the problem themselves so they should not be entitled to loss of quiet enjoyment or return of rent.

The Tenant is also requesting $150.00 to replace pillows and clothing covered in rodent droppings and $75.00 to replace food that had been contaminated. The Tenant testified

that they had not seen rodent droppings in the food but that they had been concerned that there may be rodent droppings in the food, so they threw the food away. The Tenant testified that they had found rodent droppings on their pillows and clothes, so they had no choice but to throw them out. When asked if the Tenant had attempted to wash the pillows and clothing, the Tenant had testified that they had not attempted to wash the items.

The Landlord testified that the Tenant should have attempted to wash the soiled items and that there was no evidence that a rodent had gotten into the Tenant's food.

Additionally, the Tenant is requesting $20.14 in the recovery of their costs to buy rat traps. The Tenant testified that the rat traps the Landlord put out were not working and that they need to buy a different kind that used sticky paper to trap and kill the rodent.

The Landlord testified that the traps they purchased were sufficient and that the kind that the Tenant purchased were inhumane, and the Landlord refused to use that method of capturing the rodent.

The Tenant is also requesting $650.00 in the recovery of their moving expenses. The Tenant testified that they feel they had to end their tenancy due to the Landlord's failure to deal with the rodent problem in the rental unit and that failure caused them the additional expense of moving, which they should be compensated for.

The Landlord testified that they had signed a mutual agreement to end the tenancy with the Tenant and that it was the Tenant's choice to leave and not allow sufficient time to treat the rodent problem. As well the Landlord testified that the rodent problem was caused by the Tenant's action and that the Landlord should not be responsible for the Tenant's decisions.

The Landlord testified that the tenancy agreement included a term that the Tenant was not allowed to smoke in the rental but that the Tenant had smoke themselves or allowed one of their guests to smoke in the rental unit. The Landlord testified that the rental unit was discoloured and smelled of smoke at the end of this tenancy. The Landlord is requesting $200.00 for cleaning all surfaces prior to painting and $1,000.00 for painting that was required due the smoke stains caused by the Tenant during to the tenancy. The Landlord pointed to the page from the tenancy agreement that they submitted into documentary evidence as proof of the non-smoking clause in this tenancy.

The Tenant testified that they had not smoked in the rental unit during this tenancy, nor had they allowed any of their guests to smoke in the unit. The Tenant testified that the rental unit had never been painted during their tenancy and that it needed a fresh coat of paint after four years but that they should not be responsible for those costs.

The Landlord is also requesting $5,716.62 for breach of contract of the mutual agreement to end tenancy. The Landlord testified that they had included a term on that agreement that met that the signed mutual agreement had be a final resolution of any and all claims regarding this tenancy. The Landlord argued that the Tenant's application for these proceedings had been a breach of that term of the signed mutual agreement between these parties. The Landlord pointed to the bottom of the mutual agreement to end tenancy, stating that they had personally handwritten on that agreement, and both parties had initialled, that the agreement resolved all claims between them.

The Tenant disagreed that they had breached their mutual agreement to end the tenancy by filing for a claim for losses they suffered during this tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Tenant's Claim

I have reviewed the Tenant's application, and I find that the bases of the Tenant's claim is that the Landlord had not completed the requested repairs, treating a rodent infestation, in a timely manner, which resulted in a loss of enjoyment of the rental unit, multiple financial losses and inevitably forced the early end of this tenancy.

I accept the Tenant's testimony that they had made three complaints, one verbal and two written to the Landlord regarding rodents they had seen in their rental unit, during their tenancy. The first being a verbal complaint that they made in the summer of 2016, which the Tenant testified had been satisfactorily dealt with at the time of the complaint. The second was a written complaint sent to the Landlord on December 4, 2019, regarding a November 23, 2019 rodent sighting. The third written complaint was sent to the Landlord on December 10, 2019, advising the Landlord that the Tenant was not satisfied with the rodent treatment plan started by the Landlord.

I acknowledge the testimony of the Tenant that they had also seen a rodent in their rental unit un July 2019, and that the Landlord was not informed of that sighting. I find that a landlord can not be held responsible for treating a rodent infestation when that infestation has not been reported to them. Consequently, I will not consider the July 2019, sighting in my decision.

As for the November 23, 2019, rodent sighting, a tenant is obligated to notify the landlord as soon as possible of any required repair to the rental unit. I find it unusual that the Tenant waited 12 days to report the second rodent infestation to the Landlord.

I also find that it was unreasonable of the Tenant to have included those same 12 days, in which the infestation went unreported, in their request for compensation. As I previously found that a landlord cannot be held responsible for treating an infestation that has not been reported to them, I find that I must dismiss the Tenant's request for compensation for those 12 days, between November 23 to December 3, 2020.

Furthermore, the *Act* not only requires a tenant to report a needed repair to a landlord, but it also requires a tenant to allow a reasonable amount of time for the repair to be completed. I have reviewed the Tenant's written request for repairs to the rental unit and noted that a timeline for the requested repair had not been included in that letter. As no timeline had been included in the tenant's letter, I find it reasonable that a one-week window is provided to the Landlord to conduct and complete repairs. Consequently, I find that it is unreasonable of this Tenant to be claiming for compensation during that one-week window, and I dismiss this Tenant's request for compensation for the period between December 4, 2020, to December 11, 2020.

Therefore, I will consider the Tenant's claim for compensation for loss of the use of the rental unit and loss of quiet enjoyment for 17 days, between December 12, 2020, to December 28, 2020.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act.* A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

> "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that

compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

During the hearing, the parties, in this case, offered conflicting verbal testimony regarding when the Landlord commenced treatment of the second rodent infestation, if the rental unit had been habitable during treatment and if the choice of treatment methods were sufficient to resolve the infestation. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, on this point, that is the Tenant.

I have reviewed the documentary evidence package submitted by the Tenant, to support their claim and I find that I am not satisfied by the evidence before me that the Tenant has proven on a balance of probabilities that the Landlord had breach section 32 of the Act, the requirement to repair and maintain the rental unit, in any way during this tenancy.

Consequently, I as there is insufficient evidence before me to prove a breach of the *Act* by the Landlord, I must dismiss the Tenant's claims for loss of quiet enjoyment and for a prorated return of the rent for the period between December 12, 2020, to December 28, 2020 in their entirety.

The Tenant has also claimed for the recovery of their costs to replace clothing and pillows, in the amount of $150.00, and to replace food in the amount of $75.00.
As I have already found that the Tenant has failed to prove a breach of the *Act* by the Landlord, I find I must also dismiss this portion of the Tenant's claims for the recovery of their costs to replace clothing and pillows, and food.

Additionally, the Tenant has requested to recover their moving costs in the amount of $650.00. I have reviewed the totality of the Tenant's claim on regard to this portion of the Tenant's request, and again I find that the Tenant has failed to prove a breach of the

Act, of any kind, by the Landlord that would support the Tenant's claim to recover their moving costs. Accordingly, I dismiss the Tenant's claims for the recovery of their moving costs.

The last item on the Tenant's application is the recovery of their cost for the purchase of rat traps, in the amount of $20.14. I accept the Testimony of the Landlord that they had purchased and placed rodent traps in the rental unit after they received the Tenant's written request on December 4, 2019. I also accept the Landlord's testimony that they had refused to use the style of traps the Tenant had purchased as they believed that the use of a sticky trap was inhumane. After reviewing the Tenant's evidence, I find that there is no evidence to show that there was a breach of the *Act* in the Landlord's choice of which rodent traps to use. Therefore, I dismiss the Tenant's claims for the recovery of their costs to purchase rat traps.

Landlord's Claim

The Landlord has claimed to recover their costs for treating the rental unit for smoke smells and stains due to the Tenant smoking in the rental unit during the tenancy, consisting of $200.00 in their cost to cleaning and $1000.00 re-painting the rental unit at the end of this tenancy. The Landlord argued that the rental unit was a non-smoking unit as per the tenancy agreement.

Again, in this case, these parties offered conflicting verbal testimony regarding if this was a non-smoking rental unit or if the Tenant had smoked in the rental unit during the tenancy. As previously stated in the analysis of the Tenant's claim, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. This holds true in the analysis of the Landlord's claim, and on this point, it is the Landlord that holds the burden of proof.

I have reviewed the Landlord documentary evidence submitted to support their claim noting that the Landlord submitted one page of the tenancy agreement between these parties as proof of the non-smoking clause. I have reviewed the one page submitted by the Landlord and noted that this page does not include names, signatures or initials of these parties, nor does it contain the address of the rental unit or any dates. I find it insufficient to submit only one page of a tenancy agreement; the full document is required to prove the parties agreed to the terms contained in that document. As there

is nothing contained on this one-page document, which shows that this page was in any way related to this tenancy, I will not consider it in my final decision.

After reviewing the Landlord's documentary evidence, that I have before me in this proceeding, I find that there is no evidence before me to show that there was a non-smoking term include in this tenancy agreement. Accordingly, I find that it is not necessary to determine whether or not the Tenant smoked in the rental unit, as there can be no breach of a material term of a tenancy if it cannot be shown that that term was clearly included in the tenancy agreement. Accordingly, I dismiss the Landlord's claim for the recovery of their cost to cleaning and re-painting the rental unit due to smoke damage.

The last item on the Landlord's claim is for $5,716.62 due to breach of contract. Specifically, a breach of the Mutual Agreement to End tenancy signed between theses parties.

I accept the agreed upon testimony of these parties that they signed a mutual agreement to end this tenancy on December 15, 2019. I have reviewed the mutual agreed to end tenancy and noted that the agreement showed that the parties agreed to end the tenancy effective December 28, 2019, and the Tenant gave permission to the Landlord to retain the security deposit in lieu of rent. The agreement included a handwritten section, initialled by both parties that stated the following:

> "Security deposit to be kept in lieu of Dec rent and anything else
>
> TB MF"
>
> [Reproduced as written]

The Landlord argued that the term "and anything else" included in this agreement had been a legal binging term that meant that this agreement was the full and final settlement of all matters relating to this tenancy. The Landlord continued in their argument, stating that the Tenant's actions of filing a claim against the Landlord with the Residential Tenancy Branch had been a breach of this agreement and that they are claiming for $5,716.962 in damages due to that breach.

I have carefully considered the term "and anything else" included in this agreement, and I find the term to be vague and unclear. Where I can understand the allure of including an all-encompassing, nonspecific, and catch-all term in their contact, I can not overlook the legal rule of Contra Proferentem.

Contra Proferentem is a rule used when interpreting contracts, which basically means that any ambiguous clause contained in a contract will be interpreted against the party responsible for drafting the clause.

I accept the Landlord's testimony that they had personally written this section of this mutual agreement to end the tenancy. As it was the Landlord who was the drafter of this section of this agreement, I find that I must resolve the ambiguous nature of the term "and anything else" against the Landlord. Consequently, I find that this mutual agreement did not include a clause that made this agreement the full and final settlement of all matters relating to this tenancy. Accordingly, I find that the Tenant did not breach the terms of this agreement when they filed their claim against the Landlord, and therefore, I dismiss the Landlord's claim for compensation due to breach of contract.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was not successful in their application, I find that the Landlord is not entitled to recover the $100.00 filing fee paid for their application.

Conclusion

The Tenant's application is dismissed without leave to reapply.

The Landlord's 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: June 24, 2020

Residential Tenancy Branch