Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the "Application") on May 12, 2020 seeking a monetary order for loss or other money owed. Additionally, they seek compensation of the filing fee they paid for their Application.

The matter proceeded by way of a hearing on September 14, 2020 pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*"). In the conference call hearing I explained the process and provided each party the opportunity to ask questions.

The tenant and the landlord both attended the hearing, and I provided each with the opportunity to present oral testimony. In the hearing, the tenant stated they advised the landlord of this hearing via email "by May 12th or 13th". They provided that the landlord received their evidence package. The landlord also provided that they sent their evidence by registered mail, and they presented their receipt for registered mail in their evidence. On the basis that each party received the evidence of the other, I proceeded with the hearing as scheduled.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for loss or compensation pursuant to section 67 of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord provided a copy of the initial November 2015 tenancy agreement. The parties signed another agreement on April 23, 2018. The agreement shows that the monthly amount of rent was $1,200.00 payable on the first of each month. By the time of the hearing, the amount of rent was $1,225.00, with a portion reduced because the washing machine stopped working. The tenant paid a security deposit of $600.00 for the tenancy that started on May 1, 2018.

The agreement includes an initialled copy of 'Community Rules' for April 2017. This includes provisions for pets and maintaining a good appearance. There is a separate "Pet Owners Agreement" signed on April 24, 2018, showing that the tenant has a cat.

In the hearing the tenant stated there was a previous arbitration concerning this tenancy. This resulted in the parties signing a Mutual Agreement to End Tenancy on April 23, 2018 for an end of tenancy on April 30, 2018. The landlord applied for dispute resolution for an order of possession, and an arbitrator granted that for the effective date of August 31, 2020.

In their Application, the tenant seeks the amount of $16,640.00 as compensation, inclusive of their Application filing fee. The tenant provided some details on their Application. The basement of the rental unit was "full of mold for years" – this is one-third of the house that is "unusable". They have not used or stayed in the basement for 3 years – their business had to move due to pests and odour. These matters were not addressed or resolved by the landlord despite the tenant's requests.

The amount of compensation claimed includes the following pieces:

#	Item(s)	$ Amount Claimed
1	one-third of rent over 3 years	14,400.00
2	mold inspection and testing	640.50
3	cleaning since move-in date	300.00
4	items thrown out due to damage	500.00
5	loss of quiet enjoyment	500.00
6	carpet cleaning	200.00
	Total	**$16,540.50**

In a written submission, the tenant gave a background:

- they moved into the unit in December 2015 – approximately one month later water flooded from a ceiling into the basement – “no drying or restoration was done”
- they discovered rats approximately one month later – pest control visited twice and “came a few times in a few weeks” – a few months later they re-visited and stated there was no point to work “as the house had such an old roof and so many other places throughout the house to get in”
- the landlord agreed to the tenant keeping a cat
- the roof was not fixed for another two years
- in May 2018 the tenant provided a written letter due to no responses to texts or phone calls
- the tenant kept a basement door open before the roof was fixed to air out the smell – the tenant did not use the basement and moved their business to another location and paid $600.00 per month for a room
- the landlord took issue with the door being open during the day
- a prior arbitration in this matter made the order for the landlord to hire a “mold expert”
- on October 31, 2019 rats chewed through water lines and caused major flooding – the expert said it was toxic – this affected the tenant’s daughter’s room
- the expert recommended that walls come out to check for mold throughout and intensive cleaning due to further safety issues
- on May 7, 2020 the tenant paid for air quality samples and the finding was 18,800 spores per cubic metre – this is toxic and the inspector informed the tenant the whole basement ceiling “needed out”
- in October 2019 rats chewing through a gas line had the landlord instruct the tenant to not turn on the furnace – this was potentially a carbon monoxide leak
- the landlord disapproved of the tenant calling for their own service

The tenant provided photos as evidence. These show extensive water leaking prior to the roof being replaced, a water leak due to rats chewing through the water line, water throughout the rental unit, and portions of mold in the basement.

On their own initiative, the tenant hired a remediation/mould inspection service in May 2020. They provided a copy of their recommendations and receipt for the amount of $640.50. The recommendations were for the basement drop roof to be removed and “entire basement disinfected”. It also lists “possible mould contamination” in the basement, with the “air handler” coming from the basement, making the issue a priority.

The tenant included copies of two letters from the landlord. On November 25, 2019 the landlord wrote to inform the tenant that "damage may have been mitigated" on water pipes if they had reported it promptly". Moreover, they attributed the water leak due to pests' entry into the unit from "open doors and accesses, pet food, rotten food, garbage".

The landlord also informed the tenant that a proper floor replacement could not happen until the unit was vacant with the removal of all food sources and heat off. The landlord also did not take responsibility for items damaged in the flood; this should be properly covered by renter's insurance.

On January 14, 2020 the landlord's informed the tenant that they were not to contract any work to be done. This was when the furnace failed, and the tenant was unable to contact management or owners. They stated to the tenant: "you MAY have had a somewhat emergent situation"; however, there were other means of heat within the unit at that time, such as a wood stove. The tenant added their notation on the letter copy: "Rats chewed through gas line."

The landlord provided subsets of documents:

- the landlord's September 22, 2019 response letter to the tenant: advising that pest-related complaints are dismissed due to exterminators coming in "multiple times" and the tenant leaves the basement door open – further, a health inspector visit is to be paid for by the tenant;
- details of the tenant contributing to the pest problem and refusing to comply: this is photos showing garbage in the yard, food containers, open pails and bowls of pet food and an overgrown yard; a warning letter dated October 29, 2019 and June 24, 2020 to state garbage, pet food and recycling must be left indoors until further notice; a warning letter of June 8, 2020 to state the yard needs care and cleanup;
- the tenant's "non-mitigation": this is the tenant advising they will not be moving any water-damaged items of garbage
- a plumbing invoice to show a "water line that was chewed by a rat" repaired at the landlord's expense on October 31, 2019 – this is supplemented with two close-up photos of water line damage showing a leak;
- a list for costs to the rental unit from August 2017 to October 2019 showing $32,626.46 in amounts for plumbing, roof replacement, and pest control;
- a detailed list of entries into the unit to check on traps approximately every 4 or 5 days;
- a previous arbitration decision on the tenant's request for emergency repairs to the unit dated March 24, 2020 – this is a settlement in which the landlord shall request the attendance of a mould expert to assess the rental unit and provide recommendations;

- A mould inspection report dated April 3, 2020 – moisture in flooring (landlord completed repair); replace 3 feet of drywall at baseboard level (to be completed by May); no mould in basement, playroom or kitchen.

In the hearing, the tenant presented details on specific pieces of their claim outlined above. They stated they never leave garbage out. In their account the landlord replaced the roof because of leaking; however, after this there was never any restoration done. If the landlord stated that the tenant could leave for one month to enable clean-up, the tenant would have done so.

The landlord responded by adding that the tenant insisted on leaving food out and not mowing the lawn. This includes pet food in various areas. They provided numerous exterminator visits since 2017.

They reiterated the tenant did not purchase or inquire about renter's insurance. Moreover, the tenant's paid mold inspection report does not provide that the unit is unlivable or unsafe.

Analysis

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

From the submissions of the landlord, I am satisfied that an agreement was in place between the landlord and tenant for the rental unit. The agreement contains provision 2a which sets out tenant's obligations. This includes "reasonable health, cleanliness and sanitary standards throughout" as well as "necessary steps to repair damage. . . caused by the tenant. . ."

Under section 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to section 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;

2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I find the evidence is clear, with acknowledgement from the landlord, that pests were the primary cause of ongoing problems in the unit. On this subject, I weigh the evidence of the landlord concerning their ongoing efforts to combat the problem against the evidence that shows unsanitary practices on garbage and food placement for a pet.

The landlord repaired the roof and completed this major work in 2018. I find there are no residual problems with structural damage that led to ongoing problems with moisture accumulation leading to mold. There is a presence of mold within the unit; however, I am not satisfied on the evidence presented that the mold presence is tied to the tenant's difficulties for which they are claiming monetary compensation.

The largest portion of the tenant's claim is for $14,400.00. This is for one-third of rent over 3 years (at $400), due to the loss of that amount of space within the unit. This is for the last 3 years' timeframe where the tenant had to move their business out. I am not satisfied that one-third of the unit was not usable. All pictures provided show the basement space is in use, with boxes and many other articles in that space. These are miscellaneous items of storage and furniture. There is no evidence to show the tenant was required, or given the option, of completely emptying the space to rectify water or pest issues. The landlord at one point did state this was necessary; however, they did not make this mandatory for the tenant. While the tenant does show water leakage throughout the basement, they are not providing that the space was completely separated or inaccessible at any time during their tenancy. This is the primary reason I dismiss this portion of the tenant's claim which focuses on a reimbursement of paid rent. I am not satisfied that a damage or loss to the tenant exists.

Though not presented clearly in the evidence, presumably this claim amount is for a portion of the expense paid by the tenant for their need for a separate outside space to carry on business. A separate photo of a room with a massage table and equipment has the notation: "space I rent for $600.00 per month." This is not met with other evidence to provide the location of the space, their access to it, nor an agreement for the provision of that monthly amount. I am not satisfied of this monthly cost to the tenant – there is no solid evidence of its procurement, nor an agreement on the cost involved. This is the secondary reason I dismiss the largest portion of the tenant's claim; the additional expense to them is not shown in the evidence. While they have stated they had at some point hoped to use a part of the rental unit to carry on their business, there is not enough detail provided to bear this claim out.

The tenant claims $200.00 for carpet cleaning for which they paid cash. The need for this carpet cleaning is not established. Insofar as they state this is “from toxic water due to rats and feces all over” I refer to the clause 2a of the tenancy agreement above. I find it is the tenant’s responsibility to maintain cleanliness standards throughout and the landlord shall not bear this cost. The value of the loss to the tenant is not established.

I make the same finding for the claim of cleaning at $300.00. The tenant stated they “added up a random number”. This does not establish the details of cleaning such as the clear delineation of time and the resources involved. The tenant stated they had to clean up since their move in; I find this is more in line with clause 2a of the agreement. The value of this portion of loss to the tenant is not established.

The tenant also claimed $500.00 for items thrown out from the toy closet and basement. Specific items are not listed. In the hearing they presented this was due to “[the] inspector [who] said to the landlord that air quality was bad, so items needed to be thrown out.” I am not satisfied of the link between bad quality and items needing to be thrown out. The evidence does not establish the value of this portion of the claim.

Section 32 and 33 of the *Act* set out the landlord’s obligations to repair and maintain standards, and emergency repairs. I find the landlord has established that they undertook high-priority repairs and fulfilled their obligations to repair and maintain standards. I find this was throughout the tenancy and completed within a reasonable amount of time. On this basis, I find there was no violation of the *Act*, regulations or tenancy agreement. The landlord presented how they responded to the tenant’s ongoing issues with pests and water issues. There was a designated property manager who attended to immediate issues and was communicating with the tenant throughout.

I make these considerations when reviewing the evidence and submissions of the landlord. The tenant did not present that they undertook or concentrated on actions that show they attempted to lessen the impact of the situation. The circumstances presented challenges; however, I find nothing in the evidence shows the tenant made reasonable efforts and cooperating with the landlord, following warnings and guidelines regarding cleanliness. The photos presented by the landlord show garbage and food strewn about the yard, with the source of this problem being garbage not properly disposed of. The landlord also established that the tenant left the door open to the basement which also permitted pest entry. This was well past the time of pests starting problems for the tenant within the unit.

A previous Arbitration decision appears in the evidence of the landlord. It is dated March 24, 2020 and one of the terms of settlement – which means it was agreeable to both the landlord and the tenant – was that "the Landlord shall request the attendance of a mould expert to assess the rental unit and to provide recommendations to the Landlord and the Tenant." The landlord made this undertaking, with a comprehensive report provided by the inspector that attended on April 3, 2020.

The tenant undertook obtaining their own mould assessment. The date on their receipt showing this is obscured; however, the tenant in their written submission provided this was on May 7 2020. The tenant did not explain the need for this service for which they paid $640.50. It is unknown why the tenant procured this service; however, the landlord advised in September 2019 that the tenant may bring in an inspector for health reasons as they choose. It is not known why the tenant waited for months in order to do so. The landlord explicitly stated that they would not be paying for that service.

Though not stated in the hearing, I find the tenant obtained this service on their own as some measure toward quiet enjoyment, and to verify the presence of mold impacting the air quality. This occurred after the landlord undertook this on their own as mandated by a previous arbitration ruling. Given there was no agreement on this service, and no explicit stated need from the tenant, I find the tenant is not eligible for this claimed amount.

For loss of quiet enjoyment, the tenant has other wise provided a claim amount for $500.00. This amount is not quantified; that is to say, they did not present what this amount represents. Given the ongoing issues the tenant faced with ongoing repairs and maintenance, I award this amount as nominal damages. While the tenant has not proven a significant loss through other portions of their claim, I find there has been an infraction on the legal right to quiet enjoyment. This stems from the inception of their tenancy, where the overall state of the rental unit required significant repair and more likely than not was a source of the pest problem. Given the repair and that their original business aim to have a home business shifted due to the state of repair and increasing difficulty with pests, I find some recompense necessary and so award $500.00.

For the reasons outlined above, I find the tenant has not presented a preponderance of evidence to show on a balance of probabilities that they are entitled to the amount of compensation for damages or loss that they claim. This is chiefly due to the lack of mitigation on their part, specifically with their lack of effort in maintaining effective garbage practices ongoing as established in the evidence.

Because of the tenant's success in establishing part of their claim, I find the tenant is entitled to compensation for the Application filing fee.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenant a Monetary Order in the amount of $600.00. The tenant is provided with this Order in the above terms and they must serve the landlord 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 13, 2020

Residential Tenancy Branch