Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenants under the Residential Tenancy Act (the Act), seeking:

- Compensation for monetary loss or other money owed in the amount of $4,751.33.

The hearing was convened by telephone conference call and was attended by the Tenants and the Landlords, all of whom provided affirmed testimony. The Landlords acknowledged receipt of the Notice of Dispute Resolution Proceeding Package but raised concerns that it was simply placed in their mailbox. The Tenants stated that it was placed in the Landlords mailbox on August 18, 2020, in compliance with the Act, and although the Landlords could not recall the exact date that they received it from their mailbox, they acknowledged receipt. Pursuant to sections 88 and 89 of the Act, I find that placing the Notice of Dispute Resolution Proceeding Package in the Landlords' mailbox qualifies as a valid service method under the Act. Pursuant to section 90(d) of the Act, I therefore deem it received three days later, on August 21, 2020. The hearing therefore proceeded as scheduled.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. As the parties acknowledged receipt of each other's documentary evidence and neither party raised any arguments that evidence before me should be excluded, I accepted all documentary evidence before me from both parties for consideration.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

Preliminary Matters

At the outset of the hearing I identified that one of the Applicants listed on the Application as a Tenant and Applicant, a named corporation, was not listed as a Tenant under the tenancy agreement. I inquired with the Applicants about why the named corporation had been listed as an Applicant and the Tenants stated that this is the personal business name of one of the Tenants.

As the business is not a tenant under the tenancy agreement, I find that it is therefore improper to name the business as a tenant and an Applicant in this matter as the business has no rights in relation to the tenancy under the Act. As the parties all agreed that the Tenant who is the owner of the business should have been personally named as the Applicant instead, I amended the Application to correctly name the Tenant, and not their business, as one of the Applicants.

Issue(s) to be Decided

Are the Tenants entitled to compensation for monetary loss or other money owed in the amount of $4,751.33?

Background and Evidence

The parties agreed that the rental unit is one half of a duplex, the other half of which is occupied by the Landlords. They also agreed that an electrical fire occurred within the walls of the Landlords' side of the rental unit on February 2, 2019, which was caught early by the Tenants who happened to be home and wake, and that electricity to the entire duplex was disconnected for an extended period of time as a result of the fire.

The parties agreed that full rent in the amount of $2,200.00 had been paid by the Tenants for February 2019, and although rent in the amount of $2,200.00 was withheld by the Tenants in March 2019, the Landlords did not agree that this was authorized by them and are seeking recovery of this amount under their own Application.

Although there was no disagreement between the parties that a company hired by the Landlords and/or the Landlords' insurance provider to provided a generator to run some

lamps, a microwave, two heaters, and a hot water heater after the above noted fire occurred, which necessitated the disconnection of the electricity to both sides of the duplex, they disagreed about whether the provision of these items made the rental unit suitable for habitation under section 32(1) of the Act. The Landlords argued that the rental unit was habitable as the Tenants had two heaters, could plug in several lamps and had access to a microwave and hot water. The Landlords also stated that the Tenants resided there under these condition for several days, until the Landlords put them up in a hotel for a week at their own expense between February 9 – February 15, 2019.

The Tenants disputed that hot water was initially provided but argued that in any event, the rental unit was not suitable for habitation as the majority of the rental unit was without lights and heat, as only lamps and the two heaters could be plugged into the generator. As a result, the Tenants stated that they were therefore unable to have heat and lights on all four floors of the duplex, which the Landlords did not dispute, and were therefore restricted to the main living areas of the rental unit (Kitchen and living room) for both sleeping and daily living activities. The Tenants stated that although they attempted to reside in the rental unit for several days under these conditions, it was ultimately untenable for them as neither their bed nor the shower was located in this area and there was insufficient, heat, light, and cooking facilities in the rental unit. As a result, the Tenants stated that the Landlords put them up in a hotel for three days, after which time they rented their own hotel room hotel room at their own cost at a different hotel, as the Landlords had advised them to simply submit receipts for costs incurred to be submitted to the Landlords insurance provider for reimbursement. The Tenants stated that they found a reasonably priced hotel with a kitchen, which allowed them to save money on food by buying groceries instead of eating out.

Although the parties agreed that the Landlords placed the Tenants in a hotel for several days, the exact number of days was disputed by the parties with the Landlords arguing it was a week and the Tenants arguing that it was three days. Both parties provided hotel invoices in support of their positions, however, the Tenants argued that the Landlords also put their own child up in the same hotel, which explains the longer stay length shown on the Landlords' invoice.

Although the Landlords agreed that they advised the Tenants to keep their receipts for submission to their insurance provider, they denied any guarantee that these costs would be covered and stated that ultimately the reimbursement of these costs by their insurance provider was denied as the insurance provider stated that the Tenants should have had their own insurance. In addition to arguing that the rental unit was habitable

and therefore the Tenants could have resided there if they had wanted to after the fire, the Landlords argued that the Tenants should not be entitled to any compensation under the Act for damage or loss suffered as a result of the fire or relocation and incidental costs, because the Tenants did not carry their own insurance.

Although the parties agreed that the Tenants had insurance at one point during the tenancy, they disagreed about whether or not this was a requirement under the Act or the tenancy agreement. In any event, the Tenants stated that their insurance had lapsed due to financial difficulties and agreed that they did not have insurance coverage at the time of the fire. However, the Tenants argued that even if they had insurance, it would only have covered the cost of replacing their possessions, not lodging elsewhere, which was not an issue for them as their possessions were not damaged.

The Tenants sought $3,657.00 in lodging costs at a hotel and $1,094.33 in incidental costs for things such as food and laundry.

Both parties submitted documentary evidence in support of their positions such as the fire inspection report, correspondence from the company that provided the generators regarding what was provided, written correspondence between the parties and legal counsel for the Tenants, written submissions, hotel and other invoices, receipts, a copy of the tenancy agreement, a Monetary Order Worksheet, records in relation to the payment of rent and the state of the rental unit at the end of the tenancy, as well as a mutual agreement to end tenancy unsigned by the Tenants and an unaccepted settlement proposal by the Tenants.

Analysis

Section 32(1) of the Act states that a landlord must provide and 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 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. However, it also states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Further to the above Policy Guidelines 5 and 16 provide helpful guidance on the purpose of compensation, which is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred, and when the duty to mitigate loss is triggered, generally the start of any loss being suffered. Policy Guideline 16 also states that in order 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.

Although there was no disagreement between the parties that the Landlords provided a generator to run some lamps, a microwave, two heaters, and a hot water heater after a fire occurred on the Landlords' side of the duplex on February 2, 2019, which necessitated the disconnection of the electricity to both sides of the duplex for an extended period of time, for the following reasons I am not satisfied that these efforts rendered the rental unit suitable for habitation by a tenant in accordance with section 32(1) of the Act.

I am satisfied by the testimony of the Tenants in the hearing that the majority of the rental unit was without lights and heat, as only lamps, the two heaters, and a microwave could be plugged into the generator and the Tenants were therefore unable to have heat and lights on all four floors of the duplex, which the Landlords did not dispute. As a result, I am satisfied that the Tenants were primarily restricted to the main living areas of the rental unit (the kitchen and living room) for both sleeping and daily living activities, which I find to be unreasonable, as neither their bed nor the shower was located in this area. I also accept the Tenants' testimony that although they had use of a microwave, this was not an appropriate substitute for an oven and stove as it left them with few options for eating, and find that the provision of a microwave is not at all akin to the provision of an oven and stove, which the parties agreed was provided as part of the tenancy agreement, and the Tenants argued was required in order for the rental unit to be suitable to them for living accommodation.

Based on the above, I find that the Landlords breached section 32(1) of the Act when a fire on their half of the duplex rendered the rental unit unsuitable for habitation by a tenant. Having made this finding I will now turn my mind to whether I am satisfied that

the Tenants suffered a loss as a result of that breach and the value of any such loss suffered. During the hearing the Tenants stated that they suffered a loss in the amount of $4,751.33 as a result of the fire and the Landlords' subsequent breach of section 32(1) of the Act; $3,657.00 in lodging costs at a hotel and $1,094.33 in incidental costs for things such as food and laundry. The Tenants submitted receipts, invoices and a Monetary Order Worksheet in support of the amounts claimed, which the Landlords did not dispute, except for several days claimed at a hotel between February 9, 2019 – February 15, 2019. Although the Landlords submitted an invoice for a hotel room between the above noted dates, it did not show the names of the Tenants, only the name of one of the Landlords and a room number. The Tenants argued that this is actually an invoice for the Landlords' child's hotel room, not the one provided to them by the Landlords for only three days, and provided their own hotel invoice stating that their stay began at a different hotel on February 9, 2019, under their own names.

Based on the fact that the Tenants' names do not appear on the Landlords hotel invoice and the fact that the Tenants have provided me with a copy of their own hotel invoice clearly showing that they were in their own hotel room under their own names at a different hotel between February 9, 2019 – March 1, 2019, I therefore prefer the Tenants evidence in this regard and find that the Tenants were in their own hotel room between February 9, 2019 – March 1, 2019, at a cost of $3,657.00. As a result, I am satisfied that the Tenants suffered a loss in the amount of $4,751.33 as a result of the Landlords' breach of section 32(1) of the Act.

While the Landlords argued that the Tenants should not be entitled to any compensation under the Act for damage or loss suffered as a result of the fire and the uninhabitability of the rental unit because they did not carry their own insurance, I disagree. There is no requirement in the tenancy agreement before me for consideration that the Tenants carry their own insurance or any stipulation regarding the type and amount of insurance to be carried by them, if any. As a result, I do not find that there was any requirement under the tenancy agreement for the Tenants to have carried insurance absolving the Landlords from financial liability in the event of an incident such as this.

Further to this, I am not aware of any requirement under the Act or the regulations for Tenants to carry insurance. While section 7 of the Act requires parties claiming compensation for loss as a result of a breach of the Act to do whatever is reasonable to minimize the damage or loss suffered, Policy Guideline 5 states that the duty to minimize loss generally starts when a party becomes aware that a loss is occurring, not before, such as when they become aware that their possessions and the rental unit are

being damaged by a water leak, and requires them only to take practical and common sense steps to prevent or minimize avoidable damage or loss at that time, such as notifying the Landlord of the leak as soon as possible and removing their items from the affected area. Based on the above, I do not find that the duty to mitigate loss generally pre-exists the breach which gives rise to the loss suffered, as asserted by the Landlords in this case, or that any such argument is reasonable in these circumstances as there was no requirement that the Tenants carry insurance in the tenancy agreement. As a result, I am therefore satisfied that the Tenants duty to mitigate loss in relation to the fire began when they first became aware of the fire on February 2, 2019, not before.

Although the Landlords argued that the Tenants failed to mitigate their loss, again I disagree. I am satisfied based on the testimony and documentary evidence before me that the Tenants were the ones to notify the fire department of the fire and by the admission of both parties during the hearing, the Tenants' quick discovery of the fire and expedient reporting of it to the fire department is likely the reason the entire structure was not damaged beyond repair as the Landlords were not present on the property at that time. Further to this, I am satisfied that the Tenants attempted to continue residing in the rental unit to avoid additional expenses to themselves and the Landlords for some time after the fire until it was untenable for them to continue doing so due to a lack of adequate heat, light and cooking facilities at the rental unit. Finally, I find that the Tenants acted reasonably to mitigate the amount of loss suffered by staying at a reasonably priced hotel, securing a room that allowed them to cook, thereby allowing them to buy their own groceries at a reduced cost instead of eating out for every meal, and by claiming for only bare essential incidental costs, such as laundry.

Based on the above, I therefore find that the Tenants are entitled to the $4,751.33 sought for hotel, food, and other incidental costs incurred due to a fire on February 2, 2019, which rendered the rental unsuitable for occupation by the Tenants. Pursuant to section 67 of the Act I therefore grant the Tenants a monetary Order in the amount of $4,751.33 and I order the Landlords to pay this amount to the Tenants.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenants a Monetary Order in the amount of **$4,751.33**. The Tenants are provided with this Order in the above terms and the Landlords must be served with this Order as soon as possible. Should the Landlords 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: December 9, 2020

Residential Tenancy Branch