# Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

## DECISION

Dispute Codes MNR, MNSD, MNDC, OLC, PSF, LRE, O, FF

Introduction

This hearing was scheduled to deal with cross applications. The tenants applied for compensation for damages or loss under the Act, regulations or tenancy agreement, return of double the security deposit, orders for the landlord to comply with the Act, regulations or tenancy agreement, provide services or facilities required by law, suspend or set conditions on the landlord's right to enter the rental unit, and recover the filing fee paid for this application. The landlord applied for a Monetary Order for unpaid rent, retention of the security deposit and recovery of the filing fee. Both parties appeared at the hearing and had an opportunity to be heard and respond to the other party's submissions.

Issues(s) to be Decided

1. Have the tenants established an entitlement for compensation for damages or loss under the Act, regulations or tenancy agreement?
2. Is there a need for orders to make the landlord comply with the Act, provide services or facilities required by law, or set conditions upon the landlord's right to enter the rental unit?
3. Has the landlord established an entitlement to unpaid rent, and if so, the amount?
4. Retention or return of double the security deposit.
5. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony I make the following findings. The one-year fixed term tenancy commenced July 1, 2008. The tenants were required to pay rent of $1,400.00 on the 1st day of every month. The tenants had paid a $700.00 security deposit on July 1, 2008. On February 19, 2009 the tenants left a message for the landlord that they were vacating the rental unit. The landlord posted a 24 Hour Notice to Enter and entered the rental unit February 23, 2009. The landlord confirmed on that date that the tenants had vacated the rental unit. The parties met at the end of February or early March and the tenants returned the keys.

In making her application, the landlord is seeking loss of rent for March 2009 in the amount of $1,400.00 and $50.00 for the garage opener not returned. The landlord has not re-rented the unit as renovations and repairs are on-going; however, the landlord alleged that had the tenants not moved out, kitchen renovations would have taken only four days to complete.

The tenants submitted that their tenancy was frustrated and that they did not feel safe in the rental unit. The tenants testified that exterior of the building was under repair starting in October 2008. An emergency repair needed to be made in the rental unit to install a post to support rotten joists between February 9 and 11, 2009. The workman cut a waterline on February 9, 2009 causing water to infiltrate the rental unit. On February 10, 2009 a tarp was attached to a support post and with the heavy wind and snow the tenants feared the support would be pulled out. The tenants testified that the building contractor told them the building was unsafe. In addition, the tenants claimed that they endured drying machines, crude notes from workmen about entering the rental unit and workmen damaging their personal property. The landlord then gave the tenants notice on February 17, 2009 that renovations were going to be made to the kitchen.

The tenants asked to be released from the lease and return of the security deposit but the landlord refused to return the security deposit.

The landlord refuted the tenants' position that there was a risk of the joists collapsing and claimed that the tenants were aware of future repairs to the kitchen were required at the commencement of their tenancy. The landlord explained that she refused to agree to return the security deposit as the tenants had not provided written notice to end the tenancy; however, the landlord was willing to return the security deposit if the tenants would cooperate and participate in an inspection.

From the tenants' written submission, the tenants indicate that they were refusing entry to tradespersons unless they were provided one week's written notice, except if entry was required for an emergency. This is consistent with the landlord's submission that the drying fans were in the rental unit much longer than necessary because the restoration company was unable to obtain consent to retrieve the fans. The landlord provided letters from the repair and restoration companies indicating that the tenants were uncooperative in allowing the tradespersons in the rental unit to make repairs or restoration.

Analysis

As the tenants have vacated the rental unit, I find no reason to make orders upon the landlord to provide services or facilities or set conditions on the landlord's right to enter the rental unit; therefore, I dismiss those portions of the tenants' application.

As the tenants pointed out, a tenancy ends when a tenancy becomes frustrated. A frustrated tenancy means that the performance of the tenancy agreement becomes impossible and is usually effective when the rental unit becomes uninhabitable. The

tenants submitted that their tenancy became frustrated when a tarp was attached to a temporary support post.

Upon review of the photographs provided by the tenants, I observed a large tarp attached to the exterior of the building. The tarp does not appear attached to the temporary support posts; however, temporary support posts are visible on the balcony above the tenants' unit. Supposing the tarp was attached to the temporary support posts on the balcony above, I do not find sufficient evidence that the rental unit became inhabitable. There is also a photograph of a temporary support post that appears to be located inside the rental unit. I do not see a tarp attached to that post and do not find it likely that a tarp shielding the exterior of the building would have been attached to that interior post. Therefore, the photographs do not sufficiently satisfy me that the residential property was at significant risk of collapse.

The landlord countered the tenants' claims that their life was at risk with the tarps attached to the posts by stating that the contractors were professionals. I have also considered that I did not hear evidence that the building inspectors ordered the building uninhabitable or that other occupants vacated other units in the building and I was not provided with evidence from the building contractor who allegedly told the tenants the building was unsafe. Therefore, in considering all of the evidence before me, I do not find that the tenants have shown that their tenancy ended by frustration.

A tenancy also ends when a tenant vacates or abandons a rental unit. I find the tenants vacated on February 19, 2009; thus, ending the tenancy. However, the tenants had a contractual obligation to pay rent until the end of the fixed term tenancy. Where a tenant ends a tenancy early, the landlord has the obligation to minimize their damage or loss. In this case, the landlord is only seeking loss of rent for one month and not the remainder of the fixed term.

In light of the above, I find that the tenants ended the tenancy without giving the landlord adequate notice to find new tenants for March 2009. However, as with any monetary claim, the party making the application must show that they did whatever was reasonable to minimize the loss. I do not find that the landlord attempted to re-rent the unit in order to reduce the loss of rent, rather, the landlord proceeded to make other repairs or improvements to the property. Therefore, I reduce the landlord's claim for loss of rent by one-half and award the landlord $700.00.

I do not award the landlord compensation for the garage opener as I do not have sufficient evidence that the landlord incurred a loss of $50.00 for the garage opener.

With respect to the tenant's claim for compensation of one month's rent I have considered whether the landlord violated the Act, regulations or tenancy agreement. A violation includes the loss of use, privacy, freedom from unreasonable disturbance and quiet enjoyment of the rental unit. Residential Tenancy Policy Guideline 6. *Right to Quiet Enjoyment* provides the following excerpts:

> Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.
>
> It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

> Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

Upon review of all the evidence before me, I do not find that the tenant's lost use of their rental unit during the repairs. While I appreciate that several attempts were made by repairmen or the restoration company to obtain access to the rental unit, I do not find sufficient evidence that there was illegal entry made. On February 9, 2009 the rental unit was entered to address the waterline break which is an emergency repair and a tenant's consent is not required in such a circumstance. As mentioned previously, a party making a claim for monetary compensation must show that they did whatever was reasonable to minimize their loss. Based on the preponderance of evidence, I find it more likely than not that the tenants' actions or lack of action resulted in the drying fans in the rental unit much longer than necessary. Therefore, I do not find sufficient grounds to award the tenants compensation equivalent to one month's rent for the month of February 2009.

The tenants are seeking compensation for damage to their property caused by the water leak and the workmen damaging the tenants' patio furniture. The tenants failed to substantiate the costs of these items or that the landlord's actions caused the tenants to incur such a loss. Therefore, I do not award the tenants compensation for their damaged property.

The tenants are claiming increased hydro costs of $200.00 for running the drying fans on their hydro and the exposure to the outside. I find the tenants would be entitled to the increased hydro costs; however, the tenants did not provide a copy of their hydro bills to substantiate the amount claimed.

Finally, the tenants are claiming return of double their security deposit. A landlord has 15 days to return a security deposit, plus interest, or make an application to retain it, from the later of the date the tenancy ends or the date the tenant provides a forwarding address in writing. The tenant made their application February 11, 2009 but the tenancy had not ended at that time; therefore, their request was made prematurely. The tenants did not provide sufficient evidence as to when they provided the landlord with a forwarding address in writing. Therefore, I do not find sufficient grounds to find the tenants entitled to double the security deposit. I do find that the tenants are entitled to receive their security deposit, plus accrued interest of $5.28.

The tenants are seeking recovery of costs to prepare for this dispute resolution. These costs are not recoverable under the Act, with the exception of the filing fee. Accordingly, I do not award the tenants the amount paid for the photographs. As the tenants were largely unsuccessful with there application, I do not award the tenants recovery of the filing fee.

Given my findings above, I grant the landlord's request to retain the tenant's security deposit of $700.00 in satisfaction of the award provided to the landlord for loss of rent. I authorize the landlord to retain the interest on the security deposit in partial recognition of the filing fee paid by the landlord.

In summary, the awards to the landlord are completely offset by the tenants' security deposit and accrued interest. I do not provide a Monetary Order to either party and I consider this matter resolved.

Conclusion

The landlord is awarded $705.28 for loss of rent and part of the filing fee. The landlord may retain the tenants' security deposit and accrued interest in satisfaction of this award. I provide no Monetary Order to either party with this decision.

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 21, 2009.

Dispute Resolution Officer