



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

FINAL DECISION AND REASONS

Dispute Codes:

MNR, MNSD, MNDC, O, FF

Introduction

This was a cross-application hearing. The hearing reconvened on August 24, 2009 for final submissions from each party. The parties were reminded that they continued under oath. I have considered all testimony and evidence, including photographs, submitted by the parties.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent in the sum of \$3,610.00?

Is the landlord entitled to retain the deposit paid?

Are the tenants entitled to compensation for damage or loss in the sum of \$22,783.00?

Are the tenants entitled to return of the deposit plus interest in the sum of \$905.98 held in trust by the landlord?

Are the landlord and/or tenant entitled to filing fee costs?

Background and Issue(s)

During the hearing the parties agreed that this tenancy commenced on February 1, 2003 and ceased after a written notice to end tenancy effective March 1, 2009 was issued by the tenants on February 20, 2009. The tenants moved out of the rental unit on February 28, 2009. Rent was \$1,805.00 per month due on the fifth day of each month. A deposit in the sum of \$875.00 was paid at the start of the tenancy.

During the hearing the tenants acknowledged that they do owe rent for the month of February, 2009. The Landlord is also claiming loss of rental revenue for the month of March 2009, claiming that the tenants failed to provide proper notice to end tenancy, as required by the Act.

The tenants have claimed compensation in the sum of \$22,783.00 for damage and loss; less one month's rent owed for February 2009.

Tenant Claim for Repair and Maintenance

paint materials, labour, curtains, fixtures	650.00
cleaning after repair work 12 hrs X 20.00	240.00
repair fence, materials	320.00
gate construction plus materials	110.00
door weather stripping	35.00
maintain undeveloped portion of property	3,840.00
Total	5,195.00

The tenants testified that throughout their tenancy they made repeated verbal requests to the landlord that repairs be made. The tenants stated that due to a lack of response from the landlord to verbal requests, they made repairs and completed maintenance. The tenants stated that they painted, purchased curtains, fixtures and that the fence and gate in the backyard required repeated bracing and repair. The tenants stated that they were forced to accept responsibility for a bordering lot owed by the landlord that they determined posed a fire hazard. The tenants testified that this lot was covered in combustible vegetation and that the failure of the landlord to maintain this lot resulted in the tenants completing 192 hours of maintenance in order to reduce the possible fire hazard.

The landlord's agent confirmed that the tenants were given permission to paint the home, but that the work was completed at the choice of the tenants. The landlord's agent stated that the home was painted just prior to the tenants moving in and that no further costs were to be assumed by the landlord. The landlord understood that the tenants had repaired the fence and gate without her permission and stated that there had never been a request made by the tenants for repair or any agreement that the fence or gate could be repaired and then claimed as compensation by the tenants. The landlord's agent stated that there was no complaint made about the need for cleaning, fixtures, curtains or weather stripping and denies there was an agreement that costs for replacement would be the responsibility of the landlord.

The landlord's agent stated that the landlord was aware that the tenants had been working in the yard adjoining the rental unit and that she did not interfere as she felt the tenants liked doing yard work. The landlord's agent stated that the tenants never claimed compensation in the past and have now done so in an attempt to reconstruct the past.

The landlord's agent testified that that English is not the landlord's first language and that the landlord's understood there were no problems with the tenancy.

Tenant's Claim for Health Problems, Pain, Suffering, Injury

health problems, pain and suffering	8,000.00
injury due to broken shower glass	1,500.00
Total	9,500.00

The tenants have claimed compensation for pain, suffering, injury and health problems that resulted due to the presence of mold in the rental unit and cuts suffered from a broken shower door. The tenants stated that in February 2003 there was a hole in the basement ceiling, below the bathroom, which they discussed with the landlord's property manager who told them the cause of the hole had been repaired. The tenants stated that over the next 6 years this hole slowly enlarged. The tenants testified that they made numerous verbal requests to the landlord that she repair this hole and that

during the last 1.5 years of the tenancy they began to suffer from breathing problems, congestion and sinus problems.

The tenants stated that early in the tenancy the shower stall had a depression and that the landlord took the tile out, repaired the wall board but did not fix a leak that was in the wall. The tenants stated that some time in January 2009 the shower door fell out of the track, broke and caused cuts to the male tenant's hands and feet. The tenants allege that the landlord failed to properly install the shower door during the repairs that had been completed and that the landlord is responsible for damages related to injuries suffered in the sum of \$1,500.00.

The shower stall was repaired by the landlord a second time, in February 2009 and the tenants stated that during repair the presence of mold in the wallboard became evident. The tenants testified that the landlord failed to take proper steps to minimize the spread of mold spores while repairs were taking place, resulting in the spread of mold spores throughout the house. The tenants testified they deduced that the mold had been present in the walls during the term of their tenancy as a result of a leak in the bathroom wall. The tenants also stated that during repair of the basement ceiling the landlord put moldy insulation back in the ceiling. The tenants stated that the landlord did not properly clean during periods of repair and that the repair work completed was sub-standard.

The tenants provided a copy of a February 20, 2009 letter from a medical doctor indicating that the female tenant and a daughter were showing signs of allergies, headaches, rhinorrhea, conjunctivitis and cough. The physician letter indicates that from the photographs of the mold and mildew within the home she recommended that, due to the allergic symptoms, they remove themselves from this environment as soon as possible. On February 20, 2009 the tenants provided the landlord with written notice that effective March 1, 2009 they would, on the advice of the physician, be moving due to the "horrific mould problem in the house."

The landlord's agent responded that the landlord entered the home approximately every three months to carryout an inspection and was not made aware of any deficiency with the shower stall door. The agent stated that if the tenants did not notice a problem related to an internal wall leak or shower door installation, how was the landlord to have known there was a problem. The agent stated that the shower stall door had been in place for four years and that no complaints had been received from the tenants alleging a malfunction or installation problem.

The landlord's agent responded that the tenants have provided no proof of injury or improper handling of moldy materials in the house. The agent stated that the physician's letter does not determine the origin or cause of the allergic reactions but only that symptoms exist. The agent testified that one of the tenant's is a nurse and even she did not determine the cause of her allergic symptoms. The agent stated that the tenants failed to make any attempt to mitigate the problem by approaching the landlord to discuss possible options during construction, but instead decided to immediately move.

The landlord's agent stated that the tenants have failed to provide any independent opinion regarding the allegations made of improper or negligent repair and that a claim alleging problems dating back six years would seem to have required the tenants to have taken action much earlier.

Tenant's Claim for Loss of Value of Assets, Moving, Distress

loss due to sale of assets at a loss	4,000.00
cost of moving	1,893.00
mental/emotional distress due to move	4,000.00
Total	9,893.00

The tenants have claimed compensation for the emotional stress caused due to the need for their rapid departure from the home, for the loss of the value of assets they were forced to quickly sell and moving costs. The tenants stated that the new home could not accommodate all of their belongings, thus they were forced to downsize their belongings at a loss. The tenant's stated they had to have garage sales, give belongings away and to throw items out. The tenants testified that they were also forced to rent a separate home for their daughters, due to limited space available in their new rental unit.

The landlord's agent testified that any loss suffered by the tenants in relation to their move is not compensable due to negligence or action of the landlord. The agent stated that the tenants did not mitigate any loss they now claim and that they have not shown any proof of damage or loss due to a violation of the Act.

Analysis

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord. Once that has been established, the tenants must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the tenants did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Tenant Claim for Repair and Maintenance

paint materials, labour, curtains, fixtures	650.00
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Total	5,195.00

I will first respond to the portion of the tenant's claims for compensation related to maintenance and repair the tenant's claim they provided throughout six year tenancy.

Section 32 of the Act requires a landlord to maintain a rental in a state of decoration and repair that complies with the health, safety and housing standards required by law and I can find no evidence that the landlord has failed to meet this standard. I accept that the landlord may have been aware that the tenants were engaging in some efforts to maintain the home, but find that the tenants have failed to demonstrate any proof that agreement existed whereby the tenants would receive compensation for work completed. The landlord's agent confirmed that work on the adjoining lot was being completed by the tenants, but that this was solely at the discretion of the tenants and not an activity that was required or requested by the landlord.

Residential Tenancy Branch policy requires a landlord to maintain fences that have been erected by the landlord. In this case I accept that the tenants completed maintenance to the fence, but there is no evidence before me that the tenants obtained agreement from the landlord that they be compensated, or any proof that the tenants provided the landlord with a request that the fence be repaired or that the tenants be compensated for repairs completed.

Compensation claimed by the tenants dates back to start of this tenancy in 2003. Section 7 of the Act requires both landlords and tenants to take reasonable steps in order to minimize damage from any alleged loss. The tenants have not provided any evidence that they placed their concerns in writing to the landlord or made any attempt to seek a remedy until 2009, thus allowing their claim for compensation to accumulate over a period of six years. I find this delay in expressing a claim unreasonable and dismiss without leave to reapply the tenant's claim for costs related to maintenance and repair.

Tenant's Claim for Health Problems, Pain, Suffering, Injury

health problems, pain and suffering	8,000.00
injury due to broken shower glass	1,500.00
Total	9,500.00

In relation to the claim of compensation due to the broken shower glass, I find that the tenants have failed to prove any negligence on the part of the landlord. The tenants were using this shower stall on a regular basis over a period of years and were unable to detect a problem with the door, yet have claimed against the landlord for her failure to repair. In the absence of any evidence that the landlord was made aware of a deficiency with the door I dismiss without leave to reapply the tenants claim for injury.

In relation to the tenant's claim for compensation related to health problems, pain and suffering I find that the tenants have not provided any evidence of written communication to the landlord expressing concerns regarding exposure to mold or any request to seek a solution. The tenants testified that there was a leak in the bathroom wall which caused mold to accumulate over time. There is evidence that early in the tenancy the landlord repaired the bathroom and neither party seems to have been aware that the leak was continuing. The tenants testified that there was evidence of a problem in the ceiling below the bathroom, but there is no proof that the tenants provided the landlord with written communication regarding their concerns.

The tenants did not approach the landlord to discuss the February 2009 doctor's note but chose to immediately give improper notice to end the tenancy. The doctor's note appears to have been the first written communication provided to the landlord that there

might be a health concern as a result of mold. The landlord was not provided with an opportunity to respond to the tenant's concerns.

I find that the tenant's have failed to provide proof that damage or loss occurred. The tenants provided no medical evidence that mold within the house caused medical problems, no evidence that injuries were suffered due to broken glass and no independent evidence of any loss experienced as the result of pain or suffering. Therefore, I dismiss without leave to reapply the tenant's application for compensation for pain, suffering, injury and health problems.

Tenant's Claim for Loss of Value of Assets, Moving, Distress

loss due to sale of assets at a loss	4,000.00
cost of moving	1,893.00
mental/emotional distress due to move	4,000.00
Total	9,893.00

I find that the tenants have failed to prove the claim for compensation related to pain, suffering and a loss related to health problems. I have also determined that the tenants failed, as required by section 7 of the Act, to mitigate any loss that they are claiming. I find that the costs related to moving are the sole responsibility of the tenants and were not the result of any breach of the Act by the landlord. The tenants chose to move without providing the landlord with any opportunity to respond to their concerns and can not be held responsible for costs incurred due to a failure of the tenants to communicate with the landlord. Therefore, I dismiss without leave to reapply the tenant's claim for costs related to moving and emotional distress related to the move.

Landlord Claim for Loss of Rental Revenue

I find that the landlord is entitled to compensation for loss of rental revenue for the month of February and March, 2009 in the sum of \$3,610.00. Sections 45 and 52 of the Act state that a tenant may end a month-to-month tenancy on the day before the day in the month that the rent is due. The notice must be in writing. The written notice provided to the landlord did not meet the requirement of the Act for vacancy effective at the end of February.

I find that the landlord may retain the deposit, plus interest held in trust, in the sum of \$905.98 and that the landlord may retain the deposit in partial satisfaction of the claim for compensation.

As the landlord's claim has merit I find that the landlord is entitled to filing fee costs.

I dismiss the tenant's claim for filing fee costs.

Conclusion

The tenant's claim for compensation for damage and loss and return of the deposit paid is dismissed without leave to reapply.

I find that the Landlord has established a total monetary claim of \$3,601.00 comprised of unpaid rent, rental revenue loss and the \$50.00 fee paid for this application. I order that the Landlord retain the deposit and interest of \$905.98 in partial satisfaction of the

claim and I grant the Landlord an order under section 67 for the balance due of \$2,754.02. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Dated August 31, 2009.

Dispute Resolution Officer