DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF
MNDC, FF

Introduction

This matter dealt with an application by the Landlords for a Monetary Order for a loss of rental income, for compensation for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts. The Tenants applied for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Are the Landlords entitled to compensation for damages to the rental unit and if so, how much?
2. Are the Landlords entitled to compensation for a loss of rental income and if so, how much?
3. Are the Tenants entitled to compensation for damages and if so, how much?
4. Are the Tenants entitled to the return of their security deposit?

Background and Evidence

This month to month tenancy started on October 25, 2008 and ended on August 31, 2009 when the Tenants moved out. Rent was $900.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of $450.00 at the beginning of the tenancy.

The Tenants' Claim:

The Tenants applied for the return of all rent payments they made during the tenancy as they claim that the rental unit was not fit for occupation. In particular, the Tenants said the rental unit was heated with a wood furnace and pellet stove which were located in the basement. The Tenants claimed that one of them (R.C.) only resided in the rental unit approximately 6 days each month, so the other Tenant (K.D.) said she expressed her concerns at the beginning of the tenancy about being able to operate the furnace and stove. The Tenants said an agent of the Landlords showed them how to use the pellet stove and wood furnace at the beginning of the tenancy and assured them that he would check the stoves periodically to ensure the Tenants were operating them properly. The Tenants claim that the Landlords did not regularly check the stoves during the tenancy, that the stoves were not up to Code and that they did not operate properly. In particular, the Tenants said the stoves smoked excessively which caused or

contributed to respiratory problems and affected their use and enjoyment of the rental unit.

The Tenants also claimed that the basement of the rental unit flooded the year prior to their tenancy causing damages and then flooded again in April 2009. The Tenants said that although the Landlords installed a sump pump that removed the water, mould and mildew began to grow in the basement. The Tenants also said that they asked the Landlords for a rent reduction as a result of the flooding but they refused. Consequently, on May 4, 2009, the Tenants asked a Health Inspector to investigate. The Tenants said the Health Inspector found mould and ordered the Landlords to make repairs which they started on May 6, 2009 and completed 2 weeks later. The Tenants said that although the Health Inspector did a follow up inspection and found the repairs to be satisfactory, they continued to smell mould in the rental unit until the end of the tenancy.

The Tenants claimed that the Landlords swore and yelled at them on 2 occasions. The Tenants also claimed that the Landlords would not return their telephone calls and that there were occasions when they could not track down the Landlords to pay their rent.

The Landlords denied that they or their agent advised the Tenants that they would regularly check the wood stoves to ensure the Tenants were using them properly. The Landlords said that they only lived a ½ mile away from the rental unit and that it would have been easy to visit the rental unit if the Tenants had problems but they never mentioned any problems with the wood or pellet stoves during the tenancy. The Landlords said they always returned the Tenants' telephone calls. The Landlords also claimed that the wood stoves were CSA approved and operated properly. The Landlords argued that it if there was smoke and soot coming from the furnace or stove, it was because the Tenants did not operate them properly. In particular, the Landlords claim that at the end of the tenancy they found an excessive amount of ashes in the furnace and evidence that the Tenants had been burning garbage in it. The Landlords also claimed that a nearby sewer pipe had heat blisters on it due to the heat from one of the Tenants leaving the furnace door open while it was burning.

The Landlords also claimed that the Tenants were responsible for flooding in the basement. The Landlords said that in late March 2009 (prior to any flooding) they asked the Tenants to clean out a hole in the basement for the sump pump because they had filled it with wood chips and sand. The Landlords said they periodically checked the sump pump while the Tenants were away on holidays at the end of March 2009 and found it was working properly. The Landlords claimed that after the Tenants returned from holidays they contacted the Landlords about flooding, and discovered that the sump pump had been damaged by sand. The Landlords also claimed that once the sump pump was replaced and the flooding was controlled, one of the Tenants contacted them to advise that the basement was flooding again because she shut off the sump pump because she did not want to pay for the hydro to operate it continuously.

The Landlords said that when the Tenants contacted them on the evening of May 2, 2009 about mould in the basement, they advised the Tenants that they would look into it and started making arrangements on May 3, 2009 to gut the basement and make repairs. The Landlords said that once they got the Health Inspector's instructions on May 4, 2009 about what needed to be done they started work immediately. The Landlords also said that there was only one week during which the Tenants did not have the use of the basement which contained a washer and dryer, storage room and the wood stoves. The Landlords denied that there were any damages to the basement caused by flooding the previous year (prior to the tenancy).

The Landlords denied yelling or swearing at the Tenants. The Landlords admitted that they were unavailable to collect the Tenants' rent on one occasion but claimed that there were no consequences to the Tenants as a result of that.

The Landlords' Claim:

The Landlords claimed that the Tenants contacted them on August 27, 2009 to advise them that they were moving out on "the 1st" but would not say which month they intended to move out, would not return their calls and did not provide a forwarding address. Consequently, the Landlords did a move out condition inspection report without the Tenants on September 4, 2009. The Landlords said the rental unit was left dirty and in need of repairs which took almost a month to complete and therefore it could not be re-rented until November 1, 2009. The Landlords admitted that they did not try to re-rent the rental unit until early October 2009. The Landlords provided copies of photographs of the rental unit they said they took on September 4, 2009 which were not disputed by the Tenants.

The Landlords said the rental unit was clean and in a state of good repair at the beginning of the tenancy as indicated on a move in condition inspection report completed by the Parties on November 18, 2008. Consequently, the Landlords claim that the Tenants were responsible for the following damages that they discovered at the end of the tenancy:

- Vacuum repair, filter, power head and hose replacement: $1,201.17
- Bathroom door replacement: $235.19
- Painting of a replacement bedroom door: $61.16
- Damaged bedroom carpet: $200.00
- Damaged living room carpet: $1,000.00
- Carpet cleaning: $215.00
- Drywall repair in 3rd bedroom: $218.00
- Wall paper damage in 2nd bedroom: $184.00
- Damaged linoleum in 3rd bedroom: $200.00
- Kitchen countertop repair: $50.00
- Finish Kitchen painting: $100.00
- General cleaning: $600.00

- Reseed damaged lawn: $30.00
- Pump house repair: $1,810.85
- Fence repair: $450.00
- Two sump pumps: $179.13

The Tenants admitted that they moved out without giving proper notice and without fully cleaning the rental unit but argued that they should not be responsible for cleaning soot from the walls because the wood stoves smoked excessively and were probably defective. The Tenants also admitted that they were responsible for damaging a bathroom door but claimed that the amount sought by the Landlords was unreasonable given that they replaced a similar bedroom door for approximately $100.00. The Tenants said they were unaware that the Landlords wanted them to paint a bedroom door they replaced.

The Tenants admitted that they were responsible for a burn on the living room carpet but argued that they should not be responsible for replacing it because it was old, worn and soiled at the beginning of the tenancy. The Landlords admitted that this carpet was at least 15 years old. The Tenants denied putting burn marks in the master bedroom carpet which the Landlord estimated was approximately 10 years old.

The Tenants admitted that they had an agreement with the Landlords that they would not have to pay rent for the period, October 25 – 31, 2008 if they painted the kitchen and that they did not complete the painting however they argued that it was not a fair exchange. The Tenants admitted that they were responsible for damage to some drywall in the 3rd bedroom but claimed that a section of wallpaper was already starting to peel off at the beginning of the tenancy. The Tenants also admitted that there were no scrapes on the linoleum floor in the 3rd bedroom at the beginning of the tenancy but claimed they were unaware of them having been caused during the tenancy.

The Tenants said that a strip started peeling off the edge of the counter when a stove repair man (called by the Landlords) caught the edge of it. The Tenants said they tried to glue this strip down but one day it just broke off.

The Tenants admitted that they were responsible for replacing a vacuum filter. The Tenants also admitted that they were responsible for putting a “kink” in the vacuum hose but argued that it still functioned properly. The Tenants further admitted that one of them sucked up a rag with the vacuum and had to pressure wash the hose to remove it. The Tenants argued, however, that the vacuum still worked properly after that and in particular, there were no problems with the power head.

The Tenants admitted that they were responsible for damaging a pump house and section of fence on the rental property as a result of a grass fire getting out of control. The Tenants argued, however, that the amount claimed by the Landlords for repairs was excessive given that the pump house was already old and weathered and that the only visible damage was that the side of the pump house was blackened and could

have been painted over. The Tenants argued that they were not responsible for re-seeding a section of the lawn and denied that they had burned garbage there as alleged by the Landlords. The Tenants also denied that they burned garbage in the wood furnace.

The Tenants denied that they were responsible for damaging 2 sump pumps. The Tenants said they were unaware that there was a sump pump in the basement at the beginning of the tenancy and denied that they damaged it by throwing their belongings on top of it. The Tenants admitted that they inadvertently put sand in a hole that was for the sump pump but argued that they had no reason to expect the Landlords' agent to install it on top of the sand.

Analysis

The Tenants' Claim:

Section 32 of the Act says (in part) that a Landlord must maintain and provide residential property in a state of decoration and repair that complies with health, safety and housing standards required by law, and that make it suitable for occupation by a tenant.

The Tenants claimed that the wood furnace and/or pellet stove in the rental property did not work properly and gave off a lot of smoke and soot. As a result, the Tenants argued that the rental unit was not fit for occupation and that they should be allowed to recover all of their rent payments. However, the Landlords argued that the stoves were safety approved and in good working order but that it was the Tenants' failure to operate them properly that caused them to smoke excessively. The Tenants provided no evidence that the stoves did not meet safety standards required by law. Furthermore, I find that at no time during the tenancy did the Tenants advise the Landlords that there was a problem with the wood furnace or pellet stove as they claimed. Consequently, I find that there is insufficient evidence that the Landlords should be responsible for damages due to a breach of their duty to maintain or repair the wood furnace in the rental unit.

The Tenants also claimed that after the basement flooded in early April 2009, they were subject to mould. The Tenants also suggested that damages to the basement might have existed prior to the tenancy because it flooded the year prior to the tenancy. However, there is no evidence that the Tenants had concerns about mould in the basement prior to May 2, 2009. Furthermore, I find that the Landlords acted quickly to make repairs ordered by the Health Inspector and that those repairs were found to be satisfactory. Although the Tenants argued that mould still existed in the rental unit after the repairs were made, there is no evidence of that and no evidence that they brought this to the attention of the Landlords. Consequently, I find that there is insufficient evidence that the Landlords should be responsible for damages due to a breach of their duty to repair the basement following the flooding.

Section 28 of the Act says (in part) that a tenant is entitled to quiet enjoyment including but not limited to the right to reasonable privacy and freedom from unreasonable disturbance. The Tenants have the burden of proof and must show (on a balance of probabilities) that the Landlords harassed them by yelling and swearing at the Tenants as they allege. However, the Landlords denied that this occurred and in the absence of any corroborating evidence by the Tenants, I find that they have not provided sufficient evidence to show that their right to quiet enjoyment was affected by the Landlords' "harassment."

I find that there is no basis under the Act for the Tenants' claim for damages due to the Landlords' failure to pick up their rent payment on time and as a result, the Tenants' claim is dismissed in its entirety.

The Landlords' Claim:

Section 45(1) of the Act states that a tenant of a month-to-month tenancy must give one clear months notice to end the tenancy. The only exception to this rule, is s. 45(3) of the Act which states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant has given *written notice* of the failure, the tenant may end the tenancy without further notice to the Landlord.

As indicated above, I find that there is no evidence that the Tenants made any complaints to the Landlords throughout the tenancy about the wood stoves. Although the Tenants said they made at least one verbal complaint to the Landlords about mould in the basement on May 2, 2009, I find that they made no further complaints after that time and at no time did they tell the Landlords that they would end the tenancy if the Landlords failed to rectify those issues. As a result, I find that the Tenants were required to give one clear month's written notice as required by the Act and the earliest their verbal notice given on August 27, 2009 could have taken effect (if it was in writing) would have been September 30, 2009. Consequently, I find that the Landlords are entitled to compensation for a loss of rental income for September 2009 of **$900.00**.

The Landlords argued that they were also entitled to a loss of rental income for October 2009. Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income. The Landlords' evidence was that it took most of September 2009 to do cleaning and repairs so that the rental unit could not be advertised for rent until early October 2009. However, I find that there is little evidence to support this argument. In particular, based on the Landlords' invoices, I find that the general cleaning was substantially completed by September 27, 2009. There is no evidence that any flooring was replaced. The only evidence of repairs having been done was to repair dings to some walls and to repaint. In the circumstances, I find that the Landlords should have been in a position to re-rent

the rental unit for October 1, 2009 and they are not entitled to recover a loss of rental income from the Tenants for that month.

Section 32 of the Act says that a Tenant is responsible for damages caused by his act or neglect but is not responsible for reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

Section 21 of the Regulations to the Act says (in part) that a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection unless there is a preponderance of evidence to the contrary.

I find that the rental unit was not reasonably clean at the end of the tenancy and that the Landlords had to incur expenses to bring it up to that standard. Based on the photographs provided by the Landlords, I find that it would have taken considerable time to wash the soot off some of the walls and clean appliances. However, the Landlords claimed that it took 2 people a total of 20 hours each to do this cleaning which I find unreasonable. As a result, I award the Landlords **$450.00** representing a total of 30 hours of cleaning. I also find that the Landlords are entitled to recover carpet cleaning expenses of **$215.00.**

I find that the Landlords are not entitled to recover the cost to replace the living room or master bedroom carpets. The Landlords are only entitled to recover the depreciated cost of the carpet due to the burns (allegedly) caused by the Tenants. The Landlords claimed that the living room carpet was in excess of 15 years of age and the master bedroom carpet was approximately 10 years of age. Given that the estimated useful lifetime of a carpet is 10 years, I conclude that the living room and master bedroom carpets had already exceeded their useful lifetimes and as a result, this part of the Landlords' claim is dismissed.

The Landlords claimed that the Tenants put scratches in the linoleum in the 3rd bedroom floor. As this damage did not exist at the beginning of the tenancy, I find on a balance of probabilities that it occurred during the tenancy and that the Landlords are entitled to compensation for the reduced value of that flooring. The Landlords said that the flooring was approximately 8 years old. The estimated useful lifetime of linoleum is 10 years. Consequently, I find that the Landlords are entitled to 20% of the amount claimed or **$40.00**.

The Tenants admitted that they were responsible for replacing a bedroom and a bathroom door but argued that they were not asked to paint the bedroom door and that the cost for the bathroom door was unreasonable. In the circumstance, I find that the Landlords are entitled to recover the cost of restoring the bedroom door to its original condition and as a result, I award them **$61.16** for this part of their claim. I find that the amount claimed to replace the bedroom door is excessive and instead I award the Landlords **$125.00** representing the cost of materials and labor to install it.

The Tenants admitted that they were responsible for drywall damage in a 3rd bedroom but denied that they ripped the wall paper. However, there is nothing on the move in condition inspection report that supports the Tenants' position and as a result, I conclude that they are responsible for the ripped wall paper. Consequently, I award the Landlords **$218.00** for the drywall repair for the 3rd bedroom. However, the condition inspection report does show pre-existing damage to the wall paper in the 2nd bedroom and as a result, I cannot conclude that the Tenants should be responsible for that damage. Consequently, this part of the Landlords' claim is dismissed.

The Tenants agreed that they did not complete painting a section of the kitchen behind the refrigerator. The Landlords claimed $100.00 to complete this painting. However, the move in condition inspection report states that $100.00 will be deducted from rent in exchange for the painting (and not 7 days of rent or $203.00 as the Tenants claimed). In the circumstances, I find that the Tenants substantially completed the painting and as a result, I find that the Landlords are not entitled to claim the full amount but are entitled to a reasonable amount to finish the job which I assess at **$25.00**.

I find on a balance of probabilities that the broken strip on the countertop was the result of reasonable wear and tear and not the result of an act or neglect of the Tenants. In particular, I find that the section was initially removed by an agent of the Landlords and that through normal use, the section was torn off. Consequently, this part of the Landlords' claim is dismissed.

The Tenants admitted that they were responsible for a vacuum filter and as a result, I award the Landlords **$66.08** to replace it. The Tenants also admitted that they were responsible for putting a kink in the vacuum hose but argued that it was still fully functional which the Landlords did not dispute. In the circumstances, I award the Landlords **$50.00** for the diminished value of the hose.

The Tenants denied that they were responsible for damaging a power head to the vacuum or damaging the vacuum. The Landlords claimed that these items were not working at the end of the tenancy which is in contradiction to the evidence of the Tenants who claimed that they were working on the last day of the tenancy. The Landlords claimed that moisture was found in the vacuum which likely caused or contributed to the damage to the vacuum. The Tenants admitted that they used a power washer to remove a rag. There was no evidence as to the age of these items. In the circumstances, I find that there is insufficient evidence to conclude that the Tenants damaged the power head of the vacuum and as a result, that part of the Landlords' claim is dismissed. I also find that the vacuum probably would have required maintenance from frequent use which is the responsibility of the Landlord. However, I also find that the Tenants' act of power washing the hose probably contributed to the problems with the motor failing on the vacuum and as a result, I award the Landlords ½ of the cost of that repair or **$232.10**.

I find that the Landlords are not entitled to compensation for 2 sump pumps. In particular, I find that there is insufficient evidence to conclude that the 1st sump pump left in the rental unit at the beginning of the tenancy was in good working order. I also find that there is insufficient evidence that the Tenants were responsible for the damage to the 2nd sump pump due to an act or neglect on their part. Although the Landlords argued that the 2nd sump pump was damaged by the Tenants' failure to remove sand from the hole, I find that the Landlords were the ones who had the duty to properly install the sump pump and must take some of the responsibility for knowingly putting it in the hole with sand still in it. Consequently, this part of the Landlords' claim is dismissed.

The Tenants admitted that they were responsible for a grass fire that got out of control and scorched the pump house and damaged a fence. The Landlords only sought compensation for the cost of the materials to fix the fence which I find reasonable and as a result they are entitled to **$450.00** for that part of their claim.

The Tenants argued that the amount claimed by the Landlords to repair the pump house was excessive given its age and condition and the type of damage it sustained. In particular, the Tenants argued that the damage was minimal and that the pump house only needed to be repainted. However, the photographs taken by the Landlords show that there is significant burn damage by the roof line and the facia boards with lesser damage on the sides. The photographs also show some minor melting on the edges of some shingles along the sides as well as the fact that the structure was old and weathered.

While the Landlords are entitled to have the damage to this structure repaired *if it is reasonable in the circumstances to do so*, they are not entitled to be put in a better position by having a substantially new structure built to replace the old, weathered one.
I find that the cost of the repairs likely exceeds the depreciated value of the pump house and as a result, I also find that it would not be reasonable to compensate the Landlords to make the repairs they suggest. Consequently, I find that the Landlords are entitled to recover the diminished value of this structure due to the damages caused by the Tenants which I assess at **$300.00**.

Although the Tenants denied that they burned garbage on the grassed area near the rental unit, the photographs taken by the Landlords on May 6, 2009 show evidence of cans and other debris that was likely garbage. The Landlords also provided a photograph of the same area taken on September 4, 2009 that shows a bare spot in the middle of a grassy area. RTB Policy Guideline #1 says at p. 7 that a Tenant is responsible for routine yard maintenance and as a result, I find that the Landlords are entitled to recover **$30.00** for the cost of re-seeding this part of the rental property.

As the Landlords have been successful in this matter, I find that they are entitled to recover the **$50.00** filing fee for this proceeding. I also find that the Landlords are entitled to recover their reasonable photocopy and photograph expenses. Although the Landlords did not provide any evidence in support of those amounts, I find that the

amounts claimed are reasonable and as a result, I award the Landlords **$5.00** for photocopies and **$73.92** for (3 sets of) photographs.

I order the Landlords pursuant to s. 38(4) of the Act to keep the Tenants' security deposit in partial payment of the damage award. The Landlords will receive a monetary order for the balance owing as follows:

	Loss of rental income:	$900.00
	General cleaning:	$450.00
	Carpet cleaning:	$215.00
	Linoleum damage:	$40.00
	Door Painting	$61.16
	Replacement Door	$125.00
	Drywall repair:	$218.00
	Kitchen Painting:	$25.00
	Vacuum Filter:	$66.08
	Vacuum hose damage:	$50.00
	Vacuum repair:	$232.10
	Damaged fence:	$450.00
	Damaged pump house:	$300.00
	Lawn damage:	$30.00
	Photographs:	$73.92
	Photocopies:	$5.00
	Filing fee:	$50.00
	Subtotal:	$3,291.26
Less:	Security deposit:	($450.00)
	Accrued interest:	($1.25)
	Balance Owing:	$2,840.01

Conclusion

The Tenants' application is dismissed. A monetary order in the amount of **$2,840.01** has been issued to the Landlords and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 *Residential Tenancy Act*.

Dated: March 09, 2010.

Dispute Resolution Officer