

DECISION

Dispute Codes MNDC OLC RP RR O

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain an Order to have the Landlord comply with the Act, make repairs, and a Monetary Order for reduced rent, for money owed for or compensation for damage or loss under the Act, regulation, or tenancy agreement, and for other reasons.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the Act, sent via registered mail. The Landlord confirmed receipt of the hearing package.

The Landlord and both Tenants appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Are the Tenants entitled to Orders to have the Landlord comply with the Act and make repairs under sections 32 and 62 of the *Residential Tenancy Act*?

Are the Tenants entitled to a Monetary Order under section 67 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the month to month tenancy began on April 1, 2009 and ended August 31, 2010, after the Tenants were issued a 2 Month Notice to End Tenancy for Landlord's use. Rent was payable on the first of each month and no rent amount was listed on the actual tenancy agreement. An addendum was attached to the

tenancy agreement which lists the rent payable as \$1000 from April 1 to September 30, 2009; \$1050 from October 1, 2009 to March 31, 2010; and \$1100 from April 1, 2010 to March 31, 2011. The Tenants paid a security deposit of \$400.00 on March 6, 2009. An incomplete move-in inspection form was provided to the Tenants with no information listed other than the word "Good" listed under each section. Neither party signed the move-in inspection report.

The Tenants confirmed that they vacated the rental unit after filing their application for dispute resolution and requested to withdraw their requests for a) an Order to have the Landlord comply with the Act, b) an Order to have the Landlord make repairs to the unit, c) allow the tenant reduced rent for repairs, services or facilities agreed upon but not provided, d) and for other reasons.

The Tenants wish to proceed with their monetary claim which consists of the following:

- The Tenants are seeking reimbursement for the overpayment of rent due to illegal rent increases. They confirmed that they had a verbal agreement with the Landlord that their rent would increase as noted in the addendum however that agreement was made before they knew what rent increases were allowed under the Act. They provided copies of their rent receipts to confirm they paid the amounts in accordance with the addendum.
- \$1050.00 in compensation for having to live in the rental unit with mould. The Tenants argued that they found the presence of mould in the rental unit, that the Landlord brought in someone to attend to it, and all that resulted was they were told to spray a chemical on the mould and wash it down with bleach. They stated this occurred sometime in April 2010 and at the end of May 2010 their daughter had to move out of the rental unit to go live with her grandmother due to an illness. They surmised that their daughter could not live in the rental unit with the presence of mould which allegedly caused her illness, and as a result they lost "leisurely time" with their daughter. They followed the Landlord's instructions on how to treat the mould and moisture issue only to find that it appeared later and had spread further across the wall and into their closet. The Tenants confirmed

they did not provide evidence to support their daughter was ill and that her illness was caused by the conditions in the rental unit.

- \$400.00 for the return of their security deposit. The Tenants vacated the rental unit in compliance with the 2 Month Notice to End Tenancy for Landlord's use. The Tenants' forwarding address was provided to the Landlord in writing on August 19, 2010.

The Landlord testified that she provided the Tenants with copies of the tenancy agreement, addendum, and the move-in inspection report all at one time when they signed the documents. She advised that she negotiated the rent amounts with the Tenants over the telephone in February 2009, before they met to sign the documents. There were no rental arrears. She served the Tenants with Notice to End tenancy on July 31, 2010 so that her mother could move into the rental unit. She confirms that the Tenants told her about the presence of mould and that she brought in a restoration company to investigate. They were told that it was surface mould caused by too much moisture. They were instructed to keep furniture away from the walls, use the fans and keep window open, to allow for proper circulation.

The Landlord stated that she overheard a loud discussion with the Tenants whereby they stated that their daughter had to move out due to their financial problems not illness.

The Landlord confirmed receipt of the Tenant's forwarding address on August 19, 2010. She has not made application to keep the security deposit, she does not have an Order instructing her to keep the deposit, and she does not have the Tenants' written permission to keep the security deposit. The Landlord confirmed she has not returned the damage deposit because the Tenants failed to clean the rental unit and left a stain on the carpet. The Landlord acknowledged that the Tenants hired a professional carpet cleaner who came twice to clean the carpet and attempt to remove the stain.

Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Section 41 of the Act provides that a landlord must not increase rent except in accordance with this part which means the landlord must comply with all of the sections listed under Part 3 of the Act which are sections 40, 41, 42, and 43 of the Act. This means that in order for a rent increase to be valid and issued in accordance with the Act is must comply with sections 42 and 43. (The contents of these sections of the act are listed at the end of this decision.)

In this case the Landlord implemented the first rent increase on October 1, 2009, less than 12 months after the beginning of the tenancy agreement and without issuing the

proper three month written notice of rent increase. Therefore the first increase of \$50.00 collected from October 1, 2009 to March 31, 2010 is in contravention of the Act. The second rent increase was implemented 12 months after the onset of the tenancy agreement, therefore had the first increase not occurred the Landlord would have met the timing requirement. However the Landlord did not issue a three month written notice of rent increase as required under the Act; therefore the rent increase from April 1, 2010 to March 31, 2011 is invalid. Having found both rent increases to be invalid the amount of rent payable between April 1, 2009 and August 31, 2010, was \$1,000.00 per month. Therefore the Tenants have proven the test for damage or loss, as listed above, in the amount of \$800.00 (Actual rent paid \$17,800.00 less required amount \$17,000.00)

The Tenants have sought loss of "leisurely time" which I have interpreted as loss of quiet enjoyment of the rental unit due to the presence of surface mould and to compensate for their daughter having to move out of their care. Upon review of the testimony and documentary evidence I find the Tenant's have failed to provide sufficient evidence to support this claim, therefore I dismiss their claim of \$1,050.00, without leave to reapply.

The evidence supports the Tenants vacated the rental unit August 31, 2010, and provided the Landlord with their forwarding address on August 19, 2010, in accordance with the Act.

Section 38(1) of the Act stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenants' security deposit in full or file for dispute resolution no later than September 15, 2010. The Landlord did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit. I find that the Tenants have succeeded in proving the test for damage or loss as listed above and I approve their claim for the return of double the security deposit plus interest.

Monetary Order – I find that the Tenants are entitled to a monetary claim as follows:

Reimbursement of overpaid rent	\$800.00
Return of double the security deposit (2 x \$400.00)	800.00
Interest owed on security deposit of \$400.00	0.00
TOTAL AMOUNT DUE TO THE TENANTS	\$1,600.00

In regards to the Landlords claims relating to loss that they may have suffered, I am not able to neither hear nor consider the Landlords' claim during these proceedings as this hearing was convened solely to deal with the Tenant's application. That being said, I must point out that the Landlords are at liberty to make a separate application for dispute resolution and to resubmit their evidence.

Conclusion

I HEREBY FIND in favor of the Tenants' monetary claim. A copy of the Tenants' decision will be accompanied by a Monetary Order for **\$1,600.00**. The order must be served on the respondent Landlord and is enforceable through the Provincial Court 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: September 20, 2010.

Dispute Resolution Officer

Part 3 — What Rent Increases Are Allowed

Meaning of "rent increase"

40 In this Part, "**rent increase**" does not include an increase in rent that is

- (a) for one or more additional occupants, and
- (b) is authorized under the tenancy agreement by a term referred to in section 13 (2) (f) (iv) [*requirements for tenancy agreements: additional occupants*].

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
- (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase

43 (1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.