Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

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

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was originally held on January 13, 2011 at 1:30 p.m. Due to the length of testimony provided and limitations on the conference call system the hearing was cut off prior to the completion of testimony.

As a result the hearing was reconvened on January 18, 2011 and both parties were informed and provided call in procedures via phone directly from the Residential Tenancy Branch. The landlords and the tenants attended both hearings.

Prior to the hearing the landlord provided audio recordings of phone calls between the parties, although I did listen to them, I find that there is no relevant information available from them that I have used in this decision.

Prior to the hearing the landlord's submitted a request for a 30 day postponement as the landlord was seeking records regarding two separate police files. At the hearing the landlords noted that they no longer sought postponement.

In addition the landlord had sought, prior to the hearing, to have summons issued to compel two witnesses to attend the hearing. The landlord withdrew this request at the start of the hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for overholding; for damage to the rental unit; for monies owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; for all or part of the security deposit and to recover the filing fee from the

tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 57, 67 and 72 of the *Act.*

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A partial copy of a residential tenancy agreement signed by both parties on August 25, 2009 for a 1 year fixed term tenancy beginning on September 1, 2009 for a monthly rent of $1,700.00 due on the 1st of each month with a security deposit of $850.00 and a pet damage deposit of $850.00 paid on August 21, 2009;
- A copy of a "Pet Agreement" signed by both parties on August 26, 2009 stipulating, among other things, that at the end of the tenancy the tenant will, at the tenants' cost, have the rental unit inspected by a licensed pest control operator and obtain certification that the rental unit is free of fleas;
- A copy of a "Notice to Landlord" dated June 22, 2010 stating the tenants are giving notice to end the tenancy effective 1:00 p.m. on August 31, 2010 and a copy of a Mutual Agreement to End a Tenancy dated June 22, 2010 with an effective time of 1:00 p.m. on the 31st day of August 2010;
- A copy of a letter dated August 25, 2010 signed by the landlord's agent with her agreement to end the property management contract with the landlord on August 31, 2010. The letter includes the following statement: "I do acknowledge that I am still bound to perform the required "move out inspection" and all paperwork that it entails;
- Copies of the move in and move out Condition Inspection Reports for this tenancy. The move in report is dated August 29, 2009 and the move out report is signed on September 1, 2010. The landlord has also included a copy of the move out condition inspection report from the end of the previous tenancy;
- Several photographs taken at the start, during and end of the tenancy by the landlord's property managers (two separate companies being transitioned) and the tenants. Specifically there are pictures taken at the end of the tenancy showing damage to the stove, a/c unit, laminate flooring, kitchen sink, and;
- Copies of the following receipts: Application for Dispute Resolution filing fee; registered mail to the tenants for hearing documents and evidence; A/C inspection dated October 14, 2009 for service on September 13, 2009; A/C inspection dated November 4, 2011 for a diagnostic visit on October 28, 2010; replacement microwave including delivery dated June 23, 2010; legal fees dated October 14, 2010; postage for mailing subpoenas; plumbing services on February 1, 2010 and June 27, 2010; grass seed dated May 15, 2010; maintenance, repairs & cleaning costs dated September 16, 2010 (and assorted receipts for supplies);
- Copies of estimates for a replacement A/C unit;

- Landlord's estimates for hardwood flooring repair; double kitchen sink; additional cleaning at the start of the tenancy; compensation for inability to rent; and overholding charges; and
- A substantial volume of email correspondence between the landlord and potential tenants/buyers to replace these tenants at the end of the tenancy; between the landlord and the tenants; and between the landlord and their property manager; throughout the duration of the tenancy.

The landlord seeks monetary compensation as outlined in the following table:

Description	Amount
Registered mail – hearing	$18.80
Registered mail – subpoenas	$16.97
Service of Subpoena	$170.00
Courier costs (evidence)	$82.65
A/C maintenance (start of tenancy)	$186.90
A/C inspection (end of tenancy)	$95.14
A/C replacement	$1,500.00
Microwave	$125.75
Cabinet Repairs	$240.35
Pest (flea) inspection	$112.00
Legal fees	$232.74
Plumbing (during tenancy)	$96.82
Grass Seed	$11.50
Flooring	$560.00
Sink replacement	$144.48
Cleaning (start of tenancy)	$160.00
2 weeks rent (Sept 1-15 2010)	$890.50
Overholding	$57.45
General cleaning and repairs	$1,230.74
Total	$5,932.79

The tenants have submitted the following additional relevant documents into evidence:

- A written summary of their response to the landlords' claim;
- A typewritten note signed by the landlord's previous property managers, in support of the tenants, commenting on 5 points of concern related to the landlord's claim. Specifically the property managers state the damage to the deck was pre-existing as noted in the move in inspection; that they told the tenants when they signed the pet agreement that they did not need to have any flea treatment unless there was an issue; all keys were returned to the property managers and provided to the new property manager; that they agreed to a new time for the move out inspection; and that there had been a hairline crack in the

tub when the tenants moved in and that it got worse due to normal wear and tear; and

- A copy of the tenant ledger showing rental payments throughout the tenancy;
- A letter from the tenant's veterinarian dated December 29, 2010 stating two dogs belonging to the female tenant have never been diagnosed with fleas or any skin parasites since October of 2009.

The landlord contends that as the fixed term of the tenancy was nearing an end he had begun discussions in June 2010 with the tenants regarding their plans to either remain as tenants or if they planned to vacate the unit. On June 22, 2010 the tenant and the landlord's agent entered into an agreement that the tenancy would end at 1:00 p.m. on August 31, 2010.

As a result, the landlord had requested, and the tenants had accommodated the landlord's request, to help show the rental unit for potential new tenants. The landlord contends that as a result of the conditions that the tenants kept the unit in he was not able to rent the unit for the period immediately after the end of this tenancy.

The tenants contend that the landlord's inability to rent the unit is based on the amount of rent requested. The tenants believe the landlord's expectations for rent were above what the local market value would warrant.

The landlord has submitted evidence that during the last couple of months of the tenancy he was having difficulty with his property manager and that the landlord and property manager agreed to end their contract with each other on August 31, 2010. In the final letter between them regarding these matters the property manager notes that she will still complete the move out inspection at the end of this tenancy.

The landlord notes that he was insistent that the move out inspection be completed on August 31, 2010 and that he had arranged for his new property manager to be scheduled to attend this inspection. The property managers and tenants subsequently agreed to meet on September 1, 2010 in the morning to complete the inspection.

The landlord submits that the move in portion of the condition inspection report was altered to include additional comments, particularly in the living room the original document does not include comments that there are some marks/no blinds a dash under the heading cabinets, counters, closets and cupboards and a check mark under light fixtures, light bulbs, etc.

Additional comments not in the original move in inspection include the conditions for Bathroom #2 stating there were picture hooks in the walls, flooring is marked with a check mark, dash for blinds, curtains and drapes; check marks for cabinets, counters, closets and cupboards and for light fixtures, bulbs, and connections.

The only marks or comments regarding the condition at the move out inspection are as follows: light above sink goes off/on – sometime does not work; tub cracked; tenants improved yard; stove door/oven dirty.

Analysis

To be successful in a claim for compensation for damage or loss under the *Act*, regulation or tenancy agreement the party making the claim must provide sufficient evidence to establish the following four points:

1. That a loss or damage exists;
2. That that loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate any loss.

Despite the landlord's claim that the property manager no longer represented him and therefore the condition inspection report is not valid, I note the landlord did not provide any evidence that he responded back to the property manager stating she should not complete the move out inspection. I also note that on August 31, 2010 when she agreed to conduct the move out inspection on September 1, 2010 she was still the landlord's agent.

I also note that by the landlord's own evidence his new property manager was in attendance at the time of the move out inspection and yet the landlord has provided no written statement or comments from the new property manager contradicting the condition as outlined in the move out Condition Inspection Report completed by the previous property manager. I accept the landlord has provided photographic evidence attributed to the new property manager.

For these reasons, I accept the Condition Inspection Report conducted on September 1, 2010 to be a valid representation of the condition of the rental unit at the end of the tenancy. However, this does not limit the landlord's ability to make claims for damages found after the joint inspection was completed.

Having found that the Report is valid, I note that in email #125 from the landlord to his property manager on August 28, 2010 he specifically prohibited her from entering into any new agreements with the tenants and in combination with his email #132 dated September 1, 2010 that shows his intention to determine, for himself, if the tenants were entitled to any refund of their security deposit, the property manager had no authority to determine if the tenants were entitled to a refund of any amount.

I note at this point that there is no signature from the landlord or his agent on the Condition Inspection Report that authorizes the return of any of the deposit. The applicable signature is the female tenant's signature agreeing that nothing should be deducted.

In relation to the landlord's claim for air conditioner maintenance and "additional" cleaning at the start of the tenancy, Section 32 requires a landlord to provide a residential state of decoration and repair that, among other things, make it suitable for occupation by a tenant.

If a previous tenant had not cleaned appropriately at the end of their tenancy a new tenant is not responsible to clean the unit. In addition, the air conditioner is a part of the mechanical components of the rental unit and the landlord is responsible for its maintenance, prior to the start of a tenancy. I therefore dismiss this portion of the landlord's claim.

As to the landlord's claims for legal fees, registered mail, service and courier costs related to this dispute, I find these are choices the landlord has made in order to present their case and therefore not the responsibility of the respondent party. Further the *Act* does not provide for recovery of any costs associated with these proceedings other than the potential to recover the filing fee. I therefore dismiss this portion of the landlord's claim.

While I accept the landlord's assertion and his evidence that the tenancy ended at 1:00 p.m. on August 31, 2010, Section 35 of the *Act* allows for a move out condition inspection to be completed before a new tenant moves in on or after the day this tenant ceases to occupy the rental unit or on another mutually agreed day. As such, I find the tenants were not overholding as described in Section 57 of the *Act* and the landlord is not entitled to per diem rent for September 1, 2010.

From the landlord's submitted evidence of emails from potential tenants there is only one (email #4 page 70) that states that "sight and condition alone we disregarded your

rental". All other emails indicate that the condition at the time of their viewing was a *contributing* factor but not the sole reason to not accept a tenancy.

In addition, the landlord provided no evidence as to when he entered into a new tenancy agreement or when the tenants who did move in after September 1, 2010 viewed the rental unit. For these reasons, I find the landlord has failed to establish that the tenants specifically caused the landlord to be unable to re-rent the unit effective September 1, 2011 and I dismiss this portion of the landlord's claim.

In relation to the landlord's claim for the microwave, I note that the tenancy agreement submitted indicated that the rent included the use of a microwave. I also note that the move in Condition Inspection Report does not indicate that the microwave is not working.

However I accept that the tenant, from the landlord's evidence email #48 shows that the tenant reported the malfunctioning microwave within the first two weeks of the tenancy. As such, I find that in all likelihood the microwave did not work at the start of the tenancy. I dismiss this portion of the landlord's claim.

I find no reference in the tenancy agreement submitted by the landlord that the tenant was responsible for yard work or the condition of the lawn, I dismiss the landlord's claim for grass seed.

Regarding the landlord's claim to replace the kitchen sink and flooring, based on the two photographs (one of the sink and one of a small section flooring) and in combination with the Condition Inspection Report, I find the landlord has failed to provide sufficient evidence that the sink required replacement or how substantial the damage may have been to the floor, I dismiss this portion of the landlord's application.

As to the landlord's claim for replacement of the melted kitchen cabinet door, I accept, based on the photographic evidence that the tenants are responsible for this damage. I accept the landlord suffered a loss as a result and that the value of this loss is $240.00.

In relation to the landlord's claim for plumbing services provided on February 1, 2010 and July 27, 2010 the landlord has provided no evidence that the tenants were responsible for the need to call a service provider for any of these services.

Despite the tenant's assertion that air conditioner was not serviced until October 28, 2010 making it not their responsibility, I note that it is possible for damages to be

discovered long after a tenancy ends, particularly with mechanical components of a rental unit.

I find, based on the balance of probabilities, the tenants' dogs did cause the damage that was determined by the service provider to have been caused by dog urine. However, as indicated by the service provider the air conditioner is working normally and in combination with the fact the landlord has submitted only an estimate of replacement without evidence how the damage may have impacted the useful life of the air conditioner, I find that he has not establish a loss at this time. I dismiss this portion of the landlord's application.

However, I find that the landlord has established the value of the costs associated with the assessment of the air conditioner and entitled to reimbursement for this in the amount of $95.14.

As to the landlord's claim regarding the flea inspection, I am not persuaded by the tenant's submission from the previous property managers that despite having the tenants sign the Pet Agreement they informed them that they would not need to complete a flea inspection unless there was problem.

I find it unlikely that a party representing one of the parties in an agreement would get the other party to sign an agreement and then tell that other party, immediately after signing it, that they had no intention of enforcing it. I therefore find the landlord has established that the tenant was responsible for a flea inspection. I accept the estimate submitted by the landlord as reasonable and find the landlord is entitled to compensation in the amount of $112.00.

In relation to the landlord's claim for maintenance and repairs, I find that other than the issue of the bathtub, all other matters are not supported by the Condition Inspection Report as being the responsibility of the tenants.

For example, there is no indication in the Report that the rental unit requires painting or if it does that it results from the tenants' treatment of the rental unit; the Report clearly states at move in that the deck was faded and dog scratched; blinds in one bedroom and the kitchen were bent at the start of the tenancy.

In addition, I see nothing in the submitted portion of the tenancy agreement that prevent the tenants from hanging any pictures and therefore causing some acceptable damage.

As to the bath tub crack, as I have relied upon the Condition Inspection Report as a valid assessment of the condition of the rental unit at the end of the tenancy, I also accept it as a valid assessment at the start of the tenancy. There is no mention in the Report of any problems or cracks in the bathtub.

I also find no correspondence from either party (including the property manager) that indicates there was an existing crack in the bath tub. As a result, I also reject the submission from the tenants attributed to the property managers where they state it was an existing condition as I find it unlikely that professional property managers would fail to record such a significant flaw in a rental unit, if they knew it existed at the start of a tenancy. As a result I find the landlord has established a loss and that the value of that loss is established through his receipts submitted at $130.00.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **$627.14** comprised of $240.00 kitchen cabinet replacement; $95.14 for a/c assessment; $112.00 flea inspection; $130.00 for bathtub repairs and the $50.00 fee paid by the landlord for this application.

I order the landlord must deduct this amount from the security and pet damage deposit held in the amount of $1,700.00 in satisfaction of this claim leaving a balance of $1,072.86.

I grant a monetary order to the tenants for the balance of the security and pet damage deposits in the amount of **$1,072.86**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) 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: January 26, 2011.

Residential Tenancy Branch