

DECISION

Dispute Codes

For the tenants - MNDC, MNSD, OLC, ERP, RP, PSF, FF, O

For the landlord – OPR, MND, MNR, MNDC, SS, ET, FF, O

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlord. Both files were heard together. The tenants seek a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement, an Order for the security deposit to be returned, other issues and to recover their filing fee. The tenants withdrew the remainder of their claim at the outset of the hearing. The landlord seeks a Monetary Order to recover unpaid rent, for damage to the rental unit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. The landlords also seek an Order to recover their filing fee. The landlord withdrew the reminder of his application at the outset of the hearing.

I am satisfied that both parties have been served with a copy of the application and a Notice of the Hearing pursuant to s. 89 of the *Act*.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to recover their security deposit?
- Is the landlord entitled to a Monetary Order for unpaid rent?

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this month to month tenancy started on November 21, 2009. No written tenancy agreement was in place.

The tenant's application

The tenants testify that they suffered a loss of peace and quiet enjoyment during their tenancy due to the behaviour of other tenants living above and below them. They state they put up with constant parties, noise from domestic disturbances and the smell of drugs coming into their unit from the tenant below. They state they had to call the police on numerous occasions and have provided dates, times and file numbers for the police visits to the building. The tenant's testify that they notified the landlord of these problems and he did try to resolve the issues but then gave up. They state that due to noise late at night they had to resort to going to a friend's house just to get some sleep. The female tenant testifies that her husband (the male tenant) is a truck driver and the lack of sleep seriously affected his health. He suffered from stress and insomnia due to their living conditions and this has been noted on the doctors' letter provided in evidence. The male tenant had to take time off work and suffered a loss of earnings of \$4,821.20 as he was off work for 15 days. The tenants have provided some documentary evidence to show the male tenant was off work but no evidence from his employer to show he earns \$23.83 per hour for 12 hours a day. The tenants testify that they received \$898.00 from their insurance company for this lost time but seek to recover the remainder from the landlord in compensation to the sum of \$3,391.40.

The tenants testify that the male tenant lost another two days of work in August, 2010 and three days in January, 2011 due to parties at a neighbouring tenants which caused a lack of sleep and they seek to recover the sum of \$1,429.80 from the landlord as he failed to deal with the problems they experienced with the other tenants. The tenant's testify the landlord has rented to four different tenants in the last 14 months, one of these tenants was arrested for beating his girlfriend and they then moved out and new tenants moved in.

The tenants seek compensation from the landlord equivalent to their monthly rent of \$650.00 for the 14 months they lived at the rental unit as the landlord failed to protect their right to quiet enjoyment to the sum of \$9,100.00.

The tenants seek to recover their security deposit of \$300.00 from the landlord as he has failed to return it after their tenancy ended and they seek to recover their filing fee of \$100.00 from the landlord.

The landlord disputes the tenant's claims. The landlord testifies he served the tenants with a 10 Day Notice to End Tenancy for unpaid rent and the tenants moved out on February 21, 2011. The landlord states he did not agree to sign a mutual agreement to end the tenancy.

The landlord testifies that the tenants have provided no proof of these disturbances and there was only one incident of a downstairs tenant having a party which the police broke up and sent everyone home. After that party that tenant moved out. He states the tenants kept complaining to the police. The landlord testifies that the tenants told him there were beer cans and cigarette butts outside the unit but when he visited he saw no evidence of this.

The landlord testifies that he endured the tenant's complaints for six months and found no evidence of disturbances from other tenants. He states after this time he had simply had enough. The landlord testifies he gave the tenants opportunity to move to an upstairs unit but they refused this offer. The landlord testifies that it was these tenant's actions that harassed and stressed his other tenants who then felt they had to move out. He states at first he listened to the tenant's complaints and believed what they told him but then found that most of the trouble in the building came from these tenants.

The landlords' application

The landlord testifies that rent was agreed at \$675.00 per month. However the landlord testifies he also had an agreement that he would reduce the rent by \$25.00 per month to \$650.00 if the tenants shovelled any snow and kept the front entrance way of the building clean. The landlord states the tenants have not done this work and he seeks a refund of the rent reduction. The tenants testify that rent was agreed at \$650.00 per month and they did not have an agreement with the landlord to shovel snow or clean the front entrance.

The landlord testifies that the tenants did not give proper notice to end the tenancy and did not pay all the rent for February, 2011. The landlord agrees the tenants paid \$350.00 and seeks to recover the balance of rent for February of \$300.00 and the rent reduction of \$25.00 per month from February, 2010 to February, 2011 to a sum of \$325.00.

The landlord seeks to recover damages to the property caused by the tenants. He testifies that the tenants were responsible for water leaking into the downstairs unit. The landlord claims at first he thought this leakage was caused by a drain from the tenant's bath tub which he replaced but after further investigation he found the overflow on the tenant's bath had been turned upside down. He states he repaired this and warned the tenant not to do this to the overflow again. A week later the landlord claimed there was another leak downstairs and over the course of a few months it kept leaking. The landlord states his brother came to replace the whole system and they put in a new ceiling downstairs; however it started leaking again, he replaced it again and then found the overflow on the tenant's bathtub was upside down again and the screw had been over tightened which caused the overflow to crack. The landlord testifies he lost his tenant downstairs because of the leaking problem. The landlord seeks repair costs of \$2,400.00 as this is the amount charged by his brother to make these repairs. (Letter provided from the landlords brother in evidence.)

The landlord seeks to recover a loss of revenue for two other units in the building from these tenants because of the harassment and stress they caused the other tenants which forced them to move out. The landlord states the upstairs unit was vacant for two months and rent was \$675.00 per month and the downstairs unit was vacant for one month and rent for this unit was \$500.00 per month. The landlord testifies he did not want to put new tenants into these units until these tenants had moved out. He also states he re-rented the upstairs unit on March 01, 2011 to previous tenants who had moved out earlier and he did not re-rent the downstairs unit as he had to deal with the drain problem.

The landlord testifies that the tenants did not clean the rental unit and left some garbage at the end of the tenancy and his wife had to clean it. He seeks to recover \$100.00 from the tenants for this work and has provided a receipt. The landlord also seeks to recover \$100.00 because

the tenants did not return the keys to the unit. The landlord has provided a receipt for the costs of this labour to change the locks for \$50.00.

The tenants testify that they wanted to end the tenancy due to problems with other tenants residing in the building. They state the landlord verbally agreed they could end their tenancy but when they asked him to sign a mutual agreement to end tenancy he refused to sign it. The tenants testify that they paid rent of \$350.00 for February, 2011 and moved from the rental unit on February 21, 2011.

The tenants testify that they never touched the overflow in their bath. They state the landlords' brother did come to fix the tub and found the seals had gone at the plughole. They state every time they had a shower or bath it would leak. They state the landlords brother came to their unit twice to caulk the plug hole and at first that seemed to fix the leak however by the third day the downstairs tenant came up to tell them it was leaking again when the male tenant had a shower. The tenant testifies that she called the landlord and he came over and checked the overflow and said his brother had tightened it up to much and this had cracked it. The tenants claim the tub had been leaking for two months before the landlord did anything to repair it and he fixed the unit downstairs before fixing the source of the problem in their tub. The tenant testifies that she would not even know how to turn an overflow upside down and denies the landlords statement that he told her not to do this.

The tenant's testify that they had to call the police many times because the upstairs tenant was beating his wife. They state the landlord told them he would evict these tenants. They also state the landlord could not re-rent the upstairs unit as it was badly damaged by the tenants residing there. The tenants state the downstairs tenant moved out because the landlord did not fix the problem in his unit. The tenants state the landlords' loss of revenue is not their responsibility.

The landlord testifies that there is no damage to the upstairs unit except a small repair to the ceiling. He also states the accusations that the upstairs tenant beat his wife are also untrue and states when the tenant called the police she even had them outside digging the yard up looking for drugs.

The tenant's testify that they cleaned the unit at the start of the tenancy and cleaned it again at the end of the tenancy. The tenants also testify that on the instructions of an RCMP officer they were told to leave the keys to the unit in the mail box as they had to move out due to the smell of pot from the downstairs unit and the tenants' pregnancy at that time. They state there was a padlock on the mailbox which was removed in front of the RCMP officer on February 21, 2011. They state the landlord was notified and should have checked the mailbox before changing the locks or re-keying them.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

With regard to the tenants claim for compensation due to a loss of peace and quiet enjoyment of their rental unit; the tenants have provided a list of phone calls, dates and files numbers for the RCMP over a period of time, concerning disturbances caused by other tenants in the building. The tenants agree the landlord did make attempts at first to resolve these issues but then gave up and the disturbances continued. I have reviewed the tenants documentary evidence and the testimony from both parties during the hearing and am satisfied that the tenants have provided sufficient evidence to support their claims that these disturbances took place and the landlord failed to take appropriate action to protect their right to quiet enjoyment as specified under s. 28 of the *Act*. The tenants seek to recover the rent paid for 14 months of their tenancy however I find this amount to be excessive as the disturbances did not appear to continue for each day and night of the tenancy. Consequently, it is my decision that the tenants are entitled to recover the sum of \$150.00 per month for 14 months to the sum of **\$2,100.00** pursuant to s. 67 of the *Act*.

With regard to the tenants claim for loss of earnings for the male tenant for 15 days and for five additional days. The tenants have provided a work sheet from the tenants' employer showing he had some days off but nothing to show the actual amount the male tenants earns. Therefore the

tenants have not provided sufficient evidence to show the actual amount of lost earnings in this matter and this section of their claim is dismissed.

The tenants seek the return of their security deposit of **\$300.00**. As the landlord has not filed an application to keep the tenants security deposit I find they are entitled to have this returned to them pursuant to s. pursuant to s.38 of the *Act*.

With regard to the landlords claim for unpaid rent; the landlord seeks to recover the remainder of rent for February 2011 of \$300.00 as the tenants did not give notice to end the tenancy and only paid rent of \$350.00. I refer both parties to s. 46 of the *Act* which says a tenant may end a periodic tenancy by giving the landlord Notice to End Tenancy on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement. Both Parties agree rent was due on the first of each month. I find the tenants did not provide written notice to the landlord to end the tenancy on January 31, 2011 and the landlord did not sign the mutual agreement to end the tenancy it is my decision that the landlord has established his claim for unpaid rent for February, 2011 of **\$300.00** pursuant to s. 67 of the *Act*.

With regard to the landlords claim to recover the alleged rent reduction of \$25.00 from February, 2010 to February 2011; the landlord has provided no evidence to support his claim that he had an agreement with the tenants that rent would be \$675.00 per month and he would reduce this sum by \$25.00 per month for cleaning and snow removal services rendered by the tenants. When no written tenancy agreement is in place and one party contradicts the other the burden of proof falls to the person making the claim. Consequently, the landlord has not met the burden of proof in this matter and his application to recover this rent reduction of \$325.00 is dismissed.

With regard to the landlords claim for damages to the rental unit, site or property, the landlord argues that the damage to the downstairs unit was the fault of these tenants; the tenants argue that the landlord did not make necessary repairs to their bathtub and argue that they did not upturn the overflow in their bathtub. The landlord has provided a written statement from his brother concerning this issue however his brother did not attend the hearing to give evidence under oath and to submit to cross examination by the tenants. Therefore, little weight can be placed on this written statement and I find the landlord has not met the burden of proof in this

matter that it was the tenant's actions or neglect that caused the water damage to the unit below theirs and this section of the landlords claim is dismissed.

The landlord seeks to recover a loss of income from the tenants because he argues they harassed his other tenants until they left their rental units. As I have found in favor of the tenants claim for a loss of quiet enjoyment of their rental unit because of the disturbances from the other tenants. The landlord has provided letters from other tenants but again as these tenants were not asked to attend the hearing to provide testimony under oath and submit to cross examination their written statements carry little weight when they are disputed by the tenants. Therefore it is my decision that the landlord did not deal with the issues between the tenants in a manner which would have mitigated his loss in this matter. The landlord also testified that the downstairs unit was left empty to deal with the drain issue therefore this section of his application is dismissed.

With regard to the landlords claim for \$100.00 for cleaning the unit the landlord did not conduct a move in or move out condition inspection report to determine the condition of the unit at the start and end of the tenancy pursuant to s. 23 and 35 of the *Act*. Under the *Residential Tenancy Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required and this section of his application is dismissed.

With regard to the landlords' application for \$100.00 to rekey the locks, the tenant's testify that they left the keys in the mail box under the direction of an RCMP officer and removed the padlock from the box. However, a tenant is responsible to ensure the keys are returned to the landlord at the end of the tenancy. As they removed the padlock from the mailbox any other party may have retrieved the keys from this box and the landlord would be entitled to rekey the locks to the rental unit at the tenant's expense. The landlord has made a claim of \$100.00 but has not provided any evidence to show the actual amount for the new locks but he has provided a receipt for the labour costs for this work. Therefore, the landlord is entitled to recover the sum

of **\$50.00** from the tenants pursuant to s. 67 of the *Act* and the reminder of his claim is dismissed this section of his claim is also dismissed.

As both parties have been partially successful with their claims I find they must both bare the cost of filing their own applications. As both parties have been successful with part of their monetary claims I have offset one claim against that of the other. A Monetary Order has been issued to the tenants for the following amount:

Loss of quiet enjoyment	\$2,100.00
Subtotal amount due to the tenants	\$2,400.00
Less unpaid rent due to the landlord	(-\$300.00)
Less labour costs to rekey unit	(-\$50.00)
Total amounts due to the tenants	\$2,050.00

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The amount of **\$350.00** has been offset against the amount owed to the tenants.

The reminder of the landlords claim is dismissed without leave to reapply

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$2,050.00**. The order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.

The remainder of the tenants claim is dismissed without leave to reapply.

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 25, 2011.

Residential Tenancy Branch