

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing dealt with the tenants' application for monetary compensation for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

I heard that one of the respondent landlords (referred to by initials GA) was out of the country and unable to attend the hearing. Another one of the landlords stated that she would represent the absent landlord during the proceeding. I was satisfied the absence respondent was sufficiently served and represented during the hearing. Accordingly, this decision and the Monetary Order that accompanies it names the absent respondent.

Another respondent landlord (referred to by initials AM) appeared at the hearing and I heard that the hearing documents sent to him by registered mail were returned to the applicants. I determined that the address for that respondent was incorrect on the registered mail. The respondent landlord indicated he was aware of the issues under dispute upon reviewing the documents served upon the other respondents. Therefore, I deemed this respondent landlord sufficiently served pursuant to section 71 of the Act and this decision and the Monetary Order that accompanies it names this respondent.

Issue(s) to be Decided

Have the tenants established an entitlement to compensation from the landlords for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The residential property is owned by three partners. On August 13, 2010 the rental unit was advertised for rent by an individual (referred to by initials SSM) who is the brother and son of two of the respondents. The tenants viewed the unit on August 14, 2010 and on August 15, 2010 SSM and the tenants had a telephone conversation whereby

SSM advised the tenants that they could have the rental unit and the tenants agreed they wished to rent the unit. The tenants asked for written commitment of this agreement and on August 17, 2010 SSM signed and faxed the tenants a document. The document is entitled "Tenancy Agreement" and states:

"This agreement is to verify that the landlords of [address of rental unit] will be leasing the property to [names of tenants] for the period of 2 years commencing on September 1, 2010. The agreed amount rent is \$2200.00 a month not including security deposit or utilities. For all other contractual obligation please refer to the addendum, contractual obligation and residential tenancy agreement."

The tenants and SSM tried to set up a mutually agreeable time to pay the security deposit but due to conflicting schedules this did not happen. Rather, on August 20, 2010 SSM provided his bank account information to the tenants and on that same date the tenants transferred \$2,200.00 to the bank account. The female tenant was faxed another document entitled "Security deposit". This document states:

"This is letter to indicate the landlords of [address of rental unit] have received a security deposit from [name of tenants] in the amount of \$2200.00 for purposes of renting the property. The rental deposit will be returned to the renter once the property has been returned to the landlords as same working conditions as they have received it."

The parties agreed to meet at the property on August 29, 2010 for purposes of finalizing the tenancy paperwork, obtaining keys, and doing the move-in inspection. The tenants met SSM and his sister who is one of the owners (herein referred to as SKM) at the rental unit and found the former occupants still in the process of moving out. The parties proceeded to go through the unit and the tenants noted some issues pertaining to cleaning and repairs the tenants felt were required. SSM and SKM did not agree with the tenants' assessment of the condition of the rental unit. The meeting ended with SKM informing the tenants that she was not comfortable with what the tenants were seeking and that she wanted 24 hours to think about the situation. The tenants reminded the landlords that there was a tenancy agreement in place.

After 24 hours passed the parties spoke over the telephone and SKM informed the tenants that the landlords would not be renting to them and that the landlords wanted to use a property manager. The tenants stated they were not opposed to dealing with a property manager; however, SKM ultimately refused to proceed with the tenancy.

The next day SSM and SKM attempted to return the security deposit to the tenants via registered mail; however, it was refused by the tenants. After a second attempt to return the deposit in mid-September 2010 the tenants accepted a refund of the security deposit.

The tenants found alternative accommodation effective October 1, 2010. The tenants are seeking to recover damages and loss resulting from the landlords' refusal to proceed with the tenancy for the following amounts:

Item	Amount	Reasons
Movers	2,889.60	Forced to use more expensive mover who could provide storage
Hotel costs	2,545.70	Hotel charges between September 14 and October 2
Mi-Box	393.68	Storage of non-furniture items such as contents of garage.
Eating out	197.34	Could not cook at home. Various receipts for restaurants after September 16
Loss of fridge contents	200.00	Fridge contents could not be stored
Mail holding service	22.40	Mail had to be held until moved into new accommodation
Title search	2.50	Search of owners of property
Unjust enrichment	11,500.00	Landlord's re-rented unit for \$2,700.00 per month
Two Month's rent	4,400.00	Compensation in lieu of notice and for stress, time and trouble that resulted from landlord's violation
Total claim	\$ 22,599.22	

The tenants submitted that they believed the landlords were motivated to discontinue their tenancy in favour of trying to obtain a greater amount of rent. The tenants provided a print out of an advertisement placed in mid-September 2010 for a monthly rental rate of \$2,700.00.

The landlords were of the position that the parties had entered into a tentative tenancy agreement and that a tenancy agreement would not be entered into until the proper tenancy agreement documents were signed by the parties after the inspection of August 29, 2010. SKM submitted that the tenants were aggressive at the time of the inspection and the landlord then determined she did not want the tenants as tenants for the next

two years. The landlords denied that their reason for not proceeding with the tenancy was for more rent. The landlords acknowledged that the property now garners rent of \$2,700.00 per month but explained that property management fees are 8% and they lost a month's rent for September 2010.

The landlords submitted that there were several other properties available for rent and since the tenants were in possession of their former home until mid-September 2010 they still had time to find alternative accommodation. The landlords pointed out one particular rental that was advertised to which the tenants explained that the advertisement for that other rental indicated the landlords did not permit pets and were only seeking tenants on a month-to-month basis. The tenants were prepared to provide reasons why the other rentals were not suitable for them but the landlords did not pursue this line of questioning further. In brief, the tenants explained that they wished to be in a rental unit in certain areas, under a long term tenancy that had a fenced yard and would accommodate their dogs. Both parties agreed that the rental unit was unique.

One of the landlords submitted that SSM was not a landlord and was not in a position to enter into a tenancy agreement. However, SSM testified that he advertised the rental unit and met with tenants upon the request of the landlords in an effort to gain experience and help out his family members.

The landlords had previously offered the tenants \$1,000.00 as settlement of this dispute as the landlords do not agree the tenants are entitled to most of the costs they are seeking to recover. The landlords acknowledged this was a stressful situation but explained that it was stressful for them as well. The landlords' offer was unacceptable to the tenants and negotiations ended.

The tenants provided copies of the advertisement of the rental unit from August 2010 showing the rent as \$2,200.00 and the advertisement from September 2010 showing the increased rent of \$2,700.00; faxes received from SSM; documents showing the transfer of the security deposit to SSM; a summary of amounts claimed; receipts for the amounts claimed; a picture of their fridge contents; and, the title search of the property.

The landlords provided a written submission; confirmation of the property management fees paid to the current property manager; photographs of the rental unit; a money order from SSM to the male tenant dated August 31, 2010 in the amount of \$2,200.00 to show an attempt to refund the security deposit; a courier log sheet for August 31, 2010; and, numerous advertisements for other rental units.

Analysis

The Act applies to tenancy agreements, rental units and residential property. The Act defines tenancy agreements to mean an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

A landlord is defined by the Act to include any of the following: an owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act or the tenancy agreement.

Based upon consideration of all of the evidence before me, I find that SSM was acting on behalf of an owner or owners in showing the rental unit to the tenants, accepting a security deposit from the tenants, and providing written confirmation of a tenancy agreement and receipt of the security deposit to the tenants. Clearly SSM had sufficient information about the rental unit to advertise it for rent and had access to the rental unit to show it to tenants. Given SSM's acknowledgement that he had been asked to perform these tasks by an owner or owners I found the brief submission by one of the owners that SSM was not a landlord to be unpersuasive. Therefore, I find SSM was acting on behalf of the owners and SSM meets the definition of a landlord under the Act.

Based upon all of the information before me, I am satisfied the landlord, SSM, and the tenants came to terms with respect to the commencement date of the tenancy, the term of the tenancy, the monthly rent, the amount of security deposit and pet deposit no later than August 17, 2010 when SSM faxed a written confirmation of the agreement to the tenants. I find that this agreement meets the definition of a tenancy agreement as provided above even if the document itself does not provide for all of the terms that must be included in written tenancy agreements.

In addition, section 20 of the Act prohibits a landlord from requiring or accepting a security deposit or a pet deposit at any time other than when the landlord and tenant enter into the tenancy agreement. Thus, I find that providing bank account information and accepting a security deposit and pet deposit from the tenants is further evidence that a tenancy had formed.

I accept that the parties intended to complete a more comprehensive tenancy agreement document on August 29, 2010 and such a subsequent document would replace the tenancy agreement already entered into between the parties. Therefore, I

find a tenancy agreement was in place no later than August 17, 2010 and the Act applies to this dispute.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The Act provides that the rights and obligations under a tenancy agreement take effect from the time a tenancy agreement is entered into. Section 29 of the Act also provides that tenants are entitled to exclusive possession of a rental unit under the terms of a tenancy agreement and in this case I am satisfied the tenancy agreement entered into on August 17, 2010 provided that the tenants had the right to that possession starting September 1, 2010. By not providing the tenants with possession of the rental unit I find the landlords violated the terms of the tenancy agreement and the Act.

Upon hearing from the tenants I accept that the landlord's last minute decision to refuse the tenants the right to possession of the rental unit caused the tenants to incur significant damages and loss. The tenants were unable to secure suitable alternative accommodation until October 1, 2010 yet they had to give up possession of their former accommodation in mid-September 2010. I am satisfied the tenants acted reasonably in seeking out alternative accommodation and that their needs were not met by the properties for rent that the landlord provided as evidence.

With respect to the tenants' monetary claim for unjust enrichment I dismiss this claim. Awards for damages are intended to be restorative and the tenants are only entitled to compensation to put them in the same position they would have been had the landlords not violated the Act, regulations or tenancy agreement. The landlords gain from larger rent payments from other tenants does not constitute damage or loss for the tenants.

As indicated in Residential Tenancy Policy Guideline 16: *Claims in Damages* an applicant may be awarded non-pecuniary losses in addition to out of pocket expenses for aggravation caused to the injured party for the wrongdoer's wilful or reckless

indifferent behaviour. Non-pecuniary damages are intangible losses for inconvenience, discomfort, grief, mental distress and the like. Upon hearing from the tenants, I am satisfied that the sudden loss of the rental unit resulted in great inconvenience, stress and grief for them. It is difficult to put a value on such damages; however, given the tenants were displaced for the month of September 2010 I award the tenants the equivalent of one month's rent for these damages.

With respect to the out-of pockets expenses, I find the items claimed by the tenants were sufficiently supported by receipts and that, with certain exceptions, these costs were incurred as a result of the landlords refusal to grant possession of the rental unit to the tenants. I make the following awards to the tenants:

Item	Reasons for award	Amount claimed	Amount awarded
Movers	Denied. Tenants did provide sufficient evidence that they incurred a higher cost for movers than they would have if they moved into the rental unit.	2,889.60	Nil
Hotel costs	Awarded hotel costs except hotel stay on October 1 and October 2 as new accommodation was available. (\$2,545.70 – 266.56)	2,545.70	2,279.14
MiBox	Awarded.	393.68	393.68
Eating out	Denied. Receipts indicate the tenants ate out occasionally. In sufficient evidence to conclude this was result of landlords' violations as opposed to a personal choice.	197.34	Nil
Loss of fridge contents	Awarded. I accept the hotel fridge, if any, was unlikely to accommodate contents of a full size fridge that would have been provided with the	200.00	200.00

	rental unit.		
Mail holding service	Awarded.	22.40	22.40
Title search	Denied. This is a cost of pursuing a dispute. Only the filing fee is recoverable under the Act.	2.50	Nil
Unjust enrichment	Denied. See reasons given previously.	11,500.00	Nil
Two Month's rent	Partially awarded in the amount of \$2,200.00. See reasons given for non-pecuniary damages.	4,400.00	2,200.00
TOTAL		\$ 22,599.22	\$ 5,543.22

The tenants are awarded \$5,543.22 of their claim and I further award the tenants the \$100.00 filing fee they paid for this application. The tenants are provided a Monetary Order in the total amount of \$5,643.22 to serve upon the landlords. The Monetary Order may be enforced in Provincial Court (Small Claims) as an Order of that court.

Conclusion

The tenants have been provided a Monetary Order in the amount of \$5,643.22 to serve upon the landlords.

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 19, 2011.

Residential Tenancy Branch