DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with applications from the tenants and the landlords pursuant to the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38.

The tenants applied for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67. Both parties applied to recover their filing fees for their applications from the other party.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The female tenant (the tenant) confirmed that she received a copy of the landlords' dispute resolution hearing package sent to her by registered mail on March 9, 2011. The male landlord (the landlord) testified that he received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on March 2, 2011. I accept that both parties served these packages to one another in accordance with the *Act*.

At the hearing and in her written evidence, the female tenant (the tenant) asked for authorization to be allowed to end her fixed term tenancy early without becoming responsible for the financial implications of doing so. As her application for dispute resolution only requested a monetary award and I was not satisfied that the landlord was properly notified that she would be seeking an order to enable her to end her tenancy early, this matter was not properly before me in her application and I have not addressed this portion of her request as part of my decision.

During the course of the hearing, the landlords claimed several times that the tenants were not telling the truth about what had happened and maintained that the tenants are trying to cheat the landlords. At many points during the hearing, I had to remind the landlords that their disagreement with the tenants' stated intention to end their tenancy agreement early was not a matter that was before me and was not a subject matter that required further oral testimony.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for damage or loss arising out of this tenancy? Are the tenants entitled to a monetary award for loss arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Are either of the parties entitled to recover the filing fee for their applications from the tenants?

Background and Evidence

This two-year fixed term tenancy commencing on December 15, 2009 is scheduled to end on December 15, 2011. Monthly rent is set at $1,880 payable in advance on the 15th of each month, plus utilities. The landlords continue to hold the tenants' $940.00 security deposit and $200.00 pet damage deposit paid on November 30, 2009.

The landlords applied for a monetary award of $11,133.33. Their application included the following items:

Item	**Amount**
Repainting Cost - Entire Interior of House	$3,000.00
Repair and Repaint One Damaged Bedroom Wall	800.00
Clean Backyard of Dog Stool and Remove Dog Smell from Inside and Outside of House	1,000.00
Breach of Fixed Term Tenancy Agreement plus Mortgage and Insurance Losses (Aug. 2011 to Dec. 2011)	6,283.33
Recovery of Filing Fee for this application	50.00
Total Monetary Award Requested	**$11,133.33**

The male landlord (the landlord) confirmed that the landlords have not conducted any of the work identified in their claim. They also confirmed that the claim for breach of the tenants' fixed term tenancy agreement covers the period from August 2011 until December 2011, a period which has not yet occurred.

The tenants applied for a monetary award of $1,070.75. They maintained that this was the amount that they were "overcharged" as a result of the landlords' failure to take adequate measures to repair their hot water tank. They testified that they advised the landlords that there was something wrong with the water heater on October 13, 2010, when they received a utility bill that was four times higher than the previous month. The

tenant said that she phoned and texted the landlord and he sent someone whose way of repairing the problem was to replace the furnace filter. The tenant called the landlord again when she received another very high bill in November 2010. She testified that the landlord did not send anyone to conduct proper repairs to the hot water heater until February 2011. She testified that there were dramatic increases in her water bill and gas heating bill resulting from a broken valve in the water tank which led to unnecessary heating and dumping of hot water from that tank. She submitted written evidence that her gas bills increased from a winter average of $180.00 per month to $411.00 in October 2010, to $636.00 in December 2010 and $505.00 in January 2011. She submitted written evidence and receipts to support her claim and testified that the utility bills decreased dramatically after the landlord conducted the valve repairs in mid-February 2011.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the parties' claims and my findings around each are set out below.

Analysis – Landlords' Application

The landlords have submitted very little evidence to support their claim for a monetary award. Most if not all of the items they have identified as their basis for seeking a monetary award rely on events that have not yet occurred. For example, I find their claim for a monetary award for breach of the tenants' fixed term tenancy agreement relies on the tenants' stated intention to end her tenancy in mid-August 2011. The tenants have not ended their tenancy as yet and do not plan to vacate the premises for another two months. At this stage, any forecast of the landlords' losses is premature as the landlords have a responsibility to take all reasonable measures to reduce the tenants' losses. Similarly, while this tenancy remains in place, the tenants are not yet required to address the landlords' concerns about the colour of paint they may have used inside this house or the landlords' concerns about damage resulting from this

tenancy. The tenants may repair any damage they may have caused before they end this tenancy. If that does not occur, the landlord would then have an opportunity to apply for a monetary award. The landlords' claim for a $1,000.00 monetary award to clean dog feces from the tenants' yard seems extravagant and out of line with the testimony provided by the female tenant. She said that she looks after this task on a weekly basis and that she will ensure that this matter is attended to before she leaves the tenancy.

I dismiss the landlords' application in its entirety as the landlord has failed to meet the burden of proof required by section 67 of the *Act* to issue any monetary award. Even if I found that the tenants were responsible for damage or loss to the landlords' property, the landlords have provided insufficient evidence to quantify any losses or expenditures that they have made. Since much of the landlords' application involves items that have not yet occurred, I dismiss the landlords' application with liberty to reapply once the landlords have incurred actual losses resulting from the tenants' actions during this tenancy. The landlords are not entitled to recover their filing fee for their application from the tenants.

Analysis - Tenant's Application

During this hearing, the female landlord questioned the accuracy of the multiple bills and receipts submitted into written evidence by the tenants. The landlords claimed that the tenants have a family of five that uses considerable heat, hydro and water and that this was the real reason for the unusually high utility bills they received. The female landlord said that the tenants keep their heat too high resulting in higher expenses. The male landlord said that he asked Terasen Gas to look into this matter shortly after the tenants raised concerns about their bills with him. He said that they told him that the usage was normal. He also said that he hired a certified technician to inspect the rental property and that technician found nothing wrong with the equipment he inspected.

Although I have given the landlords' evidence careful consideration, I find on a balance of probabilities that it is more likely than not that the tenants have encountered higher than usual utility costs as a result of the landlords' delays in attending to the repair concerns raised by the tenants after they received their October 2010 utility bills. The landlords provided nothing in writing nor did they produce any witnesses who could attest to the actions they claimed to have taken and the responses they received to their enquiries about the tenants' concerns about their increased utility bills from October 2010 until mid-February 2011. The landlords did not provide convincing evidence that they attended to the tenants' concerns in a timely fashion or that they took effective action to deal with this problem. I find the female tenant's evidence in this regard more credible and consistent.

The extent to which the tenants' increased bills from October 2010 until mid- February 2011 resulted solely from the landlords' delays in providing effective repairs is at issue. Many factors may have affected the bills over this period, including, but not limited to, the landlords' failure to repair the water heater in a timely fashion. This is also the period of the year when utility usage, particularly for heat and hot water would be greatest. I recognize that it is difficult to separate the landlords' responsibility for the escalated utility bills from a range of other factors that may have influenced these increases. I find that the tenants are entitled to a monetary award in the amount of $100.00 for each of the four months from mid-October 2010 until mid-February 2011 when the landlords had the problem identified by the tenants repaired.

Since the tenants have been successful in their application, I allow them to recover their $50.00 filing fee for this application from the landlords.

Repair of Existing Gas Leak

During the course of the hearing, the parties discussed the contents of a May 2, 2011 letter sent by Fortis BC to the female tenant. In that letter, Fortis BC stated that repair of a small leak on the 2nd elbow past the gas meter to the building was the responsibility of the owner and not Fortis BC. Although the gas leak was deemed minor, Fortis BC recommended that it be repaired. The parties discussed who should be held responsible for the repair of this leak at the hearing. The tenant said that she is worried for her personal safety and that of her household if the leak remains unrepaired.

Section 62(2) of the *Act* enables me to make a finding of fact that is necessary or incidental to the making a decision or order under the *Act*. As a gas leak is a serious matter and should be repaired promptly, in accordance with section 62(2) of the *Act,* I find that the repair of this leak is the landlords' responsibility. I order the landlords to repair the gas leak cited in Fortis BC's May 2, 2011 letter as soon as possible if that leak has not already been repaired.

If the tenants have already repaired that leak at their expense, I order the tenants to provide a copy of their paid receipt for the repair to the landlords and to reduce their next monthly rent payment by the amount of the receipt as a way of compensating the tenants for what I find was a legitimate emergency repair of this gas leak.

Conclusion

I dismiss the landlords' application with liberty to reapply. I issue a monetary Order in the tenants' favour in the amount of $450.00, which is to compensate the tenants for their losses arising out of increased utility costs during this tenancy and to recover their filing fee for this application from 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*.