Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNDC, MNSD, FF
Tenant: MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. Both parties sought monetary orders.

The hearing was conducted via teleconference and was attended by the landlord and his partner and both tenants.

Both parties provided documentary evidence including a substantial volume of email correspondence; photographs; estimates and information regarding hardwood flooring replacement and refinishing. In addition the landlord provided "memory stick" electronic storage devices. I advised the landlord that I was unable to access the memory sticks and would therefore not consider them.

The landlord referred to his partner several times in the hearing and throughout his evidence as a tenant of the residence, the landlord provided no evidence that he had a tenancy agreement or that he collected any form of rent from his partner, as such and for the purposes of this hearing, I find the landlord's partner is not a tenant of the landlord.

As I have found the landlord's partner is not a tenant and in conjunction with the landlord's testimony that his partner is not a landlord, I find the landlord's partner has no standing in this dispute, other than that of a witness for the landlord, and therefore has no entitlement to rights or obligations under the *Residential Tenancy Act (Act)*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; 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, 67, and 72 of the *Act.*

It must also be decided if the tenants are entitled to a monetary order for compensation for the loss of quiet enjoyment; for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 38, 67, and 72 of the *Act.*

Background and Evidence

Both parties submitted copies of a tenancy agreement signed by each of the parties on July 21, 2010 for a 1 year fixed term tenancy beginning on September 1, 2010 for a monthly rent of $3,400.00 due on the 1st of each month and a security deposit of $1,700.00 that was paid on September 1, 2010.

The parties submitted copies of a Mutual Agreement to End a Tenancy dated May 10, 2011 with an effective end to the tenancy on May 15, 2011. The parties also submitted a copy of a Condition Inspection Report completed only at move out – the document is blank in regard to the move in condition.

The landlord seeks compensation for repair to the hardwood flooring in the rental unit in the amount of $5,493.76. The parties do not dispute that this damage exists. The landlord has provided photographic evidence (close up) of damage to the flooring in the form of scratches that he attributes to the tenant's dog. The landlord brought this to the tenants' attention in an email dated March 19, 2011. The tenants assert that much of the condition of the flooring existed prior to the tenancy and any additional damage must be considered regular wear and tear.

The landlord states in an email dated October 4, 2010: "The second concern is that I feel in this past month that significant damage is potentially being done to our property from what we have heard so far. We are concerned with Chaz running around our hardwood and scratching it. We are wondering if the nail protectors on the dog (if he's wearing them?) will really help as the weight of Chaz will make scratching more frequent."

The tenants position is that the landlord was aware they had a dog and that the dog had been introduced to the landlord prior to signing a tenancy agreement; that they took appropriate precautions to minimize any potential damage; that even if their dog did scratch any flooring it was minimal and that it should be considered regular wear and tear.

The landlord asserts that the tenants were aware of the damage being caused by the dog and referred to specific emails submitted in the submitted evidence. In an email of March 23, 2011 the landlord proposes the tenant's statement "None of us had spent any time in the living/dining room until you requested that our son limit his playtime to that area. The dog has never been in there so if there are any scratches they were there before we moved in." confirms the tenants accept the dog caused scratching damage.

The landlord also notes the following excerpt from an email dated March 31, 2011 in which the tenant states: "As for the hardwood, we truly feel that the damage is minimal. I understand your concern with the warranty but upon choosing to rent your home out, you should be aware that there will be some kind of wear and tear on the floors. Unless you have all the lights on you truly cannot see any marks at all." The landlord's position is that this also confirms the tenants accepted they caused the damage to the floor.

The tenants seek return of their security deposit of $1,700.00 and compensation for the loss of quiet enjoyment in the amount of $6,120.0 for a total of $7,820.00. The basis for their calculation is as a per diem of the total rent for a period of 6 days for each month of the tenancy. The tenants assert this is the length of time required to deal with the landlord's complaints.

The tenants assert 4 primary breaches to the covenant of quiet enjoyment, as follows:

1. The landlord accessed property without permission;
2. Harassment on the part of the landlord in the form of countless emails tenant received with noise complaints;
3. Emotional distress caused by repeated threats of eviction without cause;
4. Refusal of the landlord to sign a Mutual Agreement to End the Tenancy at end of the tenancy and refusal to allow the tenant to sublet.

The tenants have submitted documentary evidence and testimony asserting the landlord gained access to the rental unit without their permission in March 2011. The tenants provided a copy of an email dated March 17, 2011 from the tenants to the landlord providing permission to the landlord to enter the rental unit to look at tile colour on March 17, 2011 in response to a request from the landlord.

The tenants point to an email from the landlord dated March 19, 2011 to show that the landlord entered the rental unit on or before March 19, 2011. The text of the email includes the landlord's thanks for permission to enter the unit to check the tile colour and goes on to say that while there the landlord observed damage to the hardwood floors.

The tenants also testified that when they returned from a trip on March 22, 2011 they saw the landlord leaving their rental unit with a contractor. The landlord acknowledges that he had a contractor come out the same day he entered (March 17, 2011) and inspect the hardwood floors but that he had not entered the unit on March 22, 2011.

The parties provided several copies of several emails between the two parties over the course of the tenancy, including several dealing with complaints from the landlord about the noise and ongoing discussions with both parties trying to assess potential solutions. Each series of emails and their responses occurred over the course of a day or two on several occasions throughout the tenancy.

The emails were more frequent in the early months of the tenancy and include additional matters related to the tenancy including the payment of utilities; access to internet; phone line problems; and ending the tenancy (from the landlord [cause/offer] and the tenants [mutual end to tenancy agreement]).

In relation to the issue of noise, the landlord and his partner noted substantial noise problems with the tenants use of the house including, the tenants' child and dog running

around; banging doors; dropping things on the floor; complaints about the volume of music and/or TV when the cleaners were there; noise during dinner parties.

In an email dated October 8, 2010 the landlord states: "Since the carpet will only reduce the noise from running, walking, steps etc, we will still be able to hear the TV, phone conversations, crying, cupboards, etc."

In additional emails both parties suggest different options to deal with the issues of noise for the landlord including the imposition of a "curfew"; the use of carpeting; re-purposing of various rooms of the rental unit; requests to change behaviour, etc.

In emails from the landlord between October 4, 2010 and October 7, 2010 the landlord suggests he has cause to end the tenancy and later he suggests that if the tenants wanted to move out he would provide $1,500.00 to $2,000.00 for moving and packing costs. On November 9, 2010 the landlord suggests the tenancy may be voided as result of noise issues.

There is no other mention, in the email correspondence, of ending the tenancy until March 8, 2011 when the tenant sends an email to the landlord suggesting their new place will be ready by the end of May 2011 to which the landlord responds that it should be no problem to terminate the fixed term early.

There continues to be several emails regarding discussions related to ending the tenancy by mutual agreement or by subletting the unit up to April 5, 2011 and nothing further other than the signed Mutual Agreement to End a Tenancy dated May 10, 2011.

Analysis

To be successful in a claim for loss or damages the party making the claim must provide sufficient evidence to establish the following 4 points:

1. That a loss or damage exists;
2. The 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 the damage or loss.

In regard to the landlord's Application, I accept based on photographic and email evidence and testimony of both parties that the floors in the rental unit show scratching throughout.

I also accept the landlord's position that the tenants were aware of damage to the rental unit flooring. However, in the emails referenced by the landlord as proof the tenants knew their dog had caused the damage, I find the statements to be ambiguous at best and in no way indicate an acknowledgement of the total damage or severity.

Further, in the absence of any record of the condition of the hardwood floors prior to the start of the tenancy, such as in a move in Condition Inspection Report, I find the landlord has failed to establish that the damage to the hardwood floors was caused by any act or negligence on the part of the tenants.

I also note the landlord, despite having raised concerns with the tenants in his October 4, 2010 email regarding the floors, failed to follow up with the tenants and investigate if the sounds he heard were causing damage to the flooring or to take appropriate action to prevent any further damage. I find the landlord failed to take reasonable steps to mitigate any damage.

As to the tenants' claim for loss of quiet enjoyment I find the following:

The landlord accessed property without permission – I accept the landlord did not have the tenants' permission to enter the rental unit beyond the first time (March 17, 2011 permission) and for the purpose of looking at tile colour. However, from the tenant's evidence this entry occurred only once and I accept that it was in response to a reasonable concern the landlord had and therefore had minimal or no impact on the value of the tenancy.

Harassment on the part of the landlord in the form of countless emails tenant received with noise complaints – I accept there was substantial email correspondence between to the two parties over the course of the tenancy. I accept that the landlord complained to the tenants in many of these emails about noise and that the tenants tried to work with the landlord to minimize the noise issues.

I accept the tenants had to rearrange how they used the rental unit like moving the child's play area to a location that was not above the landlord; bring additional soft floor coverings and modifying other general behaviours that might generate noise.

I find, based primarily on emails from the landlord, there was insufficient sound insulation to separate the rental unit from the unit the landlord and his partner was living in. I also find, from those same emails, the lack of soundproofing made it possible for the landlord to hear everything going on in the rental unit, including the dog and child playing and running, cupboards closing, and even phone conversations.

Based on the above, I find that as a result of inadequate soundproofing the landlord was disturbed by noises in the rental unit caused by ordinary and everyday usage of the rental unit and not by any attempt on the tenants to be disruptive. As these disturbances resulted from a fault with the residential property itself, I find the landlord's repeated attempts to "blame" the tenants for the noises and require the tenants to change both their behaviour and the usage of the rental unit itself has decreased the value of the tenancy.

Emotional distress caused by repeated threats of eviction without cause – I accept that shortly after the tenancy began, the landlord suggested to the tenants on two occasions

that he thought he had cause to end the tenancy. I also accept the landlord, on both occasions later determined that he could not end the tenancy as he originally thought, after responses from the tenants.

I find the third time the landlord tried to end the tenancy was through proposing a mutual end to the tenancy in which he would pay the tenants for the cost of moving their possessions out and as such is not a threat of eviction. There was no evidence before me that the landlord actually issued any notices to end the tenancy.

I find the landlord, through the emails he forwarded to the tenants, was informing them of what he understood the rights and obligations of each party were in relation to noise issues. I find that while the landlord may have been establishing the basis for ending the tenancy, the tenants have failed to provide sufficient to show repeated threats of eviction.

Refusal of the landlord to sign a Mutual Agreement to End the Tenancy at end of the tenancy and refusal to allow the tenant to sublet – there is no requirement under the *Act*, regulation or tenancy agreement that requires either party to sign a Mutual Agreement to End the Tenancy.

A Mutual Agreement to End the Tenancy is an *agreement* between the two parties to allow one of the parties to end the tenancy, in this case, prior to the end of the fixed term previously agreed to by the parties. Despite the landlord's repeated attempts to negotiate some compensation resulting from the tenants ending the tenancy early and for repairs to the hardwood flooring, the landlord did sign the Agreement. I find the tenants suffered no loss or damage as a result.

Finally, in relation to the refusal to allow the tenants to sublet the rental unit, Section 34 of the *Act* requires that a landlord must not unreasonably withhold consent to allow a tenant to sublet in a fixed term tenancy of 6 months or more. I accept the tenant's position that the tenancy agreement was for a term of greater than 6 months and the landlord had an obligation to consider subletting as a possibility for these tenants.

However, having found this, I also find that the tenants suffered no loss or damage as a result as they did negotiate a mutual end to the tenancy ending their obligations to the landlord under the fixed term tenancy agreement.

The tenants submit that the decrease in value of the tenancy is based on 6 days per month of dealing with all the issues for which the tenants have applied for compensation. However, as I have found that 3 of the 4 grounds are not sufficiently supported to warrant compensation and in the absence of any detailed calculation of the value of each of the tenants 4 grounds, I find reasonable compensation to be valued at $200.00 per month from the first documented complaint of September 15, 2010 for a total of 8 months.

Conclusion

Based on the above, I dismiss the landlord's Application in its entirety without leave to reapply.

As I have dismissed the landlord's Application I find the tenants are entitled to the return of their security deposit in full.

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **$3,350.00** comprised of $1,700.00 security deposit; $1,600.00 decrease in value of the tenancy and $50.00 of the $100.00 fee paid by the tenants for this application, as they were only partially successful.

This order must be served on the landlord. If the landlord fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: August 09, 2011.

Residential Tenancy Branch