Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the tenants to obtain a Monetary Order for the cost of emergency repairs, a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act*), regulations or tenancy agreement, they request the return of double the security deposit and the return of the outstanding amount and to recover the filing fee for this application.

I am satisfied the landlord was served the hearing documents on June 15, 2011.

Both parties appeared, gave sworn 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 sworn evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order to recover the cost of emergency repairs?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to recover double the balance of their security deposit and the unreturned amount?

Background and Evidence

Both Parties agree that this tenancy started as a fixed term tenancy for one year on June 01, 2009 although the tenants moved into the unit on May 15, 2009. This tenancy reverted to a month to month at the end of the fixed term. Rent for this unit was $2,200.00 per month plus utilities and was due on the first day of each month. The tenants paid a security deposit of $1,100.00 on April 20, 2009.

The tenants testify that the landlord did a move in inspection with them at the start of the tenancy but failed to give them a copy of the inspection report until after they moved out. The tenants state they also attended a move out inspection on April 01, 2011 with the landlords' mother and state they gave her there forwarding address on that day. The tenants testify that they agreed the landlord could make deductions from their security deposit for oven cleaning (self clean oven), for the cost of eight light bulbs (provided), for the cost of one key and to replace a handle (provided) and clean one drawer. The tenants state they estimated the cost of these items to be $85.00 although this was not marked on the move out inspection report. The tenants state they did mark down and agree to one and half hours cleaning and discussed half an hour to change the light bulbs and door handle at to cut the key.

The tenants testify the landlord returned $671.48 to them on April 12, 2011 and sent them a copy of the inspection reports at that time. The landlord retained the sum of $343.52 without consent and without applying to keep it. The tenant's testify the landlord provided his own cleaning list which was grossly exaggerated and not as agreed with his mother.

The tenants testify that on July 20, 2010 their dishwasher required repair because the door would not close properly. They testify they informed the landlord verbally of this on two separate occasions but he failed to have it repaired. Eventually the tenants called out a repairman and he removed a piece of plastic that was impeding the door closing. The repairman told them this platic would have been there since the dishwasher was installed and had worked its way down to impede the door. They state the invoice shows this piece of plastic was at fault. The tenants also state the landlord had carried out an earlier repair

when a wheel fell of the plastic rack. The tenant's testify this repair cost them $95.20 and they seek to recover this from the landlord (receipt provided).

The tenant's testify that their air conditioner failed to work in July 2010. They notified the landlord of this in writing on July 24, and July 26, 2010. They state the unit ran continually without producing cold air. They state the landlord did not acknowledge their letters so they contacted an air conditioner company who advised them to turn the unit off for two days then turn it back on again. The tenants state they did this but it still failed to work and temperatures at that time were in the mid 30's. The tenants testify as the landlord had not acknowledged either letter they decided to have the unit repaired themselves. They state it was a blown motor failure and this was repaired at a cost of $670.78 (receipt provided). The tenant testifies they sent letters for this to the landlord to the same address they sent their rent cheques. If the landlord got their rent why did he not receive these letters?

They state they deducted both these amounts from their rent for August, 2010 however the landlord did not agree to this deduction and wrote to the tenants informing them that they were responsible for the dishwasher repair and he would not pay for the air conditioner repair. The tenants state they then issued the landlord with another cheque for the rest of their rent.

The tenants testify that they had a flood in their basement storage area at the end of December, 2010. They notified the landlord in writing on January 01, 2011. They state at that time they cleaned the water up and asked the landlord what he wanted them to do. Since then the tenants explain that the flooding kept occurring at different intervals. They testify by February 25, 2011 they gave notice to end their tenancy effective on March 31, 2011. The tenant's testify that the landlords' mother came to the unit on March 01, 2011 to show it to a prospective tenant and during that visit she found another flood. The tenants states the landlords mother asked them to clear up the water as she had another viewing later that day and it was starting to smell.

The tenants testify that it was on March 03, 2011 that the landlord finally responded and sent the tenant a text message to inform them that Rotor Rooter would be coming to work

on the affected area on March 04, 2011. The tenants testify that when Rotor Rooter came to the unit they informed the tenants that the flood was sewage water and there was evidence of toilet tissue and feces in the flood water. At that visit Rotor Rooters machine got jammed in the pipe and he could not free it so had to return on the March 05, 2011. Later the tenants state the restoration company informed them that this was a level four contamination.

The tenants testify they left the home on March 04, 2011 and when they returned they found the basement had flooded again and their stored belongings left in that area were ruined. They state the carpet in the family room and the bathroom were all affected by contaminated water.

The tenant's testify that they filed a claim for their belongings with their own insurance company and had to pay a $500.00 deductible and a premium increase of $114.00 which they seek to recover from the landlord. The tenants also seek to recover compensation for the loss of the use of the storage area for January to March, 2011 as the landlord did not act on this matter after first being advised, despite two letters and voice messages being left on his telephone. The tenants have based their calculation on the square footage of the home against the monthly rent and seek the sum of $732.00. The tenants also seek compensation for the loss of the use of the family room, office and bathroom in this area. Part of this compensation claim of $600.00 is due to the fact the female tenant could not work in her home office because repair work started in the basement and she had to relocate to her office making a round trip to work of 65 km a day throughout March, 2011. The tenant also state they had to spend two hours removing their belongings from the affected areas and time spent talking to the restoration crew as the landlord did not come to the unit to their knowledge to talk to the restoration crew. The tenant's state they also had to clean some of the downstairs area before they could move their belongings upstairs as they did not want to track contamination through the house. Part of the compensation claimed is also for having to live with the constants noise from the three drying machines set up to dry the affected area and the additional Hydro costs they encountered due to the use of these machines throughout March, 2011.

The tenants testify there were notified by Rotor Rooter that a section of rebar was found in the pipe which caused the blockage and state they believe this was from the original construction of the driveway. The tenants have provided photographic evidence of this piece of rebar and of the repair work taking place to the basement. The tenants seek to recover the cost of processing for the photographs sent in evidence to the sum of $31.49.

The landlord testifies he deducted $343.52 from the security deposit because there were issues about cleanliness when the tenants moved out. He states the tenants agreed to two hours cleaning and there were 24 light bulbs burnt out or missing. He states the tenants agreed to provide a handle but he had already replaced it before they brought one to him. He states he applied the costs associated to these purchases and work carried out and retained part of the security deposit to cover this work.

The landlord testifies that the tenants moved into the unit on May 15, 2009 and did not inform him that the dishwasher did not work until July, 2009. The landlord testifies the dishwasher was perfect when they moved into the unit. He states after the tenants informed him of the breakdown he picked up a part himself and installed it. At this time it was a plastic wheel of the dishwasher tray. He states it was the tenant’s failure to maintain the dishwasher that caused the breakdown.

The landlord testifies that the tenants did not inform him by letter that the air conditioner did not work. He states when he did hear about it he told the tenant he had a friend who owned an air conditioner company who could replace the fan in the unit for $80.00. He states the tenants than had the repair work done and when he spoke to the tenant about his friend the tenant said he would take out the new motor and get a refund so the landlord could fit the fan. The landlord testifies the tenants completed this work unauthorised by him in July 2010 but have waited until June, 2011 to file a claim to recover this. The landlord agrees the tenants sent him a copy of the invoice for this work when they sent their reduced rent cheque.

The landlord argues that the tenants did not send any letters to his service address concerning the flood and they did not telephone him to inform him of this flood. He states he

did not know about it until March 04, 2011. He states he went to the house on that date and noticed a small pool of water. He states he advised the tenants to remove their belongings from the area and called someone to inspect the hot water tank as the water was lying in the tanks vicinity. The landlord testifies he later called the tenant and informed her something was blocking the main sewage line and the toilet. He states he called Rotor Rooter but they could not attend that day so he messaged the tenant to inform her toilet was blocked. At that time he states the tenant messaged him back to inform him Stutters Restoration Company was coming to visit.

The landlord testifies this home is five or six years old and he would not have left the problem unattended. He states when he went to the unit there was no smell and only a 10 inch pool of water. He states he acted promptly once informed of the problem and got someone there as soon as possible. He states it was confirmed that water had seeped into the walls and on the carpet in front of the storage room; to fix the problem Stutters would have to remove the drywall and cut out the section of damaged carpet. The landlord testifies the unit was cleaned up and dry within two days and there was no evidence of sewage contamination. The landlord testifies he attended the house and spike to the restoration crew there and all work was done while the tenants were out of the home.

The landlord testifies it was a child's toy that blocked the system and he was present when Rotor Rooter pulled it out. The landlord states when he was in the storage area there was no evidence of the tenants belongings stored there. The landlord also suggests that there was only one flood and the tenants pictures were taken on the same day.

The tenants testify that they do not have any small children and if there was a toy in the system it was not put there by them. They state the landlords' ex-wife and three year old child lived in the unit before them. The tenants testify that their photographs did not show all their belongings stored in the basement as they were stored under the stairs. They state they did not provide these pictures as they are not making a claim for their belongings. The tenants also dispute the landlords' testimony that he visited the unit during March. They state he was not at the unit with them and did not post a notice of entry to the unit. If he was there he entered illegally without giving the tenants notice. The tenants also dispute ever

getting a text message from the landlord about Rotor Rooter attending. The tenants state the landlords' mother was aware of the flood on March 01, 2011 but the landlord is saying he was not informed by the tenants until March 04, 2011. The tenant testifies on March 04 she left the landlord four voice mail messages but he did not respond.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim to recover the balance of the security deposit plus double the security deposit; I refer the parties to s. 38(1) of the Act which states: the landlord except as provided in subsection (3) or (4) (a), within 15 days after the later of

> (a) the date the tenancy ends, and
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The tenants argue that the landlord is not entitled to keep a portion of their deposit as he has failed to make a claim against it and they only agreed he could keep the sum of $85.00. I have considered both parties arguments in this matter and find on two counts. 1) the landlord extinguished his right to make a claim against the security deposit for damages as he failed to give the tenants a copy of the move in condition inspection report within seven days of the inspection and 2) the landlord did not have the tenants permission to keep a monetary sum from the deposit as no monetary sum was indicated on the move out condition inspection report. At the hearing the tenants have testified they calculate the amount owed by them to be $85.00. Therefore, I will allow the landlord to deduct this

amount from the deposit. The balance of the unreturned portion plus deduction of the security deposit of $343.52 must be returned to the tenants.

The tenants also claim the sum of $1,100.00 in compensation because the landlord did not comply with s. 38 of the Act. However s. 38 states a tenant is entitled to recover double the security deposit if it was not returned within 15 days. As the landlord did return $671.48 within the fifteen allowable days I find the tenants are only entitled to have the unreturned portion less the agreed upon amount of $343.52 doubled to the sum of **$687.04.**

With regard to the tenants claim for a Monetary Order to recover the cost of emergency repairs; S. 33 of the Act determines what is considered to be an emergency repair as follows:

> **emergency repairs"** means repairs that are
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> (a) urgent,
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> (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
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> (c) made for the purpose of repairing
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> (i) major leaks in pipes or the roof,
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> (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
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> (iii) the primary heating system,
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> (iv) damaged or defective locks that give access to a rental unit,
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> (v) the electrical systems, or
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> (vi) in prescribed circumstances, a rental unit or residential property.

The tenants seek to recover the sum of $95.20 for a repair to a dishwasher and $670.78 for the repair to the air conditioner. It is my decision that neither of these repairs fall under the

section of emergency repairs. If a repair is not considered to be an emergency repair then the tenants are not entitled to make repairs without permission in writing from the landlord. While I agree the landlord did not make the repairs in a timely manner the tenants recourse would have been to file an application for an Order for the landlord to make repairs to the unit and not just have the repairs done themselves and expect reimbursement from the landlord. Consequently, as these are not emergency repairs the tenants claim for the sum of $95.20 and $670.78 is denied.

With regard to the tenants claim for compensation for the floods; having pursued the evidence and verbal testimony I find the tenants have established their claim for compensation in part. I find the tenants did notify the landlord about the first flood by letter and dealt with the flood water themselves at that time. I also find the landlords' mother was aware of the flood on March 01, 2011 and as she was acting on behalf of the landlord at that time one would presume she would have notified the landlord about any flood water. I further find the landlords' testimony not credible that he did not receive the letter in January as the tenants sent it to the same address they sent their rent cheques of which he received or did not hear about the flood until March 04, 2011.

The tenants have met a four part test for damages for part of their claim

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the landlords' failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

I find the tenants have not met the test to recover the $500.00 and $114.00 for their content insurance deductable and their insurance premium increase as they have not shown how they attempted to mitigate their loss by removing their belongings from the floor area after

the first smaller flood occurred and before it damaged their belongings. Consequently, this section of their claim is denied. However, I do find the landlord did not take action to rectify the flood to prevent it recurring resulting in further loss to the tenants in their time spent dealing with it, the inconvenience associated with it and the loss of the use of the rooms affected by it. Therefore it is my decision the tenants are entitled to recover the sum of **$732.00** for the loss of the use of the storage room for January and February, 2011; and **$1,100.00** for the loss of the downstairs portion of the house for March, 2011. The landlord has provided no evidence to support his claim that he was at the rental house dealing with the restoration crews or any of the flood damage; therefore I find the tenants have also established their claim for **$600.00** for time cleaning and dealing with restoration crews and having to work in an alternative location. I further find as the landlord did not deal with the flood expediently the tenants had to take photographic evidence of this and they are therefore entitled to recover the costs of processing these pictures to the sum of **$31.49**.

As the tenants have been partially successful with their claim I find they are also entitled to recover their **$100.00** filing fee paid for this application pursuant to s. 7291) of the Act. The tenants will receive a Monetary Order pursuant to s. 67 of the Act for the following amount:

Double the unpaid balance of the security deposit	$687.04
Loss of use of storage room	$732.00
Loss of downstairs	$1,100.00
Compensation for dealing with flood	$600.00
Photograph processing	$31.49
Filing fee	$100.00
Total amount due to the tenants	**$3,250.53**

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **$3,250.53.** The order must be served on the respondent and is enforceable through the Provincial Court 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: September 20, 2011.

Residential Tenancy Branch