



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the Tenants for a monetary order for return of the security deposit, compensation for damages and losses and recovery of the filing fee for the cost of this Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary Matter(s)

The Landlord’s Agent stated at the hearing that a prior decision (February 27, 2012), in relation to an application made by the Landlord, ordered the Landlord to keep the security deposit of \$275.00 for outstanding rent. The Tenants confirm that they participated in the prior hearing of the Landlord’s application and received the decision of February 27, 2012. The Tenants have claimed for return of the security deposit of \$275.00 in their Application and dispute the Landlord’s entitlement to an order of possession.

I find that due to section 77(3) of the Act and the legal principal of Res judicata, I cannot grant the Tenants’ request to hear the issue of the order of possession or the security deposit as these matters were already heard and decided upon at the hearing of February 27, 2012 and the decision of the same date which ordered the Landlord to keep the security deposit and granted the Landlord an order of possession. Additionally, section 80 of the Act sets out the time frames in which a Review of a decision can be applied for. The Tenant did not file for a Review as required by the Act. The Tenants’ request to rehear the security deposit or order of possession issue is dismissed.

The Tenants stated that they are each claiming lost wages for the dates that they took off work to file their application, attend the Landlord's hearing, file evidence for the Application, and attend the hearing of their Application.

I find that the Tenants are not able to claim their time and lost wages associated with dealing with their claim and the Landlord's claim as the Act does not allow parties to recover the costs that are outside of our jurisdiction. Costs connected with preparing for or responding to an application or participating in a hearing are outside the jurisdiction of the Act. As a result I dismiss these portions of the Tenants' claim.

The remaining issues in the Tenants' claim are the request for compensation for damages and losses during the tenancy for the months of September, October, and December of 2011, and recovery of the filing fee. These issues are dealt with in the balance of my decision.

Issue(s) to be Decided

Are the Tenants entitled to a monetary order for compensation for damages and losses and recovery of the filing fee for the cost of this Application?

Background and Evidence

The parties agree the tenancy commenced on September 02, 2011, with a monthly rent of \$1,100.00 due on the first of each month. The Landlord received a monetary order for unpaid rent and an order of possession for the rental unit on February 27, 2012 through a prior hearing.

The Tenants' stated that they completed their move out of the rental unit on February 04, 2012, although they acknowledge that they did not return the keys to the Landlord at that time.

The Tenants are requesting \$600.00 in compensation for damages and losses which represents \$200.00 for each of three months, September, October and December 2011 during their tenancy when the Landlord failed to undertake urgent repairs and pest control to deal with issues in the rental unit. The Tenants stated that they verbally informed the Landlord of their concerns, and they wrote them to the Landlord in a letter of October 07, 2011. The Tenants identified that their living room had significant water incursion issues due to a roof leak; the rental unit had a mice problem and an ant infestation. The Tenants stated that the Landlord did not fix the issues in a reasonable period of time. The Tenants stated that they had other issues that they were not

satisfied with as well that they mentioned to the Landlord verbally, such as the fact that the shower in the rental unit did not work and they had to shower at their mother's house as a result.

The Tenants stated that the Landlord came to the rental unit and put some tar on the roof to try and resolve the roof leak, however the tar covered the roof drain and so the water issue got worse rather than resolving. The Tenants stated that during heavy rain the water would come into their living room like a waterfall. The Tenants stated that the ceiling of the rental unit cracked, sagged and dripped, and that pieces of the ceiling began to fall out, landing in the living room. The Tenants stated that it was very difficult to use the living room during their tenancy. The Tenants stated that the ants and mice were an infestation which the Landlord did not treat in a reasonable period of time. The Tenants stated that they attempted to reduce the problem by using mice traps. The Tenants stated that when the colder weather came the ants went away but the mice remained. The Tenants stated that the Landlord did not send in an exterminator to begin to get rid of the mice until late December or early January 2012. The Tenants provided several photos into evidence of their concerns with the rental unit. The Tenants stated that the Landlord gave them a rent reduction during their tenancy of \$200.00 for the month of November 2011 only. The Tenants are seeking \$600.00 to compensate them for the months of September, October, and December 2011 when their peaceful enjoyment of the rental unit was disrupted by significant water incursion, ceiling pieces falling into their living room, ants, and mice.

The Landlord's agent stated that the Landlord was aware of the Tenants verbal complaints about the roof in September 2011 and received the Tenants letter of complaint on October 07, 2011. The Landlord's agent stated that he felt the \$200.00 rent reduction provided to the Tenants was sufficient to compensate them for the months of September, October, and November. The Landlord's agent stated that the Tenants had a large dog in the rental unit and that they needed to be home to let the contractors in to do work. The Landlord's agent stated that the Tenants preferred contractors to come on evenings or weekends, as a result it was difficult to get the work done. The Landlord stated that the roof issue was resolved with tar and provided a copy of a roof tar receipt for \$28.00 into evidence. The Landlord stated that they had a pest exterminator address the mice issue in December 2011 and provided a pest control contractor's invoice for \$140.00 dated January 31, 2012 into evidence. The Landlord disagrees with the Tenants claim and feels they have been adequately compensated already.

The Tenants stated that the Landlord had their contact numbers and failed to arrange to with them times for the contractors to come to the rental unit. The Tenants stated that

they could have arranged for a family member to take care of the dog if the contractors needed to work during the week days. The Tenants stated that in a couple of instances the Landlord gave the contractors the Tenants' home phone number and that messages were left during the day when the Tenants were at work and the Tenants received the messages after hours. The Tenants stated that the Landlord should have dealt with the contractors and called Tenants in the evening or posted a Notice to notify them of the need to enter the rental unit on a specific date or time so that they could arrange for their dog to be taken care of. The Tenants stated that the Landlord did not communicate with them and delayed resolution of their concerns. The Tenants request a monetary order for \$650.00, representing \$200.00 x 3 months for September, October, and December 2011 compensation for damages and losses, and recovery of the \$50.00 filing fee for the Application.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In a claim for damage or loss under the Regulation the Applicants (in this case the Tenants) have the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have the Respondent (in this case the Landlord) pay for the loss the Applicants (the Tenants) must satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Regulation,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant(s) followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I am satisfied that the Tenants testimony and photographic evidence sufficiently support their claim that their peaceful enjoyment of the rental unit was disrupted by the Landlord's delays in resolving the mice issue and sufficiently repairing the roof and ceiling within a reasonable time.

I do not agree that the Tenants are entitled to any compensation for September 2011 as the tenancy with this Landlord had just commenced at that time and they needed to give the Landlord reasonable time in that month to address their concerns. I find that the Tenants made verbal complaints to the Landlord in September and that when their concerns were not being addressed promptly, they put their concerns in writing to the Landlord on October 07, 2011. The Landlord provided insufficient evidence that the Tenants were difficult with regards to contractors accessing the rental unit. The Landlord provided no evidence of any notices issued in accordance with the Act requesting entry to the rental unit for repairs or pest control being provided to the Tenants during the tenancy.

I find that the Tenants claim for compensation for damages and losses in the amount of \$400.00 representing two months, October and December 2011, is reasonable and supported by sufficient evidence. I grant the Tenants a monetary order for \$400.00.

As the Tenants have partially succeeded in their Application, I find that the Tenants are entitled to recover the \$50.00 fee for this proceeding, which brings the total amount owed to the Tenants to \$450.00. I grant the Tenants an order under section 67 for **\$450.00**.

Conclusion

I dismiss the Tenants' claim for return of the security deposit, and their costs connected with preparing for or responding to an application or participating in a hearing.

I find that the Tenants are entitled to monetary order pursuant to section 67 against the Landlord in the amount of **\$450.00**. This order must be served on the Landlord and may be filed in the Provincial Court (Small Claims). The order accompanies the Tenants' copy of this decision.

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: April 04, 2012.

Residential Tenancy Branch