Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF, O

Introduction

This hearing dealt with cross applications. The tenant's filed an application seeking compensation for damage or loss under the Act, regulations or tenancy agreement. The landlord filed an application seeking compensation for damage to the unit; unpaid rent or utilities; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing 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.

Procedural Matter(s)

During the hearing the tenant attempted to play an audio recording as evidence. I refuse to permit the inclusion of such evidence as it was not evidence provided to the landlord or the Residential Tenancy Branch prior to the hearing in accordance with the Rules of Procedure.

Issue(s) to be Decided

1. Have the tenants established an entitlement to receive compensation from the landlord for the loss of quiet enjoyment?
2. Has the landlord established an entitlement to receive compensation for carpet cleaning?
3. Has the landlord established an entitlement to receive compensation for utilities?
4. Is the landlord authorized to retain all or part of the security deposit?

Background and Evidence

The tenants moved in the rental unit at the end of January 2012 for a tenancy set to commence February 1, 2012. Pursuant to the written tenancy agreement, the tenants were required to pay rent of $995.00 on the 1st day of every month and were required to

pay the landlord 50% of the hydro bills. The tenants paid a $500.00 security deposit. A pet damage deposit was required but the tenants put a stop payment on the pet deposit cheque. The tenancy ended May 30, 2012 when the tenants vacated the rental unit.

The rental unit is a basement suite located in a house originally constructed as a “single family: house several years ago. The landlord lives in the upper unit along with her 9 year old son on a part-time basis. The tenants, along with their young child and pet dog and cat, occupied the basement suite.

A move-in inspection report was completed and signed by both parties. The landlord and tenant had set up a time to do the move-out inspection together. Subsequently, the tenant informed the landlord he would participate in the scheduled move-out inspection, left the keys and forwarding address and requested the landlord send him a “copy” of an unspecified document. The landlord completed the move-out inspection report without the tenants and sent the tenants a copy of the inspection report with the landlord’s Application for Dispute Resolution.

Landlord’s Application

Carpet Cleaning - $313.60
The landlord is seeking to recover carpet cleaning costs of $313.60 which included pet odour restorative treatment to remedy the strong dog odour. The landlord provided a copy of the move-in and move-out inspection report and copies of the carpet cleaning invoice as evidence.

The tenants were of the position the carpet cleaning invoice was unreasonably high considering the unit did not smell like dog and the landlord had the stairs cleaned which they used for storage purposes only. The tenant further submitted that he is in the restoration business and carpet cleaning costs are typically much lower than that charged to the landlord. The tenant did not supply any documentary evidence to demonstrate his point that the carpet cleaning is more often done at much less expense. The tenant explained he did not have the carpeting cleaned because he did not have time to do so.

The landlord was of the position the unit smelled very much of wet dog and explained that she had the stairs cleaned as there was a cat in the unit. The tenant acknowledged that he took his dog to the beach but claimed the dog only lay on a dog bed.

Hydro - $559.19
The landlord is seeking to recover 50% of the hydro bills or $559.19 for the period of February 3, 2012 through June 1, 2012. The landlord provided copies of the tenancy agreement and the hydro bills as evidence.

The tenants were of the position that having to pay 50% of the hydro bills was unreasonable given the landlord's space was larger, has a bathtub and dishwasher. The tenants had originally agreed to pay 50% as the landlord assured them she was rarely home but they observed the landlord coming home during the day to do laundry. The tenants provided a copy of the hydro bill for the current home which had a charge of $56.43 for 12 days of service in June 2012.

The landlord acknowledged her living space was slightly larger but the landlord maintained she was not home much of the time. Rather, the landlord explained that the 50/50 split was based upon occupancy: the landlord had her son live with her part time whereas the rental unit was occupied by two adults and a very young child which would result in more laundry for the tenants. The landlord denied coming home during her work shift to do laundry and claimed she rarely used the dishwasher.

Tenants' Application

Loss of quiet enjoyment - $5,000.00
The tenants claim the landlord breached their right to quiet enjoyment in the following ways:

1. The landlord wore heeled shoes and excessively stomped on her floor above them between 8:00 p.m. and 10:00 p.m. which woke their young child from sleep on a nightly basis. The tenants attributed this disruption to a lack of soundproofing and deliberate behaviour of the landlord since the tenants' pet deposit was not paid.
2. A plumbing pipe ran through the tenants' bedroom and the landlord would flush the toilet multiple times. The tenants gave an example were one night the landlord flushed the toilet three times in a row.
3. The tenants were uncomfortable coming and going from the rental unit for fear of running into the landlord. The tenants claimed the landlord had been abusive in text messages. The stress caused the female tenant, who was pregnant, to be hospitalized due to stomach cramps. Both parties provided excerpts of text message exchanged between the parties.

4. The landlord failed to address a mould issue in the bathroom. The landlord had a plumber put silicone around the toilet when the mould likely originated from a previous flood the landlord must have known about but did not disclose to the tenants. The tenants' daughter suffers from asthma and her coughing improved after the tenants' moved out of the rental unit. The tenants submitted copies of receipts for inhalers purchased for their daughter and photographs.
5. The landlords efforts to collect the pet damage deposit and giving the tenants a 10 Day Notice to End Tenancy rather than a 1 Month Notice to End Tenancy caused the tenants two months of discomfort.

The tenants submitted are claiming $5,000.00 as it is their position that this amount is the minimum amount payable for such claims. The tenants' explained that it is their intention is to send a message to the landlord that she cannot do what she did to tenants and that she should stop renting the unit given the danger associated to the mould and the landlord's "terrorizing behaviour".

In the letter given to the landlord March 30, 2012 they gave notice to end their tenancy citing the following reasons: lack of soundproofing; lack of storage; insufficient hot water; and a baby on the way.

In an effort to substantiate their position with respect to the smell of dog, mould, and stomping the tenants provided an unsigned letter from three persons. The tenants also provided photographs into evidence.

The landlord responded to the tenants' submissions as follows:

1. The landlord does not wear shoes in her house. The landlord made only normal daily living sounds and had explained to the tenants that they would have to tolerate such sounds from each other given the house was originally constructed as a single family home.
2. The landlord tried to refrain from flushing the toilet excessively as she was aware of the location of the drain pipe; however, when the toilet needed to be flushed she would do so.
3. The landlord denied she was abusive to the tenants and referred me to the text messages that were provided as evidence. The landlord also denied being abusive in person.
4. The landlord was aware of discolouration in the bathroom on the floor and caulking. The landlord has owed the house since 1991 and denied there was a previous flood. The tenants did not mention any health issues related to mould.

5. The landlord unintentionally issued the incorrect Notice to End Tenancy when she was trying to collect the pet deposit they were required to pay. Upon learning of her error she issued the correct Notice to End Tenancy.

Analysis

Upon consideration of all of the evidence before me, I provide the following findings and reasons with respect to each of the applications.

Landlord's Application

Carpet cleaning
The Act requires a tenant to leave a rental unit reasonably clean at the end of the tenancy. Residential Tenancy Policy Guideline 1: *Landlord & Tenant – Responsibility for Residential Premises* provides that where a tenant had an un-caged a pet in the rental unit the tenant is generally expected to have the carpets steam cleaned or shampooed at the end of the tenancy, regardless of the duration of the tenancy. In this case, the tenants had two un-caged pets and did not have the carpets steam cleaned or shampooed. Rather, the tenants left carpet cleaning to the landlord and I find the landlord is entitled to recover carpet cleaning costs from the tenants.

The tenants have raised the issue that the carpet cleaning cost was unreasonably high. As provided in Residential Tenancy Policy Guideline 16: *Claims in Damages*, if a claim is made by the landlord for damage to property the normal measure of damage is the cost of repairs. The onus is on the tenant to show that the expenditure is unreasonable. Similarly, I find the tenants have the burden to show the carpet cleaning cost incurred by the landlord was unreasonable.

Based upon the landlord's detailed carpet cleaning invoice and the tenant's acknowledgement that he took their dog to the beach I accept, on the balance of probabilities, that the unit had a smell of dog and that additional odour eliminating treatment was required. I have given little weight to the unsigned statement provided into evidence by the tenants that the unit did not smell of dog. Therefore, I find the tenants have not met their burden to show the landlord had unnecessary treatments provided or that the carpet cleaning cost was unreasonably high.

In light of the above, I grant the landlord's request to recover the amount she paid for carpet cleaning, or $313.60.

Hydro

The landlord has provided copies of hydro bills to verify the amount she is claiming and a copy of the tenancy agreement to show the agreement that the tenants would pay 50% of the hydro bills.

The tenants raised the issue that the requirement to pay the amount claimed by the landlord is too high compared to hydro costs they currently pay. The landlord is claiming $559.19 for nearly 4 months of usage, including winter months, which I calculate to be an average daily charge of $4.66. In contrast, the tenants paid $56.43 for 12 days in the spring for a daily average of $4.70. Comparing the hydro bills using a daily average does not demonstrate to me that the landlord is seeking to recover an excessive amount of hydro.

The tenants raised the issue that the requirement to pay 50% of the hydro bill was unreasonable considering the landlord's space and amenities exceeded that provided to the tenants. In order to find a term of a tenancy agreement unenforceable I must find that it otherwise violates the Act, is unclear, or unconscionable. Requiring a tenant to pay a landlord for utilities does not violate the Act and I find the term in the tenancy agreement is sufficiently clear. Finally, I find that basing the allocation of hydro bills upon occupancy is reasonable and does not meet the criteria of "unconscionable" which is defined in the Regulations to mean a term that is: "*oppressive or grossly unfair to one party".*

Although the claim for hydro extends to June 1, 2012 I find the inclusion of June 1, 2012 is not unreasonable considering the claim for hydro starts February 3, 2012 and the tenants moved in at the end of January 2012.

In light of the above, I find no reason to deny the landlord's request to recover hydro costs payable by the tenants under their tenancy agreement and the landlord is awarded $559.19 as claimed.

Tenants' Application

The Act provides that a tenant is entitled to quiet enjoyment of the rental unit and use of the residential property free from significant interference. Residential Tenancy Policy Guideline 6: *Right to Quiet Enjoyment* provides a statement of policy intent of the legislation as it relates to the right to quiet enjoyment. A basis for finding breach of quiet enjoyment may include:

- Unreasonable and ongoing noise;
- Persecution and intimidation;
- Allowing the property to fall into disrepair so that the tenant cannot safely continue to live there.

The policy guideline also provides that temporary discomfort or inconvenience does not constitute a basis for breach of quiet enjoyment.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove: that the other party violated the Act, regulations, or tenancy agreement; that the violation caused the party making the application to incur damages or loss as a result of the violation; the value of the loss; and, that the party making the application did whatever was reasonable to minimize the damage or loss.

The burden of proof is based on the balance of probabilities. Accordingly, the tenants bear the burden to proof each of the criteria outlined above in order to succeed in obtaining a compensatory award.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

With respect to each of the five types of breaches of quiet enjoyment identified by the tenants I provide the following findings:

1. Stomping and lack of soundproofing: I was provided disputed verbal testimony as to the landlord stomping or wearing heels in the house. I have given very little weight to the unsigned letter provided as evidence by the tenants. Thus, I find insufficient evidence of deliberate stomping or loud walking by the landlord. I do accept that due to the age and construction of the house the house likely has less soundproofing than a purpose built or newer building. However, I find the landlord was not obligated to install extra soundproofing as the Act provides that repairs and maintenance may take into account the age and character of the building. Walking and other daily living sounds are not activities for which I find the landlord negligent but are to be expected given the age and character of the building. Therefore, I find the tenants have not proven a breach of quiet enjoyment related to stomping or walking in the upper unit.

2. Toilet flushing: The tenants observed the drain pipe in the bedroom when they entered the tenancy and I find that a reasonable person would expect to hear periodic flushing sounds. The landlord denied flushing the toilet excessively and I find the tenants provided insufficient evidence to the contrary. As indicated above, I find the landlord was not obligated to relocate the drain pipe under the Act due to the age and character of the building. Therefore, I do not find a breach of quiet enjoyment due to the sounds of normal usage coming from the drain pipe.

3. Abusive behaviour: Upon review of the reproductions of the text messages provided to me I find a lack of corroborating evidence that the landlord was abusive towards the tenants. Rather, I find the landlord's communication to be polite and patient in dealing with the tenants' inability or refusal to pay the pet deposit and utility bills. In the absence of evidence of abusive behaviour via text message, as asserted by the tenants, it follows that I find insufficient evidence that the tenants' were reluctant to come and go from the property due to abusive behaviour on part of the landlord. I find it more likely that the tenants were uncomfortable seeing the landlord as they were not able to fulfill their obligations under the tenancy agreement.

4. Mould: I accept that the tenants' daughter suffers from asthma and uses inhalers based upon the receipts for inhalers; however, many children suffer from asthma and I find a lack of evidence, such as a doctor's letter or medical records, to point to mould in the rental unit as the cause or aggravating factor of her medical condition. From the photographs, I accept that the caulking beneath the shower door is discoloured and is likely that of mould or mildew. I am less certain as to the nature of the discolouration on the floor behind the toilet. Nevertheless, in order to receive compensation, the tenants must show they took steps to mitigate their loss. I was not provided evidence that the tenants attempted to wipe the mouldy caulking with a bleach or anti-fungal solution or requested such of the landlord. Nor did the tenants seek repair orders or indicate this to be an issue in their notice to end tenancy or any other written communication to the landlord. Thus, while I find evidence of mould or mildew in the bathroom I find insufficient evidence it significantly interfered with the tenants' ability to use and enjoy the rental unit; caused medical distress, or that the tenants took reasonable steps to address the issue and mitigate any loss or damage. Therefore, I make no award for compensation for mould in the bathroom.

5. Issuance of an incorrect Notice to End Tenancy: It is undeniable that the landlord issued the incorrect Notice to End Tenancy in an attempt to collect the unpaid pet

deposit. However, I find such an error, which occurred one time and was correctly shortly thereafter, not to be a basis for finding breach of quiet enjoyment. The fact that the tenants informed the landlord that she used an incorrect Notice and she followed up with a correct Notice to End Tenancy the following day indicates to me that the tenants suffered no more than temporary discomfort or inconvenience. As indicated in the policy guideline, temporary discomfort or inconvenience is not a basis to find a breach of quiet enjoyment.

Considering all of the above, I find the tenants have failed to show the landlord breached their right quiet enjoyment such that would entitlement them to compensation. Therefore, the tenants' claim is dismissed entirely.

Filing fee, Security Deposit and Monetary Order

The landlord was successful in her application and I award her the filing fee paid for her application. In total the landlord has been awarded $922.79 for carpet cleaning costs, hydro, and the filing fee. I authorize the landlord to retain the $500.00 security deposit in partial satisfaction of the amounts awarded to the landlord. I provide the landlord with a Monetary Order for the balance of $422.79 to serve upon the tenants and enforce as necessary.

Conclusion

The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of $422.79 to serve upon the tenants.

The tenants' application has been dismissed in its entirety.

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 20, 2012.

Residential Tenancy Branch