



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord, the tenants and the tenants' legal counsel.

The landlord testified at the start of the hearing that he was no longer seeking compensation for his insurance deductible. Further into the hearing the landlord also withdrew his claim to the security deposit as a result of damage to the rental unit. I accept the landlord's amendment to exclude all matters related to damage to the rental unit.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began in June 2011 as a month to month tenancy with monthly rent of \$800.00 due on the 1st of each month with a security deposit of \$400.00 paid.

Both parties provided a copy of a previous dispute resolution decision between these two parties dated May 15, 2012 dismissing the tenant's Application to cancel a notice to end tenancy for cause issued by the landlord in April 2012, found in part that the tenancy ended on March 3, 2012 when the tenants vacated the rental unit.

The parties agree the tenants moved out of the rental unit on March 3, 2012 after a flood had been reported to the landlord. The tenants submit that they vacated the property after the insurance adjuster indicated there was a potential for mould and asbestos in the damaged areas of the residential property.

The parties agree the landlord issued a notice to end tenancy for cause on April 12, 2012 with an effective date of May 31, 2012. The tenants testified and submitted documentary evidence to confirm they continued to pay for hydro on the rental unit until the end of May 2012.

The tenants have provided copies of email discussions between them and the landlord's insurance adjuster beginning on March 7, 2012 and ending on April 18, 2012 indicating there was a concern about asbestos and the results of asbestos testing.

The tenants submit that they moved into a neighbour's place and moved only essential items as the intention was to return to the rental unit after repairs had been made. The landlord testified the repairs were not made because the work could not be done while the tenants' belongings were in the rental unit and that the tenants did not remove their furnishings until the end of May 2012 after receiving the previous decision.

The parties agree that the tenants had paid rent on March 1, 2012 and that the landlord also cashed the tenants' posted dated cheque for April 1, 2012 and that the landlord later returned these amounts back to the tenants. The tenants testified the landlord withheld \$77.00 for rent for the days of March 1 and 2. The landlord did not dispute this testimony.

The landlord seeks unpaid rent for the months of March, April, and May 2012 on the grounds the tenants' possessions left in the rental unit prohibited repairs to the unit until such time as they had removed these belongings and despite the tenancy ending on March 3, 2012.

The tenants testified the landlord could have included in his insurance claim any lost rent that resulted from the flood. The landlord testified that he probably could have included this in his claim but that he had no intention of doing so because it was the tenants' responsibility to pay rent and if they had had their own insurance it may have covered the rent for this period.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

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

Section 26 of the *Act* requires tenants to pay rent when it is due under a tenancy agreement regardless of whether the landlord complies with the *Act*, regulation or

tenancy agreement, unless the tenant has the right under the *Act* to deduct all or a portion of the rent.

I find from the testimony of both parties that the tenants did pay rent for the months of March and April 2012, when it was due, as per the tenancy agreement and that the landlord subsequently returned this amount less a per diem rate for March 1 and 2 when the tenants did occupy the unit. I also find the tenants did not pay rent for the month of May 2012.

Despite the dispute resolution decision of May 15, 2012 that found the tenancy ended on March 3, 2012 I find that both parties continued up to the hearing date for that decision to act as though they were in a tenancy. I also find, based on the acts of both parties, that they anticipated, the tenancy would continue after repairs had been made. For example, the tenants continued to pay hydro costs for the unit and the landlord issued a 1 Month Notice to End Tenancy for Cause with an effective date of May 31, 2012.

As such, until the time of the proclamation that the tenancy ended on March 3, 2012 both parties believed they had rights and obligations under the tenancy agreement. As such, I find in order for the tenants to responsible for the payment of rent for March, April and May 2012, the landlord had an obligation under Section 32 to provide and maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law made it suitable for occupation.

From the emails provided into evidence by the tenants and in the absence of any evidentiary support from the landlord to contradict the tenants' evidence, I find the landlord has failed to establish that the rental unit was suitable for occupation from the date the insurance adjusters determined there *may* be asbestos in the unit until the adjusters had confirmed there were no health hazards.

Despite the findings of the May 15, 2012 decision that state: "While it may be that there was a fault in the pipe that caused the flood I find it is reasonable and probable to conclude that if addressed right away the damage may not have been so severe." I find the landlord has provided no evidence to this hearing as to the cause of the flood or that the tenants' breach of duty of care as noted in the previous decision had any impact on the severity of damage or habitability of the rental unit.

Further, I accept the tenants' position that the landlord has failed to take all reasonable steps to mitigate any loss of rent suffered by failing to include his claim through his insurance coverage.

For these reasons I find the landlord has established that he has suffered a loss and the value of that loss but has failed to provide sufficient evidence to establish, in regard to rent for March and April, that the loss results from a violation of the *Act*, regulation or tenancy agreement on the part of the tenants or that he took all reasonable steps to mitigate his losses.

However, in relation to the landlord's claim for rent for the month of May, 2012, I find there is no evidence before me that the rental unit was not habitable for this period or did not comply with the health, safety, and housing standards required by law, despite full repairs not yet being completed, and as such, I find the tenants had a responsibility to pay rent for the month of May on May 1, 2012 (prior to the May 15, 2012 decision).

As both parties have confirmed in their testimony that rent was not paid for the month of May 2012, I find the tenants have failed to comply with Section 26. I also find, based on the balance of probabilities, that it would be unlikely the landlord would be entitled to lost rent from his insurance coverage if the unit was habitable, therefore there would be no requirement to have the landlord pursue rent for May through his insurance to mitigate any loss.

Conclusion

Based on the above, I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$825.00** comprised of \$800.00 rent owed and \$25.00 of the \$50.00 fee paid by the landlord for this application, as he was only partially successful in his claim.

I order the landlord may deduct the security deposit and interest held in the amount of \$400.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$425.00**.

This order must be served on the tenants. If the tenants fail 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, 2012.

Residential Tenancy Branch