Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: MNDC FF
For the landlords: MNSD MNDC FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the "*Act*").

The tenants applied for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to recover the filing fee, and "other" with details relating to their claim for money owed or compensation under the *Act.*

The landlords applied to keep all or part of the security deposit, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The parties confirmed that they received the evidence packages from the other party and had the opportunity to review the evidence. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

During the hearing, the landlords reduced their monetary claim from $269.00 to $264.32, which represents their claim for carpet cleaning as the original quote received was higher than the actual cost and subsequent invoice provided as evidence prior to the hearing. The landlords were permitted to reduce their monetary claim to $264.32 as the amendment did not prejudice the other party.

Issues to be Decided

- Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlords be authorized to retain all or part of the security deposit?
- Should either party recover the filing fee?

Background and Evidence

The parties agreed that a month to month tenancy agreement began on July 1, 2011. Monthly rent in the amount of $875.00 was due on the first day of each month. The tenants provided a security deposit of $380.00 at the start of the tenancy.

The parties agree that the rental unit was put up for sale by the landlords and that showings began to occur as early as June 4, 2012, with an initial appointment for the purposes of taking photos of the rental unit by the realtor for the listing on May 29, 2012. Due to the number of showings, the tenants stated that they proposed a mutual agreement to end the tenancy effective July 1, 2012. The tenants stated that they vacated the rental unit a few days early, however, the mutually agreed upon end of the tenancy date was July 1, 2012.

The landlords submitted their application for dispute resolution on July 11, 2012, to claim towards the security deposit and for a monetary order for the amended amount of $264.32 for carpet cleaning, and submitted a receipt for carpet cleaning performed on August 21, 2012. The landlords testified that the carpets had been originally cleaned prior to the tenants moving into the rental unit. The tenants confirmed that the carpets had been cleaned before they moved in. Both parties confirm that no formal move-in or move-out condition inspection reports were completed.

The tenants stated during the hearing that they called 5 carpet cleaning companies, other than the company used by the landlords and all 5 companies quoted between $100.00 and $150.00 to clean the carpets, and therefore, were of the opinion that the amount being claimed by the landlords was excessive. The tenants did not submit the quotes from the other companies as evidence. The tenants did not provide evidence that they had the carpets cleaned before they vacated the rental unit.

The tenants are seeking a monetary order in the amount of $1,312.50 consisting of one and a half month's rent representing compensation for the loss of quiet enjoyment and

lack of professionalism shown by the landlords for half of May 2012 ($437.50) and all of June 2012 ($875.00) for a total of $1,312.50. The tenants describe having suffered from “extreme mental and emotion distress”.

Both parties disputed portions of the other parties’ testimony. The tenants indicate in their documentary evidence that a realtor entered their rental unit on May 29, 2012 for the purposes of taking photos as the property was being listed for sale. The tenants stated that they had the rental unit very clean for the photos.

Starting June 3, 2012 the tenants affirmed that they began to receive text message requests from the landlords arranging times for showings. The tenants provided the following dates and times for showings via text message where there was no formal 24 hour prior written notice in provided in accordance with the *Act:*

1. June 4, 2012 at 2:30 p.m.
2. June 5, 2012 at 4:00 p.m., 4:30 p.m., and 5:00 p.m. (the landlords stated that this was a one hour timeframe from 4:00 p.m.to 5:00 p.m.)
3. June 6, 2012 at 3:30 p.m.
4. June 8, 2012 at 11:10 a.m. to 12:10 p.m.
5. June 12, 2012 at 4:15 p.m.
6. June 13, 2012 at 3:00 p.m.
7. June 14, 2012 at 2:00 p.m. (the day the female tenant went into labour)
8. June 17, 2012 at 10:00 a.m. (the tenants declined this request and requested written notice under the *Act).*

From June 17, 2012 until the end of the tenancy on July 1, 2012, the tenants claim that the following showings occurred with proper written notice under the *Act:*

Showings 1 and 2	June 18, 2012 – 2 showings
Showings 3 and 4	June 19, 2012 – 2 showings
Showings 5 and 6	June 21, 2012 – 2 showings
Showings 7 and 8	June 22, 2012 – 2 showings
Showings 9 and 10	June 23, 2012 – 2 showings
Showings 11 and 12	June 24, 2012 – 2 showings
Showing 13	June 25, 2012 – 1 showing
Showing 14	June 26, 2012 – 1 showing
Showing 15	June 27, 2012 – 1 showing
Showings 16 and 17	June 28, 2012 – 2 showings
Showing 18	June 29, 2012 – 1 showing

The tenants stated that due to the ongoing showings the first 8 or so of which they affirm were without formal 24 hour advance written notice under the *Act*, impacted them and was aggravated by the fact that the female tenant was over seven months pregnant and eventually went into labour during this time period. The tenants' testified that they did not enjoy their rental unit at all due to their lack of quiet enjoyment and due to the unprofessional nature of the landlords. The tenants also testified that the tenant was on bed rest during a portion of June 2012, which impacted their ability to prepare for showings.

The landlords stated that everything was going well until June 17, 2012, when they were asked by the tenants to provide 24 hours advance written notice before showings. Until June 17, 2012 the landlords stated several times during the hearing, that the tenants seemed to be okay with notice via text messaging. Both parties submitted many text messages as documentary evidence prior to the hearing. The tenants disputed this testimony by stating that they were not okay with it, which is why they finally insisted on June 17, 2012 to permit further showings without advance notice 24 hours in writing before future showings.

The tenants stated that they feel the amount of showings was unreasonable and that they are entitled to compensation due to their lack of quiet enjoyment for half of May 2012, and all of June 2012. Both parties testified that they present proposals for what each party felt was a reasonable showing schedule, however neither party agreed with the other parties' proposal.

The parties agree that from June 18, 2012 to June 29, 2012 inclusive, the landlords provided 24 hour written notice, that there were minor clerical errors on two of the notices regarding the times of the showings, and that not all showings occurred, as some were cancelled. The tenants stated that would prepare for the showings whether they actually took place or not.

The parties submitted documentary evidence including text messages, descriptions of events, written notices, realty information, mutual agreement to end tenancy, photocopy of photos, and receipts.

Analysis

Based on the oral testimony and documentary evidence before me, and on the balance of probabilities, I find the following.

The tenants provided a photocopy of two photos, however, the photos were too dark to see what the tenants were describing in the photos. As a result, the photocopy of the photos held little weight in my Decision.

Landlords' claim for carpet cleaning – By not completing either a formal move-in or move-out inspection report, the landlords extinguished their right to claim towards the security deposit.

The landlords have, however, claimed for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement for the cost of the carpet cleaning. The tenants occupied the rental unit for one year. According to Residential Policy Guideline 1, tenants are generally responsible for steam cleaning or shampooing the carpets after a tenancy of one year. The tenants stated that the claim made by the landlords was excessive compared to the other companies they contacted. **I find** that the landlords are entitled to compensation to cover the cost of carpet cleaning in the amount of the receipt provided for a total of **$264.32.** The tenants had the opportunity to use a company that would charge less before they vacated the rental unit, however did not do so. By vacating the rental unit without cleaning the carpets, the landlords are entitled to use their choice of company to professionally clean the carpets, as long as the costs are reasonable. The tenants did not supply contrary quotes as documentary evidence to prove this was an unreasonable amount.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the landlords. Once that has been established, the

tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenants did everything possible to minimize the damage or losses that were incurred.

Tenants' claim for compensation due to landlords' alleged lack of professionalism – The *Act* does not provide for a remedy for the landlords acting or alleged to have acted in an unprofessional way. The tenants did not refer to specific examples that would constitute a breach of the *Act,* regulation or tenancy agreement, other than the second portion of their claim which is described below. As a result, **I dismiss** this portion of their claim due to insufficient evidence without leave to reapply.

Tenant's claim for compensation due to lack of written notice and unreasonable number of showings – The landlords disputed one of the dates provided by the tenants by clarifying that instead of three separate showings on June 5, 2012, it was one 1-hour time period so should only be counted as one showing versus three. The other dates were not disputed by the landlords during the hearing, other than the male landlord stating that there were not that many showings. The total number of showings for the month of June were added up during the hearing for the benefit of both parties, and the landlords did not dispute that number. The number provided by the tenants was 28 and 26 was the total described to both parties during the hearing for June 2012. The tenants stated in their documentary evidence that the landlords caused them "extreme mental and emotion distress" but did not provide specific details other than being hysterical, crying, going into labour and the bed rest required during that time period.

Section 29 of the *Act*, states:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The landlords confirmed that showings prior to June 18, 2012 were arranged via text message and were not provided in writing at least 24 hours prior to each showing as required by section 29 of the *Act.* As a result, **I find** the landlords breached the *Act* between the first showing on June 4, 2012 and the showing on June 17, 2012 by failing to provide at least 24 hours written notice prior to the showings in accordance with section 29 of the *Act.*

According to the undisputed testimony of the tenants there were 18 showings scheduled between June 18, 2012 and June 29, 2012. Both parties agree that not all showings occurred, however, notice was provided for the showings and in two instances, the landlords made minor clerical errors on the times provided in the notices. Section 29 of the *Act*, also requires that the purpose of the entry into the rental unit must be reasonable. **I find**, that the number of entries between June 18, 2012 and June 29, 2012 was not reasonable. I would expect that a reasonable amount of showings would be one or two per week, and one or two on the weekend, however, in the matter before me, the landlords provided notice between June 18 to June 29, 2012 of a total of 18 showings in 12 days, with many of the days being scheduled for two showings in one day.

The tenants claim is for $1,312.50 representing half of May 2012 rent, and all of June 2012 rent for lack of quiet enjoyment and lack of professionalism shown by the landlords, the latter portion of which has been addressed above. **I find** that the tenants did suffer a loss of quiet enjoyment for which they are entitled to compensation under the *Act.* I do not accept the tenants testimony that they did not enjoy the rental unit at all during the month of June 2012 and half of May 2012, however, **I find** that other than the inconvenience of arranging for the showings without proper notice, and the subsequent showings with proper notice, the tenants had access to and were able to enjoy the rental unit outside of the times scheduled for showings.

Residential Tenancy Policy Guidelines 6 provides some examples of possible breaches of the right to quiet enjoyment including:

- Entering the rental premises frequently, or without notice or permission;
- Unreasonable and ongoing noise;
- Persecution and intimidation;
- Refusing the tenant access to parts of the rental premises;
- Preventing the tenant from having guests without cause;
- Intentionally removing or restricting services, or failing to pay bills so that services are cut off;
- Forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,
- Allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

As a result of the above, **I find** that the tenants' claim is on the low end in terms of degree of potential impact on the tenants with respect to the types of breaches described above. The tenants have established that the landlords requested to show the rental unit with and without notice and for an unreasonable amount of times in the month of June 2012. The tenants have not, however, established other breaches as described above. As a result, **I find** a reasonable amount of compensation to be one-third (33.33%) of the monthly rent for June 2012. I **do not** find that compensation for May 2012 has been established. The rent paid by the tenants in June 2012 was $875.00. One-third of $875.00 is **$291.64. I find** the tenants have established a monetary claim in the amount of **$291.64,** which will be added to their initial security deposit of **$380.00,** and offset against the amount awarded above to the landlords for carpet cleaning as follows:

Original security deposit (no interest accrued) held by landlords	$380.00
Compensation for tenants' loss of quiet enjoyment	$291.64
Subtotal	**$671.64**
Less cost of carpet cleaning awarded to landlords	($264.32)
TOTAL BALANCE OWING TO THE TENANTS	**$407.32**

I dismiss the tenants' claim for "extreme mental and emotion distress" due to insufficient evidence.

As both parties were partially successful in their applications, I grant the parties the recovery of the $50.00 filing fee, however, as both amounts offset each other and result in a zero balance, it is not included.

Conclusion

I grant the tenants a monetary order pursuant to section 67 of the *Act* in the amount of **$407.32**. This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 14, 2012

Residential Tenancy Branch