



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The tenants applied for a monetary order for money owed of compensation for damage or loss under the Act, regulation or tenancy agreement, for return of all or part of the pet damage deposit and security deposit, and to recover the filing fee.

The tenants and the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party.

Preliminary and Procedural Matters

The first hearing on September 11, 2012 was adjourned to provide the parties the opportunity to serve evidence on the other party. At the reconvened hearing on October 18, 2012, the parties agreed that they received evidence from the other party and had the opportunity to review that evidence prior to the reconvened hearing. I find the parties were served in accordance with the Act.

At the start of the reconvened hearing, the tenants requested to withdraw \$2,400.00 of their monetary claim for double the security deposit and pet damage deposits, as those had already been decided upon in a prior decision dated July 17, 2012. The file number of that decision is referenced on the front page of this decision for ease of reference. The tenants' initial monetary claim was for \$7,200.00, which is reduced to \$4,800.00 after the tenants' withdrawal of \$2,400.00 as described above.

Issue to be Decided

- Are the tenants entitled to a monetary order under the Act?

Background and Evidence

A fixed term tenancy began on January 1, 2010 and reverted to a month to month tenancy after January 31, 2011. Monthly rent in the amount of \$1,625.00 was due on the first date of each month. By March 2010, the parties agree that rent was reduced to \$1,600.00 per month by mutual agreement. The tenants paid a security deposit of \$800.00 and a pet damage deposit of \$400.00, which have already been dealt with by a Dispute Resolution Officer in a decision dated July 17, 2012. The parties agree that the tenancy ended on May 1, 2012, when the tenants vacated the rental unit.

The tenant's have applied for a monetary claim in the amount of \$4,800.00, however, they did not provide details on the breakdown of that amount. The tenants did not submit a monetary worksheet with their application.

During the hearing, the tenants provided oral testimony that their claim for \$4,800.00 was comprised of the following:

Aggravated damages – one month's rent equivalent	\$1,600.00
Breach of contract by landlord – one month's rent equivalent	\$1,600.00
TOTAL	\$4,800.00

Claim for Aggravated Damages

The tenants testified that they are seeking \$1,600.00 as compensation for grief, humiliation and general harassment caused by the landlord, including an allegation that the landlord called the mother of a tenant an inappropriate name. The tenants referenced a police file, however, did not submit documents or provide witness statements in support of their claim.

The tenants stated that the landlord attended their yard at 8:30 a.m. one morning and that the landlord was snooping around and puttering around in their yard. The landlord disputes the tenants' testimony and stated that she only attended the rental unit when there was a specific reason to such as maintaining the yard, or serving a document for example. The landlord stated that she is very busy with her own activities.

Claim for Loss of Quiet Enjoyment

The tenants testified that they are seeking \$1,600.00 as compensation for loss of quiet enjoyment due to the actions of the landlord. The tenants stated that the landlord

disturbed them by attending at the rental unit and provided a document with multiple dates on the document. The document reads:

“...We have notes from her dated Feb. 28 2010; Apr. 29 and 30 (x2), 2010; May 1, 2010; Aug. 2, 2010, Feb. 15, 2011; Apr. 6, 2011; May 20, 2011; June 2, 2011; Jul. 18, 2011; Aug. 25, 2011; Sept. 27, 2011; Nov. 30, 2011; Dec. 5, 2011; Dec. 7, 2011; Apr. 12, 16, 18, 20, 21, 26, 28, 2012. Each of these were times that she knocked on the door and disturbed us, some with cause, some without.”

[reproduced as written]

The landlord disputed the tenants' testimony and the document reproduced above by denying that she attended the tenants' door as claimed by the tenants. The landlord testified that there is an oil tank/storage room at the rental unit which she needs access to from time to time.

The tenants submitted their calendar as evidence and that each date marked with a “V” on that calendar was a date when the landlord attended the rental unit. The tenants were unable to provide details of each of the alleged visits as indicated on their calendar. The landlord disputed that she attended the rental unit on the occasions being claimed by the tenants.

The landlord referred to a letter from the tenants dated March 31, 2012 where the tenants state “...We have enjoyed living in this property and are regretful that circumstances could not allow us to stay longer...”. The female tenant stated that that they wrote that in an attempt to get their security deposit back but did admit that they enjoyed the rental unit but not dealing with the landlord.

Claim for Breach of Contract

The tenants testified that they are seeking \$1,600.00 due to an alleged breach of contract by the landlord, however, this was not mentioned in the initial application details of dispute completed by the tenants.

The tenants stated that this portion of their claim relates to the landlord allegedly not completing a repair to a water leak quickly enough. The tenants testified that the landlord did not repair the leak for a week and a half. The landlord disputed the tenants' testimony. The landlord testified that she called her friend who could fix a water leak the same day she was advised by the tenants. The parties agreed that the tenants were compensated \$200.00 due to the water leak. The tenants did not provide any witnesses,

witness statements or other corroborating evidence to support their claim regarding the alleged delay in the landlord repairing the water leak.

Analysis

Based on the documentary evidence and the landlord's oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

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 landlord. 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.

Claim for aggravated damages, loss of quiet enjoyment and breach of contract –

The tenants have claimed \$4,800.00 as compensation for aggravated damages, loss of quiet enjoyment and breach of contract. The burden of proof is on the tenants to prove their claim. The tenants did not call witnesses, provide witness statements or other documents that they referred to during the hearing, such as a police documents. The landlord disputed all of the allegations made by the tenants and also disputed the tenants' testimony during the hearing. The tenants also indicate in their own evidence, "Each of these were times that she knocked on the door and disturbed us, some with cause, some without." **I find** that the tenants evidence to be vague regarding when the landlord allegedly attending the rental unit with cause and without cause. By not separating their evidence clearly into the dates and providing details of each time that

the landlord attended the rental unit without cause, it is impossible to determine that their quiet enjoyment was impacted and to what extent as the landlord is just as likely to have attended when requested by the tenants to do so, such as the time when the tenants reported a water leak.

I find that the tenants' oral testimony was inconsistent with their documentary evidence. During the hearing, the tenants stated that their water leak was not repaired for a week and a half. In their documentary evidence, they claim the landlord "failed to act when we notified her of a burst pipe in the kitchen sink, leaving us without running water for nearly three weeks."

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 fails to prove their claim and the claims fails. I would have expected the tenants to have set out their claim in detail in their application and provide witnesses, witness statements, or other corroborating evidence to support their monetary claim, which they failed to do. In addition, the tenants confirmed they wrote the landlord a letter stating that they enjoyed living in the rental unit, which is inconsistent with their monetary claim for aggravated damages, loss of quiet enjoyment and breach of contract.

Given the above, **I find** the tenants have failed to prove that the landlord breached the *Act*, regulation or tenancy agreement resulting in damage or loss to the tenants. Therefore, **I dismiss** the tenant's application in full, without leave to reapply, due to insufficient evidence.

As the tenant's application did not have merit, I **do not** grant the tenants the recovery of the filing fee.

Conclusion

The tenant's application is dismissed in full without leave to reapply.

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: October 24, 2012

Residential Tenancy Branch