Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for the cost of emergency repairs - Section 67;
2. A Monetary Order for compensation for loss – Section 67;
3. An Order for the return of the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matters

The Landlord states that no evidence has been received from the Tenants. The Landlord does not seek an adjournment of the hearing. The Tenants state that one evidence packages from November 2012 was left on the Landlord's front doorstep and that a second package from November 2012 was sent to the Landlord by registered mail. The Tenants are unable to provide a tracking number for this registered mail delivery. The Tenants state that the remainder of the evidence was sent the day before the Hearing.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure (the "Rules") provide that evidence must be received by the responding party at least five days in advance of the Hearing. Based on the Tenants' evidence that other than the November 2012 evidence packages, the evidence was sent to the Landlord the day before the Hearing, I find that the evidence was not received in accordance with the Rules. Given the

prejudice to the Landlord, I decline to consider these documents. The Tenants may provide oral evidence in relation to the matters contained in the evidence package.

Section 88 of the Act provides that documents, such as evidence packages, must be served by a number of methods, including by attaching a copy to a conspicuous place at the residence of the receiving party. Based on the evidence of both Tenants that the November 7, 2012 evidence was left at the Landlord's door step, I am satisfied that the Tenants have met the requirements for service of that evidence. Given the Tenants inability to provide a tracking number for the service of the November 2, 2012 evidence package, I find that the Tenants have not substantiated on balance of probabilities that service was effective and I decline to consider this evidence.

The Landlord states that the tenancy ended on September 30, 2010 and that the Tenants are out of time to make their claim. The Landlord states that the Tenants only paid rent for September 2010. The Tenants state that they moved out of the unit on October 31, 2010 and that no rent was paid for this last month as the Tenants moved out of the unit pursuant to a two month notice to end tenancy with the last month of rent not payable.

Section 60 of the Act provides that an application for dispute resolution must be made within two years of the date that the tenancy ends. Given the evidence of the Notice, I find on a balance of probabilities that the Tenants remained in the unit until October 31, 2010. As the application was made on October 31, 2012 I find that the application has been made within the time limit under the Act.

Issue(s) to be Decided

Are the Tenants entitled to the monetary amounts claimed?

Are the Tenants entitled to recovery of their filing fee?

Background and Evidence

The tenancy started in April 2007. Rent of $600.00 was payable monthly. In November 2010 the Landlord returned the Tenants' security deposit of $300.00 but did not include any interest. The Tenants claim interest payable on their security deposit.

The Tenants state that the fridge stopped working in April 2008 and that despite repeated requests the Landlord did not replace the fridge so the Tenants purchased another one and sent the bill of $200.00 to the Landlord. The Landlord states that the Landlord did reimburse the Tenants for the cost of this fridge. The Tenant claims $200.00.

The Tenants state that the unit was not fit to live in and that in August 2010 they paid for a structural inspection on the unit. The Tenants state that this inspection was necessary for the Tenants to prove that the unit was not liveable and claim the cost of the inspection in the amount of $274.40.

The Tenants state that the unit had mold, water damage and dangerous fireplaces. The Tenants state that an integrity company was hired to prove that the unit was unfit. The Tenants state that they were unable to find another tenancy and had no choice but to live in the unit. The Tenant claims $5,000.00 for having to live in the unit. The Landlord denies that the unit was unfit and questions why the Tenants took so long to make a claim if it was so bad. The Tenants state that it took two years to collect the evidence from neighbours and the integrity company. The Landlord questions why it took so long to gather this evidence.

The Tenants state that on May 7, 2007, one of the Tenants slipped on a puddle of water caused by a leak in the unit and struck her head on a nail protruding from a wall. The Tenant states that stitches were required. The Tenant states that the Landlord was negligent and failed to make repairs to the leak causing the Tenant's injury. The Tenant claims $10,000.00 for this injury and states this amount was arrived at by picking a number. The Landlord disputes that the Tenant was injured as a result of anything

done or not done by the Landlord and argues that the incident could have occurred anywhere.

The Tenants state that one of the Tenants fell off a ladder provided by the Landlord on a job that the Tenant was doing for the Landlord. The Tenant states that this job was not in relation to the unit. The Tenant claims $200.00.

Analysis

Section 4 of the Residential Tenancy Regulation sets out the interest payable on the return of the security deposit. According to the calculations set out therein, the interest payable on the Tenants security deposit would have been $7.94. Accepting the undisputed evidence that the Tenants were not provided reimbursement of this interest, I find that the Tenants have established an entitlement to **$7.94.**

With the exception of recovery of the filing fee, the Act does not provide any authority for the reimbursement of dispute costs. As the Tenants are seeking reimbursement for the costs of the structural inspection evidence to support their claim, I find that this cost is a dispute cost and nothing under the Act entitles the Tenant to its recovery. I therefore dismiss this claim.

Section 2 of the Act provides that the Act applies only to tenancy agreements, rental units and residential property. The Tenants claim for an injury from falling off a ladder while working for the Landlord is not an injury arising within the context of the tenancy. This claim cannot therefore be determined under the Act and I dismiss it.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Although the Tenants state that they were unable to find another rental, no evidence was provided to

support this assertion and considering that the Tenants also did not make an application to seek repairs or other compensation during the tenancy, I find that the Tenants have not substantiated that reasonable efforts were taken to mitigate any looses that may have occurred during the tenancy. As a result, I dismiss this claim.

Accepting the credible evidence provided by the Tenants in relation to the failure of the Landlord to repay them for the cost of replacing the fridge and considering that the Landlord did not provide any evidence of payment for that fridge, I find that the Tenants have substantiated on a balance of probabilities an entitlement to **$200.00**.

Although Section 60 allows an application for dispute resolution to be made within 2 years of the end of the tenancy, this section of the Act does not extend the two year limitation for an injury claim as provided under the general application of the Limitation Act. As the Tenant's injury occurred on May 7, 2007, I find that more than two years has passed since the injury and that the Tenant may no longer make a claim for compensation for this injury. I dismiss the claim.

The Tenant is entitled to **$207.94**. As the Tenant has been substantially unsuccessful with its application, I decline to make an award for the recovery of the filing fee.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **$207.94**. If necessary, this order may be filed in the Small Claims Court and 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: February 15, 2013

Residential Tenancy Branch