



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, MNDC, RR, OPR, MND, MNR, MNSD, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The tenants' amended application of January 18, 2013 was for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another.

At the commencement of the hearing, the parties agreed that the tenants vacated the rental premises by January 30, 2013. As this tenancy has ended, both parties withdrew their applications relating to the landlord's 10 Day Notice. These portions of their applications are withdrawn.

Preliminary Issues – Service of Documents

The female tenant (the tenant) testified that the tenants gave their oral notice to end this tenancy by January 31, 2013 to the landlord's caretaker (the caretaker) on December

30, 2012. She confirmed that the tenants did not provide any written notice to end this tenancy to the landlord or the caretaker. The female tenant confirmed that the tenants received the landlord's 10 Day Notice sent by the landlord by mail on January 5, 2013, requiring the tenants to vacate the rental unit by January 21, 2013.

At the hearing, I advised the parties that the *Act* requires that a notice to end tenancy must be provided in writing. The *Act* also requires a written notice to end a tenancy by a landlord to be issued on the approved Residential Tenancy Branch (RTB) forms. As the tenants did not provide their notice to end this tenancy in writing, I find that their oral notice of December 30, 2012 was of no effect. I find that the tenants were served with the landlord's 10 Day Notice and that this tenancy ended on the basis of that 10 Day Notice.

The landlord confirmed that she received a copy of the tenants' amended dispute resolution hearing package sent by the female tenant by mail on January 18, 2013. I am satisfied that the landlord has been served with this package.

The landlord testified that she sent a copy of the landlord's dispute resolution hearing package by registered mail on January 17, 2013. This package included the original RTB Notice of Hearing scheduled for April 8, 2013. The tenant confirmed that she received this hearing package. At the landlord's request, the RTB agreed to reschedule this hearing from April 8, 2013 to February 13, 2013 and sent out notices of this rescheduling. The tenant confirmed that the tenants understood that the matters originally scheduled to be heard on April 8, 2013 were to be considered at the February 13, 2013. She testified that the tenants were prepared to address the issues raised in both applications at the February 13, 2013 hearing. I am satisfied that the tenants received the landlord's hearing package and were prepared to respond to the landlord's application at this hearing.

The tenant testified that the landlord had not sent the tenants a copy of the landlord's written evidence package. The RTB received this evidence package on February 5, 2013. The landlord testified that she did not send the tenants a copy of this evidence package because the tenants had vacated the premises without leaving the landlord a forwarding address. The landlord realized that the tenants were no longer living in the rental unit and decided not to send a copy of the landlord's evidence package to the dispute address, the mailing address cited in the tenants' application for dispute resolution. The tenants provided their updated mailing address during the hearing.

Although I considered adjourning this matter to allow for the delivery of the landlord's evidence package to the tenants, I decided that the landlord had chosen not to send the

tenants a copy of her written evidence package to the address identified by the tenants as their mailing address for the purposes of the tenants' application. The landlord would not have known whether the tenants had made arrangements with Canada Post to redirect their mail. In deciding to proceed with this hearing without the landlord's written evidence, I confirmed with the tenant that the most relevant of the information provided in the landlord's evidence package (e.g., the 10 Day Notice; the Residential Tenancy Agreement) were already in the possession of the tenants. The tenant did not dispute the landlord's assertion that the tenants had paid no portion of their January or February 2013 rent. Most of the remainder of the landlord's written evidence package involved estimates, but few actual receipts for which the landlord would be entitled to a monetary award. For these reasons, I have not considered the landlord's written evidence package as the landlord did not send this package to the tenants.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Are the tenants entitled to a reduction in their rent for the landlord's failure to provide services and facilities that were agreed upon but not provided during this tenancy? Are the tenants entitled to a monetary award for losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This periodic tenancy for one rental unit in the landlord's six-unit rental property commenced on September 1, 2012. Monthly rent was set at \$630.00, payable in advance on the first of each month. The tenants were responsible for paying for their heat and hydro. The landlord continues to hold the tenants' \$315.00 security deposit on August 29, 2012.

Although the landlord testified that her representative conducted a joint move-in condition inspection with the tenants in late August 2012, before they took possession of the rental unit, the landlord confirmed that no written condition inspection report was created as a result of that inspection. She maintained that no joint move-out condition inspection was possible as the tenants abandoned the rental unit, leaving their keys inside the rental unit. While the landlord (or her caretaker) conducted an inspection of the premises after the tenants left, no move-out condition inspection report was created by the landlord nor was any provided to the tenants.

The tenants reduced their original application for a monetary award of \$315.00 to \$150.00 in the tenants' amended application. The tenant testified that this amount was to compensate the tenants for having to live in premises that they discovered to be mouldy and leaking on December 29, 2012, and for damage to some of their belongings caused by this mould. At the hearing, she also noted that the tenants had not applied for a monetary award for damage to a leather couch that they did not notice until after they had applied for dispute resolution. The tenant testified that there was mould in three locations. She said that she cleaned off some of the mould in a bedroom and on a window sill, but was unable to resolve the black mould problems, particularly in a closet, where there was a puddle of water and mouldy and cracked drywall. The male tenant testified that there was also a crack in the foundation near this section of the rental property. He testified that another tenant in this building experienced similar problems with mould. The tenant said that she had many photos of these conditions, but did not submit any of these into evidence. She said that she understood that she could submit these photographs after this hearing. I explained that submissions need to be provided in advance of the dispute resolution hearing and copied to the other party.

The landlord's application for a monetary award of \$2,650.00 included the following items:

Item	Amount
Unpaid January 2013 Rent	\$630.00
Loss of Rent for February 2013	630.00
Unpaid Utilities	240.00
Damage to Drywall and Repainting	650.00
Estimate of Other Unassessed Damage	500.00
Total Monetary Award Requested	\$2,650.00

At the hearing, the landlord reduced the amount of her requested monetary award by \$240.00, as she agreed that the tenants were responsible for their own heat and hydro payments.

The landlord described this rental property as a building constructed in or about 1968 that had suffered some years of neglect before she purchased it. She said that due to the age of the building, tenants have to open windows in their bathroom when they use the bath or shower. She conceded that the building was "not perfect" but was clean. She testified that she and her caretaker endeavour to conduct repairs and upgrades as these become necessary. She gave undisputed testimony that her caretaker took immediate action to have the tenants concerns about mould inspected and assessed by a remediation and restoration specialist the day after the tenants raised this issue with

him. She noted that some of the mould could not be viewed by the specialist because the tenants had already taken action to clean those areas of mould. She testified that the specialist attributed the problem to a lack of ventilation, primarily caused by the tenants' lack of care. She obtained an expensive quote to remedy the mould problem. She said that this was a cost that she could not afford.

The landlord testified that she waited until the tenants vacated the premises to commence the process of removing drywall and repainting. She testified that she has not completed this process, but is well on the way to doing so. She said that she has not yet advertised the availability of this suite for rent.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. As there is undisputed evidence that the tenants did not pay anything towards their January 2013 rent, I find that the landlord is entitled to a monetary award of \$630.00 for unpaid rent for that month.

Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for February 2013, the tenants would have needed to provide their notice to end this tenancy before January 1, 2013. Section 52 of the *Act* requires that a tenant provide this notice in writing.

I find that the tenants did not comply with the provisions of section 52 of the *Act* that a notice to end tenancy must be in writing. As such, the landlord is entitled to compensation for losses incurred for February 2013 as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenants did not pay any rent for February 2013. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, the landlord testified that she waited until the tenants vacated the rental unit to undertake the restoration and repair work that was ongoing at the time of this hearing. The landlord said that the process of replacing items in this rental property is undertaken as the need arises. She did not dispute the tenants' claims that there "may have been a crack in the wall of the closet" and that repairs were necessary before she could re-rent these premises. Although the landlord applied for a

monetary award for damage, repairs and repainting, the landlord conceded that the extent of the repairs required were of such magnitude that she would not ask tenants for full reimbursement of these types of costs. The landlord also testified that she has chosen to repair this rental unit without retaining the restoration and remediation specialist who submitted the estimate for this work. Two weeks after the landlord commenced these repairs and over a month after the landlord issued the 10 Day Notice, the landlord has still not advertised the availability of the rental unit to seek new tenants.

Under these circumstances, I find that the landlord has not discharged the responsibility under section 7(2) of the *Act* to attempt to mitigate the tenants' exposure to the landlord's rental losses for February 2013. Rather, I find that the landlord has chosen to wait until this tenancy ended to undertake necessary repairs to restore this rental unit to a condition whereby it can be rented. I find that this process is in line with the method that the landlord described in refurbishing this previously neglected rental building as repairs become necessary. For these reasons, I dismiss the landlord's claim for rental losses for February 2013 without leave to reapply, as I am not satisfied that the landlord has taken adequate measures to discharge the duty under section 7(2) of the *Act* to mitigate the tenants' losses for this item.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenants caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. In this case, the landlord did not create inspection reports for either the joint move-in condition inspection or for the move-out condition inspection conducted without the tenants.

While the absence of condition inspection reports does not preclude a landlord from obtaining a monetary award for damage arising out of a tenancy, the landlord faces a significant hurdle in demonstrating changes during the course of a tenancy for which the tenants are responsible. In this case, no before and after photographs were submitted, nor were any witnesses called by the landlord. For her part, the landlord conceded that this rental building was old and neglected and required ongoing work that she has commenced over time.

Based on the evidence of the parties, I am not satisfied that the landlord has demonstrated to the extent required that the tenants are to be held responsible for the repairs that the landlord has been undertaking since this tenancy ended. In addition, the landlord did not enter into written evidence receipts that I could consider for the purposes of this hearing to demonstrate that she has suffered actual losses arising out of damage caused by the tenants. The estimates she provided at the time of her application were not actual expenses she has incurred. She confirmed that she has undertaken a different range of solutions than those identified by the specialist who she retained to conduct an inspection of the rental unit after the tenants noticed the mould and moisture problems. For these reasons, I dismiss the landlord's application for a monetary award for damage and losses resulting from this tenancy without leave to reapply.

Turning to the tenants' application, I find that the landlord was not notified of problems with the facilities until December 29, 2012. The landlord immediately retained a specialist to examine the problem and identify solutions. Shortly after the tenants noticed the mould and moisture problem, they advised the landlord's representative of their intention to vacate the premises before February 1, 2013. Without any authorization to do so, they chose to refrain from paying any rent after they noticed the moisture problems. Although the landlord did not act on the specialist's recommendations, I do not find that the landlord acted unreasonably in waiting until this tenancy ended to undertake repairs. Other than their sworn testimony, the tenants provided no other evidence to corroborate their claim that some of their possessions had been damaged by mould. Similarly, they provided no evidence from a health care practitioner that the extent of the mould had impacted their health.

I am not satisfied that the tenants have demonstrated that the landlord failed to address their concerns about mould and moisture. While there may have been mould during a lengthier portion of this tenancy, the tenants did not raise this with the landlord or her representative until the day before the tenants advised the landlord's representative that they intended to vacate this rental unit. Under these circumstances and as the tenants' cleaning of the mould before the landlord's specialist had an opportunity to properly

inspect the premises clearly affected the specialist's ability to assess this situation, I find that the tenants are not entitled to a monetary award for losses or for reduced rent during the course of this tenancy. I dismiss those aspects of their application for dispute resolution separate from those issues related to the 10 Day Notice without leave to reapply.

As the landlord has been partially successful in this application, I allow the landlord to recover her filing fee from the tenants. I also allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award issued in the landlord's favour. No interest is payable over this period.

Conclusion

All portions of both applications relating to the landlord's 10 Day Notice are withdrawn.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent for January 2013 and the filing fee for this application, and to retain the tenants' security deposit:

Item	Amount
Unpaid January 2013 Rent	\$630.00
Less Security Deposit	-315.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$365.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with an **Original Order** as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the remainder of both parties' applications without leave to reapply.

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 14, 2013

Residential Tenancy Branch

