Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MacGregor Realty & Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have requested compensation for damage or loss under the Act; that the landlord complete repairs and emergency repairs, that the landlord provide services or facilities required by law, that the tenants be allowed to reduce the rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord's had an interpreter assist them throughout the hearing. At the point of the hearing when the landlord's made oral submissions, they were each affirmed.

The landlord supplied some evidence to the Residential Tenancy Branch that was not served to the tenants. That evidence was set aside; the landlord was at liberty to provide oral testimony in relation to the excluded evidence.

Toward the conclusion of the hearing it became apparent that the final page of the landlord's evidence was not before me. This page set out sums for rent owed to the landlord. The landlord stated that they have a hearing set in October. The parties attempted to reach a settled agreement during this hearing, but failed to do so.

Issue(s) to be Decided

Are the tenants entitled to compensation for loss of personal property?

Are the tenants entitled to compensation for loss of use of the garage?

Are the tenants entitled to compensation for the loss of use of facilities that were agreed upon but not provided?

Are the tenants entitled to filing fee costs?

Background and Evidence

The tenancy commenced on November 18, 2012; rent is $4,000.00 per month, due on the 1st day of each month. A security deposit in the sum of $2,000.00 was paid.

A move-in condition inspection report was completed and signed by the parties. A copy of the report supplied as evidence did not indicate the need for any repairs to be made at the start of the tenancy.

The agent had not managed this property in the past; it had recently been purchased by new owners.

A copy of the tenancy agreement and addendums were supplied as evidence. A "Pool and Hot Tub Use & Maintenance Addendum" indicated that the tenants must maintain the hot tub and that they could use the pool and hot tub at their sole risk. The tenancy agreement indicated that the pool and chemicals were not included in the rent. The tenancy pool clause was in dispute; the landlord said the tenants were not to use the pool. The tenants submitted that the landlord did not wish to maintain the pool and allowed the tenants to use the pool at their own risk.

The landlord said that the unit had been advertised as $4,500.00 per month, with the pool included. The tenants said that the $4,000.00 monthly rent they pay reflected the fact that the tenants had to assume the pool operational costs.

The tenancy agreement included a "Septic System & Yard Maintenance Addendum" which indicated the tenant's responsibility for routine yard maintenance; the landlord was to complete major projects, such as tree pruning and fence repair.

The tenants have made the following claim:

Loss of personal property	$6,745.00
Loss of use of garage $572.88/month X 8 months	$3,347.28
Loss of use related to the lack of repair $2,500.00/month X $1,500.00/month	12,000.00
TOTAL	$22,092.28

There was no dispute that the 3-bay garage has experienced mold growth; however, the parties disputed when the landlord had been informed of the problem. The tenants maintained that they informed the landlord as early as January, 2013. The landlord said he first became aware of the mold when he and the property owners toured the property on April 19, 2013; the day the home was being power-washed. The tenants provided a copy of the only written communication in relation to mold; a text message sent to the landlord on May 31, 2013, asking about the mold, saying it was bad and now smelled.

The tenants provided 4 pictures of the garage ceiling, which showed the growth of mold, which the tenants said eventually, damaged numerous belongings they had stored on shelves in the garage. The tenants referred to this mold as being toxic and a health threat.

The tenants supplied a hand-written list of personal property and estimates of cost for items they say were damaged by mold and require replacement. The tenants stated that they noticed the mold at the beginning of the tenancy and took steps to move their property to the far side of the garage but by the time they realized how bad the mold was, their personal property stored in the garage was destroyed. The tenants claimed compensation for replacement of items such as infant seats, high-end hockey gear, motocross body armour, helmets, skates and various other sports gear.

There was no dispute that shortly after April 19, 2013 the landlord attempted to have a repairperson commence removal of the affected garage drywall; the tenant confirmed that he told this person to leave as he thought the removal would disturb the mold spores and cause a risk to health. The tenant did not believe the person hired by the landlord was qualified to complete mold removal. The tenant also did not believe the removal of the drywall was taking into consideration possible health risks. The landlord attempted to have the repairperson return to the home, but the repairperson would not keep appointments. Eventually the repairperson shut his business down.

In July 2013 the landlord obtained 2 quotes for repair of the garage; the tenant's obtained 1 estimate, supplied as evidence, dated July 23, 2013. The landlord has not yet made arrangements to have the moldy drywall removed and replaced. The landlord believes that the 3rd bay and part of the 2nd bay of the garage are affected and that the tenants should be able to use the 1 bay that is not affected by the mold. The landlord said the value the tenant's have placed on the garage is excessive and is more likely $100.00 per month.

The July 23, 2013 quote obtained by the tenants indicated a cost of $14,833.00 to remove the mold impacted materials in a bathroom and the garage. The parties agreed that neither has had the mold tested in order to establish possible toxicity levels and the type of mold that is present.

The owner said that the tenants should not have been using the pool as the tenancy agreement prohibited its use. When the tenants filled the pool, the resulting humidity

caused the mold to grow in the garage; forming negligence on the part of the tenants. The tenants disputed this and said that they were allowed to operate the pool; and that it was an important factor in their renting the home. The landlord said the tenants were told to cease using the pool; the tenants said that was not true.

The parties agreed that on May 7, 2013 the landlord had a furnace company replace the blower motor on the ventilation system; which the landlord believed would mitigate the humidity issues. The tenants said the mold has continued to grow.

The tenants submitted that in November or December 2012 they asked the landlord to make repairs:

- The driveway gate was not able to be locked;
- The vacumn system did not work;
- The windows lacked screens;
- A back deck was rotten;
- A walkway had broken tiles;
- The large yard was to have been maintained in the spring; and
- The sauna did not work.

The tenants supplied copies of several text messages sent to the landlord. On January 22nd and 29th, 2013 they asked the landlord to repair the vacumn system and gate. A May 31, 2013 the text inquiry was made in relation to the gate, sauna and the mold problem.

The tenants stated that the landlord had been verbally contacted multiple times, from the start of the tenancy, with requests to make repairs. The tenants said that some smaller problems, such as the dishwasher and fridge were repaired, but that the items raised in the application had not been addressed. The tenants submit that the failure of the landlord to make the repairs resulted in a loss of value to the rental unit.

The landlord said that there was no promise at the start of the tenancy that the driveway gate would be repaired. The gate is shared by 2 properties and the neighbours said it had not worked for 6 years. The landlord had agreed he would look into repair, but did not promise that the gate could be repaired.

The landlord stated that when they were at the property on April 19 they took the vacumn apart and cleaned the filter; the unit then worked. The tenants said this did not repair the vacumn, that suction in the home was very poor.

The landlord denied having ever been asked about window screens and said that the only wood deck, which was off the family room, did have some areas that were, aesthetically, not ideal, but that the deck was not rotting.

The landord agreed that a sidewalk tile needs repair and that this will be completed by October 22, 2013.

The landlord said he had told the tenants that in the spring they would have the garden beds weeded, which was completed at the cost of $500.00. The landlord also thanked the tenant for completing some hedge trimming in the spring of 2013; the landlord had rented a trimmer for the tenant. The landlord denied that any further agreement had taken place in relation to the yard and garden maintenance. The tenants submitted that the landlord had agreed to have the grounds of the property maintained in the spring and that gardeners came on only one occasion.

The landlord agreed that the sauna has not worked throughout the tenancy; that it has been examined by a repairperson and the cause of the sauna malfunction has not been established.

The landord questioned why the tenants have not supplied evidence of the cost of items they say were damaged by mold. The landlord also asked why the tenants did not have home insurance to cover the cost of the loss of property they claim was damaged.

Analysis

In a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. Evidence furnished by the applicant must satisfy each component of the test below:

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the respondent, in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the tenants to prove the existence of the damage and loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord. Once that has been established, the tenants must provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the tenants did everything possible to address the situation in order to mitigate the damage or losses that they claim were incurred.

I find that on April 19, 2013 the landlord became aware of the problem of mold in the garage. There was no evidence before me that the tenants made the landlord aware of this problem at any time prior to April 19; despite their assertion that they did. Even if the tenants had contacted the landlord prior to April 19, there was no evidence that the

tenants took any steps to mitigate the loss they have claimed. If mold had been present in the garage as early as the start of the tenancy, then the tenants must provide proof, on the balance of probabilities, that they took steps to address the matter, which they now claim has resulted in a loss of value of the tenancy. I would have expected the tenants to remove their belongings, to have given the landlord written notice of the problems and to then, after a reasonable period of time passed, submit an application requesting repair. Instead, the tenants waited from the beginning of the tenancy in mid-November 2012 until July 30, 2013 to submit their claim. During this period of time the claim the tenants have made could have been mitigated, as required by section 7 of the Act, which provides:

Liability for not complying with this Act or a tenancy agreement

7 *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss

In relation to the claim for loss of personal property, I find, in the absence of any photographic evidence, proof of purchase of the items and estimates for each item obtained through a reputable source, such as a sporting goods store, that this portion of the claim is not verified and is dismissed.

In the absence of any evidence that the tenants reported the mold prior to April 19, 2013, I find, on the balance of probabilities that any use of loss of the garage occurred from April 19, 2013 onward. After April 19, 2013 I find that the landlord did not, in my view, diligently pursue repair of the garage, which I find resulted in a loss of use of that space by the tenants. There was no dispute that from April 19 2013 onward the garage had a mold problem. I find that this formed a breach of section 32 of the Act, which provides:

32 *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

There was no evidence before me establishing that the mold was toxic or a health risk; however, it is not unreasonable that the tenants were concerned, particularly because they have young children.

Therefore, pursuant to section 67 of the Act, I find that the tenants are entitled to compensation from April 19, 2013 to September 19, 2013 inclusive in the sum of $250.00 per month. I have considered the value of the garage, relative to the rest of the home and find that this amount is reasonable. Therefore, the tenants are entitled to a total of $1,250.00, to be deducted from October 2013 rent owed. The balance of the claim for loss of use of the garage is dismissed.

Pursuant to section 32 of the Act, I order the landlord to immediately complete repairs to the garage by following the advice of a professional, licenced remediation company. If repairs are not completed by October 1, 2013; I find, pursuant to section 65 of the Act that the tenants are entitled to rent reduction in the sum of $250.00 for each month or portion of month, commencing October 1, 2013 until the repairs are completed, rendering the garage back to the same state in which it was rented. Therefore, if repairs are not completed by October 2013, the total rent reduction for loss of use of the garage that month will be $1,500.00.

Once repairs are completed to the garage the landlord and tenants may reach a mutual written agreement that the $250.00 rent abatement will cease. In the absence of a written agreement the landlord will be required to submit an application for dispute resolution and obtain an order allowing the abatement to be terminated; based on evidence repair has been completed. If the tenants continue to make a rent reduction after repairs have been completed that deduction may be considered as unpaid rent.

The tenancy agreement and addendums clearly indicated that the tenants were not barred from using the pool; in fact the parties signed an agreement setting out the use of the pool. If the landlord had wished to remove the use of this facility as the result of a ventilation problem, they could issue a proper written notice, in the approved form and reduce the rent by a commensurate amount. Removal of a non-essential service or facility must be completed in accordance with the Act and must be accompanied by a reduction in rent that reflects the value of the removed facility or service.

There was no indication on the move-in inspection report that any repairs were required at the start of the tenancy. Outside of the January 22 and 29 text message requests made for repair to the vacumn and gate, there was an absence of any evidence that the tenants made any written request for repair, in an attempt to mitigate the claim they are now making. The landlord denied having been informed of the need to repair the items that are in dispute.

There was no evidence before me of any agreement that the shared driveway gate would be repaired. If this discussion had occurred at the start of the tenancy, as the tenants say it did, it is reasonable to expect the item to have been notated on the

condition inspection report. In the absence of evidence that an operational driveway gate was agreed to I find that the claim for loss of the gate is dismissed.

There was no evidence that the landlord had been informed of the need for window screens, repair of a rotten back deck or broken tiles. In the absence of evidence of any communication with the landlord and attempt to mitigate the claim made, I find that the claim for compensation for these items is dismissed. There was no evidence before me showing the state of the deck, or any evidence that the landlord agreed to install screens at the start of the tenancy. Therefore, I find that a repair order is not required.

The landlord is now aware that the broken sidewalk tile need repair and, pursuant to section 32 of the Act, I order the landlord to make that repair no later than October 22, 2013.

There was no evidence before me that the landlord and tenants had made any agreement for yard maintenance to be carried out in the spring of 2013. The tenants signed an addendum indicating they would be responsible for general yard maintenance and, in the absence of evidence that major work is required, I find that the claim for loss related to the yard is dismissed.

There was no dispute that the sauna has not worked since the start of the tenancy; therefore, as a part of the general claim for loss, I find that the tenants are entitled to nominal compensation in the sum of $25.00 per month from November 15, 2012 to September 15, 2013; totaling $275.00. I have made this order from the start of the tenancy as the landlord has confirmed he knew the sauna was not in working order and did not make repair or provide any reduction in rent owed in recognition of the loss of the facility. As the sauna is not available for use, I find, pursuant to section 65 of the Act that rent is reduced to $3,975.00 per month, commencing November 1, 2013

As the landlord was aware that from at least January 22 the vacumn system did not work, I find that the tenants are entitled to compensation for the loss of this service, to April 19, 2013. There was no evidence before me that after April 19 the tenants took any steps to inform that the landlord that repairs attempted were insufficient. Therefore, I find, pursuant to section 67 of the Act, that the tenants are entitled to compensation in the sum of $90.00.

As the landlord is now aware that the central vacumn is not working I order the landlord, pursuant to section 32 of the Act, to repair the system within a reasonable period of time. The landlord is at at liberty to issue proper written notice, in the approved form, removing the vacumn system as a service and to provide a commensurate reduction in rent owed.

As the tenant’s application has some merit I find that the tenants are entitled to recover $50.00 of the filing fee paid; the portion of the fee related to a claim that falls below $5,000.00.

I find that the tenants are entitled to make a 1 time deduction from October 2013 rent as follows:

- $1,665.00 for loss of use of the garage, central vacumn system and sauna to September 2013 and the filing fee; plus an additional $250.00 if the garage is not yet repaired (October rent owed will be either $2,335.00 or $2,085.00);
- $250.00 rent reduction from rent owed, for each following month commencing November 1, 2013, until the garage is repaired; and that
- Rent is reduced effective November 1, 2013, to $3,975.00.

The balance of the tenant's claim is dismissed.

I note that there was no evidence before me that an Order had been issued allowing the tenants to make any deduction from rent owed prior to this decision being issued. This decision and orders are to be applied to future rent owed, commencing October 1, 2013.

Conclusion

The tenants are entitled to rent abatement in the sum of $1,665.00 for loss of use of the garage, central vacumn system and sauna.

The tenants are entitled to rent abatement in the sum of $250.00 for each month from October 1, 2013 onward, if the garage is not repaired as ordered.

Effective November 1, 2013 rent will be $3,975.00; less any ordered abatement for garage repair.

The landlord will repair the walk tile no later than October 22, 2013.

The balance of the claim is dismissed.

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: September 10, 2013

Residential Tenancy Branch