Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord: MNSD, MND, MNR, MNDC, FF
Tenant: MNSD, MNDC, FF

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution. The tenant filed on June 25, 2013, pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for return of *double* security/pet damage deposits - Section 38
2. A monetary Order for damage and loss – Section 67
3. An Order to recover the filing fee for this application ($50) - Section 72.

The landlord filed on July 04, 2013 for Orders as follows;

1. A monetary Order for damage / loss – Section 67
2. A monetary Order for Unpaid rent – section 67
3. An Order to retain the security deposit - Section 38
4. An Order to recover the filing fee for this application ($50) - Section 72.

Both parties attended the hearing and were given opportunity to settle their dispute, present relevant evidence, and make relevant submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties each acknowledged receiving all the evidence of the other. The parties were apprised that despite their abundance of evidence only relevant evidence will be considered in the Decision.

Preliminary Matters

At the outset of the hearing the tenant stated they were *recording* the hearing. They were advised that Residential Tenancy Branch Rules of Procedures do not permit the recording of these proceedings and the tenant was instructed to prevent further *recording* and the hearing was paused. Upon the tenant providing sworn testimony they had ceased *recording*, the hearing continued.

One week before the hearing, the tenant provided additional evidence and a monetary amendment effectively multiplying their original monetary claim amount from $4,700.00 to $17,900.00. The tenant did not amend their claim as prescribed by the requirements of Sections 59(2)(c) and (5)(c) of the Act and Section 8(b) of the Act Regulations. None the less, their amendment contents were accepted in support to their application.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?
Is the tenant entitled to the monetary amounts claimed?

Each party bears the burden of proving their respective claims.

Background and Evidence

The undisputed evidence in this matter is as follows. The tenancy began January 01, 2013 as a written tenancy agreement. The rental unit is within a 40 year old complex, referred to as *Phase 2.* The landlord described Phase 2 as nearing its useful life and destined for redevelopment. During the tenancy the payable rent was in the amount of $1350.00 due in advance on the 1st of each month. It is relevant that the tenancy was also subject of an advisory document signed by the parties in November 2012 before the start of the tenancy, alerting the tenant to the eminent redevelopment of the adjacent *Phase 1* of the residential complex and that as a result the tenants would *experience construction noise, dust, and some inconvenience* during the work.

At the outset of the tenancy the landlord collected a security deposit in the amount of $675.00 and a pet damage deposit of $200.00 which the landlord retains in trust along with a $40.00 key fob deposit. The parties agree there was a mutual move in condition inspection which was recorded and signed by the parties. The tenant vacated May 31, 2013 without prior notice to the landlord, save a letter left in the vacated unit dated the same date, along with the keys, stating concerns of the conditions and questioning the security of the property. The landlord acknowledged receiving the letter on May 31, 2013, and that it contained a request for the return of the deposit along with a written forwarding address. The parties did not conduct a mutual move out inspection.

The tenant seeks recovery of the security and pet damage deposits and for the application of the *doubling* provisions of Section 38 of the Act.

The landlord claims, effectively, that as the tenant abandoned the rental unit, they simply set about readying the rental unit for the next tenant; stating that the entire unit was repainted including all frames, carpet and blinds cleaned, and general cleaning was done as the unit was allegedly dirty. The tenant disputes the landlord's claims – testifying they left the unit cleaner than at the outset and that in the least it was left reasonably clean. The tenant disputes the landlord's claims they caused any damage to the walls or the paint during their 5 month tenancy. In particular the tenant claims that any deficiencies of the walls were likely the result of the structure's age, disruption

from aging mechanicals in the building, excessive humidity, or the mounting construction stresses outside the unit. The landlord provided 2 invoices for painting the entire unit, including frames - 8 months apart – one dated before the tenancy ($520.00 = tax) and the other dated June 2013 ($680.00 = tax), along with invoices for carpet and blinds / drapery cleaning and general cleaning.

The landlord is claiming loss of rent revenue for June 2013 as the tenant did not provide the required notice to end the tenancy as prescribed by the Act. Both parties provided evidence the landlord made efforts to mitigate their losses by advertising the rental unit within days after the tenant vacated, to no avail for any portion of June 2013.

The landlord also seeks to recover the cost to repaint the rental unit, and the cost of cleaning the carpeting and window coverings, and general cleaning.

The tenant claims the landlord permitted the underground garage door to periodically remain open, and as a result the tenant claims their bicycle was stolen from the underground garage area. The tenant testified they did not report the bicycle stolen to Police and did not provide supporting evidence of the theft and the landlord testified they were never made aware of the matter. The tenant claims the landlord should compensate them for this loss, which the tenant approximated at $500.00. The tenant claims they reported the garage door remaining periodically open to the landlord.

The tenant claims that low hanging hardware of the garage door made contact with their vehicle roof and claims it caused $1600.00 of damage were it to be repaired. The tenant did not testify as to the vehicle's characteristics or dimensions. The tenant claims they did not report the damage to their insurer or the landlord, or obtained an estimate of repair for the damage, but that their own experience of auto repairs helped them establish their loss for the purported damage. The landlord claims they were not alerted to an existence of protruding garage door hardware or the claimed damage to the vehicle.

The tenant claims they suffered a loss of quiet enjoyment and a loss in the value of their tenancy by way of a series of problems during the tenancy, for which they seek compensation.

The tenant testified that starting in March 2013 the building heating system (pump / motor) began emanating a mechanical noise which the tenant claims was sufficiently noisy it intruded into their unit and on their quiet, and interrupted their sleep to the point they sought medical advice and stayed away from the unit for several days at a time. The tenant also provided the landlord with an abundance of information from their knowledge of the problem and offered their knowledge with a view to aiding the landlord to resolve the problem to their mutual benefit. The landlord acknowledges receiving the tenant's concerns and information and responded with their own contractor's involvement causing certain repairs of the problem in later part of March and then again in early April 2013. The tenant acknowledges the repairs abated the noise problem, although not entirely. The tenant provided evidence of the problem, the medical

consultation and their written concerns to the landlord. The landlord provided an invoice for the heating system repairs completed April 05, 2013.

The tenant testified that as a result of the adjacent construction they encountered an abundance of equipment noise, sometimes beyond the permitted time for same. They claim their quiet enjoyment was disturbed and their dog also negatively affected. In addition, the tenant experienced, what they described as, an unacceptable quantum of dust which built up inside the rental unit, was unsightly, and discernible on all surfaces. The tenant claims the construction debris contributed to the general un-cleanliness of the unit and caused them concern respecting possible effects to their health. The landlord responded to the tenant's concerns of noise and dust by testifying it was appropriately communicated to the tenants they would experience the consequences of nearby construction such as noise, dust and inconvenience and that the tenants would *receive some form of compensation for the disruptions* as articulated in the mutually signed document dated November 16, 2012. The landlord testified they are not aware as to the exact nature of the intended compensation – but purportedly financial.

The tenant testified that during a 4 day period they experienced ingress of water into their bedroom from a compromised roof. Upon being notified, the landlord addressed the problem through the intervention of a qualified roofing contractor. The landlord provided proof of same indicating the roofing repairs occurred March 15, 2013.

The tenant testified that during a period they experienced indications of ingress of mice, which they determined was also a problem in a neighbouring unit. Upon being notified, the landlord addressed the problem through the intervention of a pest control contractor. The landlord provided proof indicating that intervention occurred March 20, 2013.

The tenant testified they experienced more than a normal amount of mould growth in the bathroom and that paint separated from the walls in portions of the unit – all of which the tenant purports was caused by excessive moisture in the unit – purportedly from the roof problems and water ingress.

In addition to the above, the tenant claims that they noticed signs of a shifting building structure which manifested in their inability to secure their deck / balcony door as it would not properly latch, causing them ongoing concern for their security. The landlord acknowledged the problematic door latches but did not repair the problem. The parties acknowledged the landlord would also not repair the closet doors which had become excessively worn.

The tenant claims that as a result of all the above, they could no longer remain in the rental unit and abruptly vacated on May 31, 2013 without prior notice to the landlord.

Analysis

The tenant and landlord, together, have submitted an abundance of evidence which has all been considered. It must be noted that only relevant and compensable matters have been determined.

The onus is on the respective parties to prove their claims. On preponderance of all the evidence submitted, and on balance of probabilities, I find as follows:

Tenant's claim

Section 38(1) of the Act provides as follows

> **38**(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> 38(1)(a) the date the tenancy ends, and
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> 38(1)(b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord **must** do one of the following:
>
> 38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> 38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find the tenancy ended May 31, 2013 and the landlord was in possession of the tenant's forwarding address in writing on the same date.

I find that the landlord failed to repay the security and pet damage deposits in full, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and the tenancy ending and is therefore liable under Section **38(6)** which provides:

> **38**(6) If a landlord does not comply with subsection (1), the landlord
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> 38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and
>
> 38(6)(b) **must** pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord was obligated under section 38 to return the entire original security and pet damage deposit amounts. Therefore, the amount which is *doubled* is the original $875.00 deposits. As a result I find the tenant has established an entitlement claim of $1750.00, to which I add the original $40.00 deposit for the key fob, for an award of **$1790.00** for this portion of their claim.

Section 7 of the Act states as follows:

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.

Proving a claim in damages or loss requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss. Effectively, in this matter, the tenant must fully satisfy the following test as prescribed by **Section 7** of the Act as follows:

1. Proof the loss occurred / exists,

2. Proof the loss occurred *solely* because of the actions or neglect of the Respondent in violation of the *Act* or tenancy agreement

3. Verification of the *actual amount* required to compensate for the claimed loss.

4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

In respect to the tenant's claim of $500.00 for a stolen bicycle, it was available to the tenant to provide evidence of their loss or an indicator of its value. I find the tenant has not provided sufficient evidence as prescribed by the above test for loss. As a result, this portion of the tenant's claim **is dismissed**, without leave to reapply.

In respect to the tenant's claim of $1600.00 for damage to their vehicle by the garage door, it was available to the tenant, for example, to provide evidence their loss occurred as a result of the landlord's violation of the Act or that it occurred as they claim, and an independent estimate of cost for its repair. I find the tenant has not provided sufficient evidence as prescribed by the above test for loss. As a result, this portion of the tenant's claim **is dismissed**, without leave to reapply.

Section 28 of the Act states as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

> (a) reasonable privacy;
>
> (b) freedom from unreasonable disturbance;
>
> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
>
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

In respect to the tenant's claim for an intrusive mechanical noise from the heating system throughout the month of March to April 05, 2013, I find the tenant and landlord have provided sufficient evidence to establish the tenant endured a loss in the use of their tenancy, a loss of sleep, a loss of quiet enjoyment of their unit. As a result, **I grant** the tenant compensation reflecting a reduction in the value of the tenancy, as per Section 65(f) of the Act, for the 5 week period, in the set amount of $150.00 per week to the sum of **$750.00**, without leave to reapply.

In respect to the tenant's claim for compensation for enduring noise, dust and inconvenience and general disruption for the ongoing work outside their rental unit; and, in acknowledgement of the landlord's signed agreement for the tenant to receive *some sort of compensation* for the disruption, I find the tenant is entitled to some compensation reflecting a reduction in the value of the tenancy. The landlord may have contemplated what compensation would ultimately have been extended had the tenancy continued, of which I do not have benefit. However, as a result of all the above I find that reasonable compensation in this respect is 15% of rent paid over the course of the 5 month tenancy. Therefore, I grant the tenant the set amount of **$1,012.50**, without leave to reapply.

In respect to the tenant's claim for water ingress and ingress of mice, I find the tenant and landlord has provided sufficient evidence to establish the tenant endured an intrusion in respect to the water ingress and mice. I find that both intrusions, while normal, unreasonably affected the tenant's enjoyment of the unit and that some compensation reflecting a reduction in the value of the tenancy is not unreasonable. As a result, **I grant** the tenant compensation for these 2 ingress incidents in the set amount of $125.00 each, or **$250.00**, without leave to reapply.

In respect to the tenant's claim for an inordinate amount of mould growth within the rental unit, I accept the tenant's evidence that the likely source of the moisture associated with mould growth emanated from the compromised roofing. I further accept that despite the landlord's timely response to the matter I find the tenant, on balance of probabilities, endured the consequences of elevated humidity before the repairs were made and a result in a loss of their quiet enjoyment and in a reduction in the value of the tenancy. As a result, **I grant** the tenant compensation for this portion of their claim in the set amount of $50.00 per month for January to April 2013 to the sum of **$200.00**, without leave to reapply.

In respect to the tenant's claim of an un-securable balcony door and compromised closet doors, I accept the tenant's claim it concerned them throughout the course of the tenancy and affected their enjoyment, and that the un-securable balcony door affected their peace of mind. As a result, **I grant** the tenant compensation for this portion of their claim reflecting a reduction in the value of the tenancy in the combined and total amount of $50.00 per month to the sum of **$250.00**, without leave to reapply.

I dismiss *the balance of the tenant's claims* for lack of evidence and a corresponding loss - without leave to reapply.

As the tenant was partly successful in their claim they are entitled to recovery of their filing fee.

Landlord's claim

In respect to he landlord's claim for loss of rent revenue for the month of June 2013, I accept the landlord's claim they were owed notice to end the tenancy in compliance with Section 45 of the Act. I do not accept the tenant's claims they were unable to provide the required notice to end to which the landlord is entitled - and intended to avoid the scenario of losing revenue – as has occurred in this matter, despite the landlord's efforts to stem that loss. I find the landlord's efforts were reasonable under the circumstances and that the resulting loss was near-unavoidable and solely due to the tenant's contravention of the Act. I find that the most egregious aspects of the tenant's issues with the rental unit were resolved by April 05, 2013. I find the tenant may have had cause to end the tenancy as they became generally displeased with it, but after April 05, 2013 the circumstances were not sufficiently dire to prevent the tenant notifying the landlord of their intent to vacate according to the Act – or at any time other than the very last day of the tenancy. As a result, I grant the landlord the rent for June 2013 in the amount of **$1350.00**.

I accept the landlord's testimony that their aim was to ready the rental unit for new tenants, and as a result they undertook to paint and clean the rental unit to the landlord's satisfaction. In respect to the landlord's claim for repainting the entire rental unit, I find the landlord's evidence they painted the entire rental unit 8 months earlier demands the landlord provide sufficient evidence to support that the state of the rental unit was so deteriorated, at the hands of the tenant's 5 month occupation of the unit, to justify again repainting the entire unit. I do not accept the landlord's position that the tenant's abandonment of the unit allows the landlord to make such a claim without evidence the tenant is responsible for the repainting. It was available to the landlord to provide such evidence but they did not. **I dismiss** this portion of the landlord's claim, without leave to reapply.

I prefer the evidence of the tenant - that the surrounding dust, debris, moisture and aging structure of the property likely contributed to extraordinary soiling of carpeting and window coverings. But, I also find the landlord has not provided sufficient evidence to support the rental unit required professional carpet cleaning, window covering cleaning,

or general cleaning, because the tenant did not leave the rental unit *reasonably clean.* Rather, I find the landlord's testimony represents they simply cleaned the rental unit to a standard to attract new tenants. It was available to the landlord to provide additional evidence of the condition of the rental unit at the end of the tenancy, but they did not. As a result, I **dismiss** the balance of the landlord's claim, without leave to reapply.

The landlord is entitled to recover their filing fee and as both parties are equally entitled to their filing fees, they mathematically cancel out.

The security and pet damage deposits have been factored in the awards herein. The tenant's greater award is set off by the landlord's award as follows:

Calculation for Monetary Order

Total of tenant's award	$4252.50
Total of landlord's award	***-*** *$1350.00*
Total of monetary award for tenant	**$2902.50**

Conclusion

The parties' respective applications, in part, have been granted. The balances of their applications are **dismissed**, all without leave to reapply.

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **$2902.50.** If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: October 03, 2013

Residential Tenancy Branch