Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF, MNDC, OLC, ERP

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

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 female tenant (the tenant) testified that on October 12, 2013, the tenants sent the landlord a text message advising her of their plans to vacate the rental unit by October 31, 2013. The landlord confirmed that she received the tenants' text message and that the tenants did vacate the rental unit by October 31, 2013.

Under these circumstances and as this tenancy has ended, the tenants withdrew their application to obtain an order requiring the landlord to comply with the *Act* and to undertake emergency repairs to the rental unit. These portions of the tenants' application are withdrawn.

Preliminary Issues – Service of Documents

The landlord confirmed that she received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on October 16, 2013. The

tenants confirmed that they received copies of the landlord's dispute resolution hearing package sent by the landlord by registered mail on November 8, 2013. I am satisfied that the parties served the above packages to one another in accordance with the *Act*.

The tenants confirmed that they received a copy of the landlord's written evidence package in advance of this hearing. I am satisfied that the landlord served her evidence package to the tenants in accordance with the *Act*.

The female tenant (the tenant) testified that she delivered the tenants' written evidence package to the Residential Tenancy Branch (the RTB) the day before this hearing. I advised that I had not yet received this written evidence. The tenant testified that the tenants sent the landlord their written evidence package by registered mail on November 21, 2013, the day before this hearing. The landlord testified that the tenants' written evidence package was delivered 7 minutes before the commencement time for this hearing.

Parties to a dispute resolution hearing are provided with information as to the service requirements and the time deadlines for sending their written evidence to one another and the RTB. The tenants clearly missed these deadlines set out in RTB Rule of Procedure 3.5(a) and (b) and Policy Guideline 12. Section 90 of the *Act* establishes that documents served by registered mail are deemed served on the 5th day after their registered mailing. In this case, the tenants' written evidence to the landlord would not have been deemed served until November 26, 2013, well after the hearing was scheduled to be convened. Although the landlord confirmed that she had received the tenants' hearing package, she was not in a position to review it or comment on it due to its delivery a few minutes before this hearing.

While late submissions of evidence may be considered in certain circumstances, I find that the tenants knew about this hearing more than a month beforehand and made no effort to provide either the landlord or the RTB with their evidence until the day before this hearing. Under these circumstances and after considering Rule 11.6 of the RTB's Rules of Procedure, I advised the parties that I would not be considering the tenants' written evidence submission.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Are the tenants entitled a monetary award for damages or losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The parties agreed that the tenants moved into the rental unit on February 27, 2013, shortly before the scheduled March 1, 2013 commencement date for this periodic tenancy. According to the terms of the Residential Tenancy Agreement (the Agreement) entered into written evidence by the landlord, monthly rent for this furnished rental unit was set at $900.00, payable in advance on the first of each month, plus hydro. Both parties agreed that the landlord has returned the tenants' $450.00 security deposit paid on February 25, 2013.

Both parties agreed that the landlord and the female tenant conducted joint move-in and joint move-out condition inspections on February 25, 2013 and October 31, 2013. The landlord entered into written evidence copies of the condition inspection reports for these inspections, signed by both the landlord and the female tenant.

The tenants applied for a monetary award of $900.00. They did not provide any itemized breakdown of this requested monetary award. In the Details of the Dispute section of their application for dispute resolution, they identified the following concerns they had with this tenancy:

Hot water doesn't work
Fridge freezes everything
No bathroom

They also attached a document in which they maintained among other concerns that:

- the temperature of their water was too low;
- there was an undue level of noise, smoke and disruption caused by the tenants who lived below them in the landlord's rental building;
- the landlord refused to move some of her possessions from areas that were rented to the tenants;
- the landlord had failed to attend to their concerns that the refrigerator was malfunctioning to the point where it froze fresh food placed in the refrigerator; and
- the landlord did not promptly or thoroughly undertake repairs to their bathroom, requiring them to shower in a distant vacant unit in another of the landlord's buildings, described at the hearing as "10 blocks away for 16 days."

Although the landlord did not retain any portion of the tenants' security deposit, she was within her rights to file an application for a monetary award for damage arising out of this tenancy. Her claim for a monetary award of $2,464.00 was for damage to the walls and floor of the bathroom in the rental unit. The landlord maintained that during the course of this short term tenancy the tenants created a hole in a wall and, in all

likelihood, purposefully sprayed water from the shower towards that hole, badly damaging the walls and the floor tiles, eventually leaking into the rental unit below them. The landlord entered into written evidence a receipt totalling $2,464,00 for work conducted by a contracting company to repair the walls and floor tiles in the rental unit. The tenant confirmed that this work was completed on October 22, 2013, shortly before the tenants vacated the rental unit.

Analysis – Tenants' Application

Section 28 of the *Act* establishes a tenant's right to quiet enjoyment, which include but are not limited 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.*

While the tenants may have found the behaviours of the tenants below them upsetting, I am not satisfied that the tenants have demonstrated that the landlord failed to take action against the tenants below them. By their own admission, the tenants below them "finally got kicked out", presumably as a result of actions taken by the landlord. I find insufficient evidence to demonstrate that the landlord failed to take appropriate action to follow up on the tenants' concerns about their neighbours. I find that the tenants have not demonstrated any other reason to justify the issuance of a monetary award for loss of quiet enjoyment of the premises. I dismiss the tenants' request for a monetary award for loss of quiet enjoyment without leave to reapply.

I note that the tenants rented a furnished rental unit, not an unfurnished one. Based on the evidence before me, it would appear that the tenants expected the landlord to remove the furniture that she was providing to them to make room for furniture that the tenants were purchasing with a view to moving to their own unfurnished rental unit. I find the tenants' expectations in this regard totally unreasonable, given that the Agreement was for a furnished rental unit. I dismiss this element of the tenants' application without leave to reapply.

Section 32 of the *Act* places responsibility on both parties to repair and maintain a rental unit.

> ***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...*

However, section 32(3) of the *Act* requires that a tenant "must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant." A tenant is not required to make repairs for reasonable wear and tear.

Section 65(1)(f) of the *Act* allows me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

I have considered the tenants' application for a monetary award for the loss in value of their tenancy due to the low temperature of their hot water and the refrigerator.

On a balance of probabilities, I find that the landlord has supplied sufficient evidence in the form of written statements from other tenants in this rental building who had no issue with the temperature of the hot water in this rental building. In this regard, I find that the landlord has reviewed the tenants' concerns, canvassed other tenants and correctly concluded that the tenants' expectations with respect to the suitable temperature for hot water is at odds with the wishes of other tenants in the remainder of this rental building. I dismiss the tenants' application for a monetary award for the loss in value of their tenancy due to the reduced temperature of the hot water supplied to their rental unit without leave to reapply.

I find some evidence to demonstrate that the tenants are entitled to a retroactive reduction in rent for the temperature in the refrigerator of the rental unit. The parties agreed that the landlord and her husband inspected this problem a number of times, eventually replacing the refrigerator. Although the tenants did not supply receipts to demonstrate losses in this regard and on a balance of probabilities, I accept that they are entitled to a nominal reduction in the value of their tenancy in the amount of $50.00

for the problems with the refrigerator in this rental unit to reflect their losses in this regard.

The issue before me with respect to the tenants' application for a monetary award for the loss in value of their tenancy arising out of the shower repairs depends on whether I find that the repairs arose through reasonable wear and tear or whether they were a result of purposeful action by the tenants, as the landlord and her husband maintained. Even if I were to find that the repairs arose from reasonable wear and tear, the tenants' claim for a monetary award for loss of use of their shower would be dependent on whether the number of days of loss of use of the shower was excessive and whether the landlord took adequate measures to provide the tenants with a suitable alternative during the time when the shower was not functional.

Under these circumstances, I find that the tenants are at least partially responsible for the damage to the walls that necessitated the landlord's repairs. However, I also find that the work undertaken, by the admission of the landlord's husband, did take far longer than would normally have been the case. The landlord testified that the substitute shower facilities in a vacant rental unit she managed was "a couple of blocks away" and not 10 blocks away, as was maintained by the tenant. I also find some merit to the sworn testimony of the male tenant who claimed that the repairs took longer than anticipated because the repair person initially attempted to ignore the mould behind the wall and just drywall over the problems in the bathroom.

Under these circumstances, I find that the repair work did take longer than should have been required and did result in a loss in the value of this tenancy, requiring the tenants to walk to another location to use the shower. For these reasons, I allow the tenants a nominal reduction in the value of their tenancy of $50.00 for the month of October 2013 to reflect this disruption.

I dismiss the remainder of the tenants' application without leave to reapply, as I am not satisfied that the tenants have established any other valid grounds to obtain a monetary award from the landlord.

Analysis – Landlord's Application

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 tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

At the hearing, the landlord testified that she has been managing this building for approximately six years. She said that during that time, neither the walls nor the tiles in the bathroom in this rental unit have been replaced or repaired. She testified that the joint move-in condition inspection report noted no damage to the bathroom and that this damage arose out of the tenants' actions. Her husband also testified that he routinely checks for damage to the bathrooms of rental units before a new tenancy begins. He testified that he was certain that there were no holes in the walls that would allow water to damage the bathroom from the shower area before this tenancy commenced.

RTB Policy Guideline 40 establishes a breakdown of the Useful Life of various elements of finishes and items found in rental units for the guidance of Arbitrators determining damage claims. For example, the normal useful life of tile flooring in a residential tenancy is estimated at 10 years. The useful life for an internal paint job is estimated at 4 years.

In this instance, there is little definitive evidence with respect to when many of the items replaced by the landlord in October 2013 were last replaced. The landlord and her husband testified that the rental building is approximately 50 years old. Neither of them knew when the bathroom walls or floor tiles had last been replaced. The landlord gave sworn testimony that the floor tiles have not been replaced in at least 6 years, and perhaps much longer. While the premises have not been repainted in some time, likely more than 4 years, there is no evidence with respect to how long it had been before the walls themselves in the bathroom of the rental unit were last replaced or refurbished. I find that the Useful Life Guideline is of little real use when there is such scant firm evidence with respect to the repair history of the bathroom in this rental unit.

Under these circumstances, I find that the repairs undertaken in October 2013 to the bathroom of this rental unit were likely a mix of reasonable wear and tear that had occurred over many years and more specific damage caused by the tenants. No damage was noted in the joint move-in condition inspection signed by the tenant only eight months earlier. At the hearing, the tenant questioned the landlord for a more detailed breakdown of the expenses incurred by the landlord and as identified on the $2,464.00 receipt entered into written evidence by the landlord. The lack of a detailed breakdown and the lack of information provided by the landlord as to the repair record of the bathroom limits the landlord's eligibility to a monetary award. However, on a

balance of probabilities, I find that the landlord is entitled to recover $500.00 of the costs incurred for repairs from the tenants. In arriving at this determination, I find that the floor tiles were likely ready for replacement as they had likely exhausted their useful life. The walls, although damaged recently by the tenants by way of the hole that was not present at the time of the recent joint move-in condition inspection, may also have been nearing the time when they would need to be repaired and/or repainted. While I recognize that the $500.00 monetary award does not come close to the amount of the repairs claimed by the landlord, I find that the landlord's evidence and claim was lacking in details regarding the history of repairs to this rental unit, the age of various components claimed by the landlord, and a meaningful breakdown of the component parts of the landlord's claim for damage.

As the landlord has been partially successful in her application, I allow her to recover her $50.00 filing fee from the tenants.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover damage arising out of this tenancy and her filing fee, less the reductions in the value of the tenancy agreement allowed to the tenants' in their application:

Item	**Amount**
Damage Arising out of this Tenancy	$500.00
Less Reduction in Value of this Tenancy due to Problems with Refrigerator	-50.00
Less Reduction in Value of this Tenancy due to Delays in Repairing Shower	-50.00
Recovery of Landlord's Filing Fee	50.00
Total Monetary Order	**$450.00**

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this 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.

The tenants' application to obtain an order requiring the landlord to comply with the *Act* and to undertake emergency repairs to the rental unit are withdrawn.

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: November 26, 2013

Residential Tenancy Branch