



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC RR FF

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenants applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, to allow the tenants to reduce rent for repairs, services or facilities agreed to but not provided, and to recover the filing fee.

The landlords and the tenants appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. I have reviewed all evidence before me that met the requirements of the Rules of Procedure and that was presented during the hearing. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The tenants confirmed that they received the landlords' documentary evidence and had the opportunity to review that evidence prior to the hearing. As a result, I find the landlords' evidence was served in accordance with the Rules of Procedure. The tenants submitted three packages of documentary evidence, the last package of which contained photos according to the tenants, and was served late and not in accordance with the Rules of Procedure. As a result, and taking into account that the landlords were served with the first two documentary evidence packages from the tenants, I find the first two evidence packages were served in accordance with the Rules of Procedure, while the last package was excluded from the hearing as it was served late and not in accordance with the Rules of Procedure.

Preliminary and Procedural Matters

During the hearing, the landlords stated that the tenants had their service address incorrect. By consent of the parties, the service address of the landlords was updated on the tenants' application for dispute resolution to reflect their landlords' correct service address. The tenants stated that they looked up the landlords' address using their phone number instead of using the service address listed on the written tenancy agreement as they claimed they were not provided a copy of the tenancy agreement by the landlords. The landlords testified that two tenancy agreements were signed at the start of the tenancy on June 1, 2013 and that both the tenants and the landlords each kept a copy of the written tenancy agreement which included the service address of the landlords.

At the outset of the hearing, the tenants confirmed that they were actually seeking compensation of \$3,900.00 comprised of 100% return of their full rent for the months of February through April of 2014, at \$1,300.00 per month for each of the three months due to "rats in suite". There were no details provided in writing in the "Details of Dispute" portion of the tenants' application for dispute resolution regarding the remaining \$100.00 portion of their monetary claim. As a result, the tenants' were advised that I would be considering only the \$3,900.00 amount being claimed at \$1,300.00 for February, March and April of 2014.

Issues to be Decided

- Are the tenants entitled to a monetary order under the *Act*, and if so, in what amount?
- Have the tenants provided sufficient evidence to support that the landlords should be directed to comply with the *Act*, regulation or tenancy agreement?
- Have the tenants provided sufficient evidence to support that their rent should be reduced for repairs, service or facilities agreed upon but not provided?

Background and Evidence

The parties agreed that a periodic, month to month tenancy began on June 1, 2013. Monthly rent in the amount of \$1,300.00 is due on the first day of each month. The tenants paid a security deposit of \$650.00 at the start of the tenancy. The tenants continue to occupy the rental unit.

The tenants failed to provide any details in their application for dispute resolution regarding what they were seeking the landlords to comply with under the *Act*, regulation

or tenancy agreement. The application indicates to “state section in the ‘Details of Dispute’ box below or to provide a copy of the tenancy agreement, which the tenants failed to do. Although the parties confirmed that a written tenancy agreement was signed, a copy of the written tenancy agreement was not submitted in evidence by either party.

The tenants confirmed at the start of the hearing that they have not written to the landlords about rats in their rental unit and confirmed that they were first notified about “mice” by the landlords. The tenants were unable to provide the exact date when the landlords first contacted the tenants about a mice complaint received from the renters living below the tenants. The landlords testified that they texted the tenants on March 6, 2014 about the possibility of mice given what they heard from the renters living below the tenants. The parties confirmed that on March 17, 2014, a pest control company attended the rental unit and found no mice or rats but found “droppings”. The landlords stated that “bait traps” were installed, while the tenants used the term “poison”.

The tenants confirmed that they did not have any photos of mice or rats submitted in evidence and that even in the photos that were excluded from the hearing, the tenants confirmed there were no photos of mice or rats in the excluded photos.

The tenants testified under oath that there were no mice or rat issues during the month of February. I note that February is the first month being claimed by the tenants in their application.

The parties confirmed that on May 12, 2014 there was a follow up inspection by the pest control company and that no mice or rats were found. The female tenant testified that the last time they heard noises from rats was mid April of 2014. The tenants stated that they smelled a “bad smell” on March 17, 2014. The landlords disputed the testimony of the tenants by stating that they were inside the rental unit on March 17, 2014 and did not smell a “bad smell” as claimed by the tenants. The tenants stated that due to them having a child and a dog, they had to put “poison” in a hole in the rental unit wall so that their child and dog could not access the “poison”. The tenants stated that they wrote a document to the landlords to advise of the “bad smell” dated March 22, 2014 and mailed the document on March 23, 2014. The landlords stated that they did not receive that document until April 27, 2014, as the document was mailed to an address that was not theirs, the same incorrect address that the tenants wrote in their application for dispute resolution.

The tenants referred to a witness letter from their witness, “TL” dated April 20, 2014. The tenants stated that the witness was not available, and then later changed their

testimony to indicate that their witness was available to testify and was called into the hearing. Witness "TL" stated under oath that just before April 20, 2014, the male tenant showed him two rats in a trap at the tenants' front door. The witness stated that male tenant threw the rats into the garbage. The witness confirmed under cross-examination that he saw the rats in the morning a couple of days before he wrote the letter for the tenants. The tenants confirmed that they did not have further questions for their witness before the witness was excused from the hearing.

The landlords deny that the rental unit smells bad as claimed by the tenants. The landlords stated that they had entered the rental unit on March 17, 2014, March 31, 2014, and May 12, 2014. The tenants disputed the testimony of the landlords and stated that the landlords only entered the rental unit on March 17, 2014 and May 12, 2014.

The female tenant stated that the smell in the rental unit began to disappear a couple weeks ago which given the date of the hearing, would be approximately the end of April 2014 or beginning of May 2014. The male tenant confirmed that he has not taken a picture of any rats and denies that they were mice. The tenants claim that the exterminator advised them verbally to move, although confirmed that they did not have any evidence to support the alleged statement of the exterminator.

The landlords stated that after March 17, 2014, they were under the impression that everything was fine in the rental unit as they had not heard from the tenants until receiving their letter on April 27, 2014.

The tenants stated that they have had 0% enjoyment of their rental unit for February, March and April 2014 and that the landlord should reimburse them 100% of their rent for those months due to rats in the rental unit. The tenants continue to occupy the rental unit and the tenants are also seeking a rent reduction due to "rats in the rental unit". The tenants did not specify the amount of the requested rent reduction other than to verbally state that they are seeking a 100% refund of rent for the months of February, March and April of 2014.

Analysis

Based on the documentary evidence, the testimony provided, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlords. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenants did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Tenants' request for an order directing the landlords to comply with the *Act*, regulation or tenancy agreement – The tenants failed to include any details in their application for dispute resolution and did not provide any testimony regarding this aspect of their application. As a result, I dismiss this portion of their application due insufficient particulars and insufficient evidence, without leave to reapply.

Tenant's request for \$3,900.00 in compensation, comprised of three months of \$1,300.00 rent at 100% refund for each of the three months – The tenants testified that the landlords first notified them of the possibility of mice in the rental unit based on the landlords being contacted by the renters living below the tenants. The parties also confirmed that two inspections performed by a pest control company on March 17, 2014 and May 12, 2014, resulted in no mice or rats being found in the rental unit. The landlords used the term "mice", while the tenants used the term "rats" when providing their testimony.

As the tenants testified under oath that there were no concerns for the month of February 2014, I dismiss this portion of their claim as it inconsistent with their claim for compensation which includes the month of February 2014.

The tenants confirmed that they have no documentary evidence to support that rats were found in the rental unit, other than the written statement of the witness "TL", who also testified during the hearing that he saw two rats shortly before writing the letter on April 20, 2014.

I prefer the evidence of the landlords over the tenants, however, for several reasons. The first reason is that the tenants testified under oath that they did not write to the landlords and later changed their testimony by stating that they wrote on March 22, 2014, and mailed the letter on March 23, 2014 to the wrong mailing address of the landlords.

The second reason is that the tenants confirmed that they did not initiate contact with the landlords and that the landlords initiated contact with them about "mice" on March 6, 2014. As a result, I find that if the tenants had an issue with rats starting in February 2014 as their application states, that at the very least they should have communicated in February 2014 with the landlords regarding a complaint about rats in the rental unit. Instead, the tenants confirmed that there were no issues in February 2014 during the hearing, and that the landlords contacted them on March 6, 2014.

The third reason is that the tenants testified that they received 0% enjoyment of the rental unit for the months of February, March and April of 2014 due to rats, which contradicts their own testimony that there were no issues for the month of February 2014, and that there has been no noise from rats since the middle of April 2014 and that the tenants continue to occupy and have exclusive possession of the rental unit.

The fourth reason is that the testimony of the landlords was consistent and that there was no dispute that they proactively contact the tenants and arranged for two inspections by a pest control company and that neither inspection resulted in mice or rats being seen in the rental unit.

Given the above, I afford little weight to the letter and testimony of the witness, "TL" as I find the tenants have failed to provide sufficient evidence to support the remainder of their monetary claim for a 100% refund for the months of March and April of 2014. I find that the tenants have failed to prove that the landlords have violated the Act, regulation or tenancy agreement. Therefore, I dismiss this portion of the tenants' application due to inconsistent evidence and insufficient evidence.

Tenant's claim for a rent reduction – As I have dismissed the remainder of the tenants' application, I find that the tenants have not met the burden of proof to justify a rent reduction regarding mice or rats in the rental unit.

As the tenants' application did not have merit, I **do not** grant the tenants the recovery of the filing fee.

Conclusion

The tenants' application has been dismissed in full due to insufficient evidence, insufficient particulars and inconsistent evidence.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 21, 2014

Residential Tenancy Branch

