Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF
MNDC MNSD FF

Preliminary Issues

The Landlord filed their application for dispute resolution on July 11, 2014, seeking monetary compensation for $8,000.00 damages resulting from a breach of contract. In the Landlord's November 18, 2014, evidence submission they included a "Introduction Summary" indicating they were seeking compensation in the amount of $8,000.00 for damages, decontamination, loss of use, breach of contract, and submitted receipts for costs in excess of the amount claimed.

Section 59(2) of the Act stipulates that an application for dispute resolution must (a) be in the applicable approved form, (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and (c) be accompanied by the fee prescribed in the regulations.

The *Residential Tenancy Branch Rules of Procedure # 2.11* provides that the applicant may amend the application without consent if the dispute resolution proceeding has not yet commenced. The applicant **must** submit an amended application to the Residential Tenancy Branch and serve the respondent with copies of the amended application [emphasis added].

In this case the Landlord did not file an amended application and simply listed the additional claims in their evidence. Accordingly, I dismissed amounts or claims not described on the original application, without leave to reapply.

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed their application on July 11, 2014, to obtain a Monetary Order for: damage to the unit, site or property; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed their application on July 14, 2014, to obtain a Monetary Order for: the return of their security and/or pet deposits; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference on December 8, 2014 for 90 minutes and January 19, 2015 for 72 mintues. Each session was attended by the Landlord, the Tenants, the Tenants' legal Advocate (hereinafter referred to as Advocate) and the Tenants' translator. Each person gave affirmed testimony and confirmed receipt of evidence served by the other.

The Advocated stated that the Tenants' testimony would be submitted by the female Tenant H.S.J. During the course of this proceeding it was noted that the male Tenant S.B.P. answered a question without identifying that he was speaking instead of H.S.J. Immediately following this event, the Advocated was ordered to inform me when H.S.J. was providing testimony. I explained that both Tenants have the opportunity to submit evidence; however, given that their evidence is being submitted by the same female interpreter it was imperative that I knew which Tenant was submitting the evidence. H.S.J. provided only one submission and the remainder of the Tenants' evidence was provided by S.B.P. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa.

The Landlord submitted that the Tenants left their evidence in his mail box on December 2, 2014, and argued that it was not deemed served until December 5, 2014. The Landlord submitted that the Tenants evidence was late and should not be considered. Upon further clarification, the Landlord stated that his wife retrieved the evidence package from the mailbox on December 2, 2014 but he did not receive it until December 3, 2014.

The Tenants confirmed that they placed their evidence in the Landlord's mailbox on December 2, 2014. They submitted that their evidence was delayed because they did not receive the Landlord's evidence until a couple weeks prior to the hearing. Once they received the Landlord's evidence they sought legal assistance on December 1, 2014, compiled their evidence, and then delivered their evidence on December 2, 2014.

The Landlord testified that he served each Tenant with his evidence package by registered mail on November 14, 2014, which he argued was within the required timelines. He submitted that he was delayed in serving his evidence prior to that date because he was awaiting receipt of the contractor's invoice who had conducted the repairs.

The Residential Tenancy Rules of Procedure # 2.5 provides that to the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch, the applicant must submit to the Residential Tenancy Branch: a detailed calculation of any monetary claim being made; a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and copies of all other

documentary and digital evidence to be relied on at the hearing. The only exception is when an application is subject to a time constraint, such as an application under *Residential Tenancy Act* section 38, 54 or 56.

In this case the Landlord filed his application for dispute resolution on July 11, 2014 and did not submit his documentary evidence until November 14, 2014. Upon review of the Landlord's evidence I note that the contractor's invoice was dated October 18, 2014, almost one full month prior to his evidence submission. I further note that the affidavit from the construction workers was not sworn until November 10, 2014 even though the affidavit related to events that took place in July 2, 2014. All of the remaining evidence was in existence at the time the Landlord filed his application.

The Residential Tenancy Rules of Procedure # 3.11 stipulates that evidence must be served and submitted as soon as reasonably possible. If an Arbitrator determines that a party unreasonably delayed the service of evidence, the Arbitrator may refuse to consider the evidence.

Based on the above, I do not find there to be exceptional circumstances that caused the Landlord to delay another month before submitting their evidence once they were issued the October 18, 2014 invoice from the contractor.

The Residential Tenancy Rules of Procedure # 3.17 provides that the Arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above, provided that the acceptance of late evidence does not unreasonably prejudice one party.

The Landlord provided the Canada Post tracking numbers in his oral testimony as proof of service of his evidence to the Tenants. Based on the Canada Post tracking website, the Tenants received the Landlord's evidence on November 17, 2014. The Landlord confirmed that he had received and reviewed the Tenants' evidence on December 3, 2014, which was two weeks after the Tenants received the Landlord's evidence.

Based on the foregoing, and in consideration of the volume of evidence submitted by the Landlord, I find that two weeks is not an unreasonable amount of time to allow a respondent to review an applicant's evidence, compile their responding evidence, and then serve the evidence. Furthermore, as this hearing had to be adjourned to allow more time for submissions, I find that each party would have ample opportunity to review all evidence and prepare oral submissions. Accordingly, I accepted all documentary evidence that had been served by both parties prior to the December 8, 2014 hearing, in accordance with the Residential Tenancy Rules of Procedure # 3.17.

The Residential Tenancy Branch Rules of Procedure # 11.10 stipulates that at the start of a dispute resolution proceeding, a party may request that his or her witness or witnesses be permitted to provide evidence. The arbitrator will consider any prejudice to the other party when deciding whether to grant the request and may refuse to hear the witness.

Notwithstanding the Advocate's argument that he mentioned that they would be having a witness attend during the December 8, 2014 hearing, I have no record of such a request or submission. Furthermore there was no mention of calling a witness in the Tenants' written submission or at the beginning of the January 19, 2015 hearing. Rather, the Advocate did not ask to add the witness until the Tenant finished her oral submission on January 19, 2015. The Advocate indicated that this witness would provide oral testimony which related to her written statement submitted in evidence regarding her visiting the rental unit during the tenancy.

After careful consideration of the Advocate's request, I declined to hear from the Tenants' witness. I made this decision in part because neither the Landlord nor the Residential Tenancy Branch had been given prior notice that a witness would be attending, which I felt would prejudice the Landlord. I did however; consider the witness's written submission.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to monetary compensation?
2. Have the Tenants proven entitlement to monetary compensation?

Background and Evidence

Upon review of the Tenants' application for dispute resolution the Landlord noted that the Tenants filed an application listing their current address as the address that was in dispute and not the Landlord's rental unit address. As such, the Landlord requested that the Tenant's application be dismissed as the Landlord was not involved with the dispute address listed on the application.

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on September 1, 2013 and was scheduled to switch to a month to month tenancy after August 31, 2014. The Tenants were required to pay rent of $1,350.00 on the first of each month and as of August 29, 2013 the Tenants paid a total of $675.00 as the security deposit. The tenancy ended by mutual agreement on

June 30, 2014. The Tenants did not provide the Landlord with their forwarding address until they served the Landlord with their application for dispute resolution.

The rental property was described by the Landlord as being built in 1981 and was purchased by the Landlord in 2007. He stated that the rental unit had 4 levels or floors with a total of approximately 1100 square feet. The Landlord submitted that the rental unit had undergone some renovations in 2009 which included new carpets and that it had non-glued or floating laminate flooring in some sections of the house which he suspected was installed since 1996. The Landlord submitted that he has had a total of five different tenancies in this property since he purchased it in 2007.

The Landlord testified that the Tenants approved the move in condition report form as represented by the Tenant signing the move in condition inspection report form at the top of the last page instead of in the signature line, where she wrote the date the form was completed. He argued that his Agent conducted the move-in inspection with the Tenants on August 29, 2013, where the Tenants' wrote "two holl" and "skhech" as deficiencies in the rental unit.

The Landlord submitted that he was out of the country when the tenancy ended and that his Agent had arranged to meet with the Tenants on July 2, 2014 to retrieve the keys and to schedule the move out inspection with Landlord and the Tenants for July 11, 2014. The Landlord stated that H.S.J. attended the July 11, 2014 inspection but she refused to sign the inspection report form.

The Landlord testified that he is seeking $8,000.00 as compensation to repair the rental unit. He noted that this claim amount was less than the total cost to repair the unit which was $18,299.40. The Landlord argued that the repairs were required due to the Tenants breaching their tenancy agreement when they brought two dogs into the rental unit. The Landlord pointed to the tenancy agreement addendum # 4 that states:

> *shall not keep any dog in any part of the building, except by written permission from the Landlord*

The Landlord pointed to his evidence # 8 and the affidavit from two construction workers who submitted that there were two dogs in the rental unit while they were conducting repairs to the first floor bedroom between June 18, 2014 and July 2, 2014. The construction workers' affidavit states that the dogs were highly aggressive; were left unattended throughout the day; and that they witnessed the dogs defecating indoors.

The Landlord submitted that in May 2014 the hot water tank leaked which caused damage to the lower bedroom. He argued that he had originally planned to repair the flooring in that lower room and submitted that the contractor's invoice did not include repairs that were done to the lower bedroom, despite the invoice listing costs for 1100 square feet. The Landlord argued that he had to pay for additional square footage of materials to accommodate waste and extra cuts for work on and around the stairs and tight corners; which he said was common in the construction industry.

Upon questioning from the Tenants' Advocate the Landlord confirmed that his evidence included copies of the condition inspection report form from the previous tenants' tenancy and that that report shows existing damages to the floor, carpets, and walls in the kitchen, living room, master bedroom, bedroom (2), and a dirty patio. The Advocate pointed out that those deficiencies were not noted on these Tenants' move-in condition inspection form and questioned how the property could be considered in perfect condition at the onset of the Tenants' tenancy when the evidence clearly indicated the existence of deficiencies.

The Advocate read a text message into evidence, a copy of which was submitted at tab 3 in the Tenants' evidence, and which indicated that the Landlord had intentions of replacing the flooring as early as June 10, 2014. The Landlord argued that that text message pertained to his intention of replacing the flooring in the basement bedroom that had been damaged by the hot water tank and not the rest of the house.

The Advocate argued that the contractors' affidavit should be given little weight because the Landlord did not arrange to have his contractors at the hearing for the Tenants to question.

The Landlord submitted that to his knowledge the previous owners did not have pets and that he had no knowledge of an email allegedly sent by his property manager about the knowledge of pets inside the rental property.

The Landlord submitted that he had installed new carpet back in 2007. He confirmed that he had not provided documentary evidence to support that the carpet had been replaced.

The Tenant's testimony was provided primarily by H.S.J. through questioning from their Advocate. The Tenant confirmed that she attended the move in inspection on August 29, 2013 and confirmed that she signed the document in section "X" and wrote the date on the signature line. The Tenant stated that she did not recall seeing this report prior to receiving the Landlord's evidence and noted that she had been under a lot of stress at the start of their tenancy because the Tenants were involved in opening a new business.

The Tenant submitted that her command of the English language was good to intermediate. She stated that she chose to use an interpreter during this hearing because this matter was very serious and she did not want to take the chance of mis-interpreting any information.

The Tenants argued that the house was more than 33 years old and was not in good condition when they moved in. They submitted evidence that the carpets and flooring were old, damaged and stained; the heating system did not work properly; the unit had problems with dampness and mold which could have caused the discoloration in the carpet. Also, the hot water tank leaked and resulted in water damage to the carpets.

The Tenant confirmed that she had two small dogs which she informed the property manager about the dogs at the beginning of their tenancy. She argued that the property manager did not oppose them having dogs at any time. She noted that the Landlord had attended the property to pick up mail, about two or three months after the start of their tenancy, and her dogs were barking, yet he made no mention of the dogs at that time or any other time.

The Tenant testified that her dogs usually urinated outside when she was home to let them out. When she was at work or away from the house the dogs would urinate inside the house in a “special area” that was set up for the dogs to use. She argued that the special area had a plastic tray with a special pad that would soak up the urine. She indicated that if she saw dog urine on the floor she would use a special product to clean it up. She indicated that this is why they hired professional cleaners at the end of her tenancy to ensure the house was cleaned properly and treated for urine.

The Tenant confirmed that she met with the property manager at the rental property on July 2, 2014 which is when she returned the keys to the unit. She stated that she was of the opinion that the property manager conducted the move out inspection because they looked around and he said he was satisfied with the place and then took the keys from her. The Tenant confirmed that she had attended the rental unit again on July 11, 2014 but that she thought she was attending just to pick up her security deposit refund.

The Tenant testified that she had knowledge of what a condition inspection involved because she had rented another place before and had been involved in an inspection with her previous landlord.

The Tenants argued that it was not until after the Landlord started renovating his place that he began to ask them for money. The Tenants argued that the property smelled of mold or a musty smell when they moved in which was the result of damp carpet and not urine. They stated that the Landlord failed to complete the move in and move out inspection reports properly; therefore, it is not possible to determine what the pre-existing condition was or to determine what could be considered normal wear and tear during their tenancy. When the keys were returned to the property manager the Tenants were told that rental property was okay. They noted that the Landlord submitted no evidence to prove the actual age of the carpet and flooring. Therefore, they argued given that the house was more than 33 years old it was reasonable to conclude that the flooring was of an age that it exceeded its normal useful life, as provided in the Residential Tenancy Branch Policy Guideline # 40. As such, the Tenants submitted that the Landlord’s application be dismissed and they are seeking the return of their security deposit.

In closing, the Landlord argued that he would have never rented to the Tenants if he knew they had two dogs that would be left unattended for long periods of time, in the rental unit. The Landlord pointed out that the Tenants admitted that their dogs urinated inside the house and argued that the fact that they brought in professional cleaners to

clean up urine indicates they knew of the urine smells in the unit. He stated that the Tenants never made a complaint about the condition of the property until the hot water tank leaked in May 2014.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Tenants' Application

Section 59(2) of the Act provides that an application for dispute resolution must be in the applicable approved form; include full particulars of the dispute that is to be the subject of the dispute resolution proceedings; and be accompanied by the fee prescribed in the regulations.

Upon review of the Tenants' application, I find that the application does not disclose accurate information relating to the dispute address. Therefore, I find the Tenants' application does not meet the requirements of section 59(2) of the Act. Accordingly, I dismiss the Tenants' application, without leave to reapply.

Landlord's Application

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

The undisputed evidence was that the tenancy agreement provided that the Tenants "*shall not keep any dog in any part of the building, except by written permission from the Landlord";* the Tenants had two dogs inside the rental unit; and both the property manager and Landlord had knowledge that the Tenants had dogs in the rental unit during the tenancy and neither the property manager nor the Landlord took action to have the dogs removed during this tenancy.

Case law provides that a material term is a term written into the tenancy agreement that both parties agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

Estoppel is a legal principle that bars a party from denying or alleging a certain fact owing to that party's previous conduct, allegation, or denial. The rationale behind estoppel is to prevent injustice owing to inconsistency.

Based on the above, I accept the Tenants' submissions that having the dogs did not appear to be an issue as no action was taken prior to the end of the tenancy. Accordingly, I find the Landlord submitted insufficient evidence to prove the Tenants breached a material term of the tenancy by having two dogs.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Notwithstanding the Tenants' argument that they did not sign the move-in condition inspection report on the signature line, I accept the Landlord's submission that the Tenants attended the move in inspection on August 29, 2013, and the Tenants signed the form in section "X" agreeing to the condition of the rental unit at the start of the tenancy. That being said, the Landlord provided contradictory documentary evidence which included the previous tenant's move-in inspection report that was dated August 29, 2012, which listed deficiencies to the rental unit, including the flooring. Those deficiencies were never repaired and were not listed on the Tenants' inspection form one year later. Therefore, I accept the Tenants' submission that the Tenants' move in condition inspection report form that was completed by or with the property manager on August 29, 2013, did not reflect the actual condition of the property.

The Landlord submitted photographs as evidence to show the existence of stains on the rental unit carpet, underlay, and subfloor. There was no evidence to prove the exact date the Landlord's photos were taken; however, the Landlord did provide oral testimony that his photos were taken sometime after this tenancy ended and during the renovation to replace the flooring. The contractor's invoice for the renovation work performed to replace the flooring was dated October 18, 2014, over three months after the tenancy ended. There was no evidence of when the actual renovation work was performed.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced flooring, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40* as follows:

Tile Flooring `	Useful life of 10 years
Hardwood, parquet	Useful life of 20 years
Carpets	Useful life of 10 years

Policy Guideline 40 does not provide a normal useful life for laminate flooring. Therefore, I accept the Tenants submission that it would be reasonable to consider 15 years as a normal useful life for laminate flooring as it is midrange between hardwood flooring and tile.

The Tenants disputed the age of the flooring and noted that the Landlord did not submit documentary evidence to prove the actual age of the carpet or the other flooring

material. In the absence of evidence to prove the contrary, I accept the Tenants' submission that the flooring was well used at the start of their tenancy. When considering the contradictory condition inspection report forms, the age of the building being 33 years old, and the fact that there had been a total of 5 different tenancies in this rental property since 2007, I find all of the flooring to have exceeded its normal useful life, pursuant to *Policy Guideline # 40.*

The evidence supports that the Tenant met with the property manager on July 2, 2014, at which time they walked through the rental unit and the Tenant returned the keys. No condition inspection report form was completed on July 2, 2014. I accept the Tenant's submission that she was not told there was an issue with the property on July 2, 2014.

Notwithstanding the Tenant's submission that she thought she was meeting up with the Landlord on July 11, 2014 to pick up her security deposit, I accept the Landlord's submission that it was during that July 11, 2014, meeting when the Landlord first told the Tenant of his concerns with the flooring. Based on the foregoing, the Landlord and/or his property manager had full possession of the property for nine days prior to the Tenants being advised that there were any concerns about the condition of the property, during which the flooring could have been altered.

Based on the above, I find that the Landlord provided insufficient evidence to prove that the Tenants or their dogs caused $8,000.00 damage to the flooring in this rental unit (excluding the lower level flooring damaged by the hot water tank leaking).

Notwithstanding the forgoing finding, I note that the *Residential Tenancy Policy Guideline* #16 states that an Arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded as an affirmation that there has been an infraction of a legal right.

Section 32(2) of the *Act* stipulates that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

In the presence of undisputed evidence that the Tenants allowed their dogs to urinate and defecate inside the rental unit, and notwithstanding the Tenants submission that this was allowed in a designated area of the unit, I find that this provides sufficient evidence to prove the Tenants breached section 32(2) of the Act. Leaving dogs unattended to urinate and defecate inside a residential home, for long periods of time, does not meet reasonable health, cleanliness and sanitary standards and such actions may cause damage to the property which cannot be remedied with cleaning.

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations

> or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Therefore, as I have found above that the Tenants breached section 32(2) of the Act, I hereby grant the Landlord nominal damages in an amount that is equal to the security deposit plus interest in the amount of **$675.00.**

When considering the Landlord primarily did not succeeded with their application; I decline to award recovery of his filing fee.

Conclusion

I HEREBY DISMISS the Tenants' claim, without leave to reapply.

The Landlord is awarded monetary compensation in the amount of **$675.00** and is HEREBY ORDERED to retain the Tenants' security deposit as full satisfaction of this one time award.

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: January 23, 2015

Residential Tenancy Branch