Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Preliminary Issues

At the outset of this hearing G.D. (hereinafter referred to as Landlord) introduced himself as Owner of the property and the Landlord as listed on the written tenancy agreement. The Landlord stated that B.D., the named respondent to this dispute, was his silent partner as he had part ownership of the rental unit, even though he was not listed on the title of the property. B.D. helped with the management of the rental unit.

The Tenants submitted that B.D. was listed as respondent to this dispute because their rent cheques were made payable to him. Also he was the person with whom they dealt with regarding their tenancy and repair issues.

As per the foregoing, the Landlords and Tenants were in agreement that G.D. should be added as a second respondent to this dispute. Accordingly, the style of cause has been amended to add G.D. as a respondent, pursuant to section 64(3)(c) of the Act.

The Tenants filed their application for dispute resolution seeking monetary compensation for $11,959.40. In the Tenants June 26, 2015 evidence submission they included a spreadsheet listing additional items claimed totalling $7,195.75. The additional spreadsheet listed additional possessions; return of rent and pet deposit; costs for mail and USB drives; medicine; carpet cleaning; mold spray; and aggravated damages.

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].

Section 62(2) of the Act stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.

In this case the Tenants did not file an amended application and simply listed the additional items they wished to claim in their evidence. Accordingly, I declined to hear matters which were not claimed on the original application, pursuant to section 59(2) of the Act. The additional amounts or items claimed in the evidence are dismissed, without leave to reapply, pursuant to section 62(2) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on January 19, 2015 seeking to obtain a Monetary Order 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 Landlords for this application.

The hearing was conducted via teleconference and was attended by both Landlords and both Tenants. Each person gave affirmed testimony. 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.

G.D. provided all of the testimony on behalf of the Landlords and translated the evidence submitted to him from B.D. Each Tenant submitted evidence. Therefore, for the remainder of this decision, terms or references to the Landlords and the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

The Residential Tenancy Branch Rule of Procedure (Rule of Procedure) 2.5 stipulates that to the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch (RTB), 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 Rule of Procedure 3.14 provides that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the RTB not less than 14 days before the hearing.

The Rule of Procedure 3.14 stipulates that if an Arbitrator determines that a party unreasonably delayed the service of evidence, the Arbitrator may refuse to consider the evidence.

Rule of Procedure 3.17 provide that the Arbitrator has the discretion to determine whether to accept documentary evidence that does not meet the requirements set out in the Rules of Procedure.

The Tenants confirmed receipt of all of the Landlords` documentary evidence. The Landlords testified that they received the following documents with the Tenants` application and hearing papers: a Monetary Order Worksheet; spreadsheet of additional items claimed; Digital Evidence Details form; and the Initial Site Visit report from a local restoration company. They did not receive a copy of the Tenants` January 15, 2014 letter.

Based on the above, I find the Tenants` written submission dated January 15, 2014 was not served upon the Landlords in accordance with Rule of Procedure 3.14. Accordingly, I did not consider the Tenants` January 15, 2014 written submission; I did however, grant the Tenants leave to read the written submission into evidence if they chose to do so.

The Tenants submitted a second packaged of documentary evidence and a second USB drive which were sent to the Landlords via registered mail on June 24, 2015. The Landlords testified

that they received all of the documents included in this second package of evidence and noted that it was not received until June 25, 2015, eight days prior to this hearing.

I informed the Tenants that their second USB drive submitted to the RTB was not in a format supported by the RTB computers. Therefore, I could not consider the contents of this second USB drive. The Tenants stated that the second USB drive contained all of the same contents as the first USB drive with a few extra photos so they said they were not concerned that the second USB drive would not be considered for this Decision.

The Tenants testified that they delayed in serving their second package of evidence because they were waiting to receive the letter from the tenants who had occupied the rental property just prior to the start of their tenancy and they were finishing up their research. .

The Landlords testified that they have had time to review the second package of evidence submitted by the Tenants and they were prepared to respond to all of the Tenants` evidence, including the second package of evidence that was received late. Upon further clarification the Landlord stated that he wanted to proceed with his response to the Tenants' late evidence.

Based on the above, I find the Tenants` second evidence package was not served upon the Landlords in accordance with Rule of Procedure 3.14 as it was not received by the Landlords 14 days prior to this hearing. That being said, the Landlords have submitted that they have reviewed the evidence and were prepared to respond to that evidence during this hearing; therefore, the Landlords would not be prejudiced if the late evidence was considered. Accordingly, I accepted the Tenants` late evidence, pursuant to Rule of Procedure 3.17.

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. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Tenants proven entitlement to monetary compensation for loss under the Act, regulation, or tenancy agreement?

Background and Evidence

The undisputed evidence was the Tenants entered into a written fixed term tenancy agreement that began on May 1, 2014 and was set to end on May 1, 2015. Rent of $1,100.00 was due on or before the first of each month and on April 6, 2014 the Tenants paid $550.00 as the security deposit.

The Tenants testified that they had to vacate the rental unit due to health concerns caused by excessive mold inside the house. They argued that the septic tank, located two feet north of the house, over flowed and sewage ran under the house causing excessive moisture inside the house. They submitted that the septic tank was not properly sealed and was simply covered with a piece of plywood board lying loosely on top of the septic tank.

The Tenants stated that the Landlords had told them that the Landlord had emptied the septic tank just prior to them moving into the unit in May 2014. Then in September 2014 they began to have problems with the septic tank overflowing and the Landlords had the tank cleaned out

again. The Tenants asserted that they had another septic issue in October or November 2014 at which time the Landlord arranged to have a plumber come and use the snake to unclog the lines.

The Tenants stated that from about October 2014 onward, anytime it rained or there was a rise in surface water they noticed that water began to pool around and underneath the house. Then in November 2014, as problems continued, the male Tenant had one of his employees look under the house at which time he said his employee saw 6 inches of standing water mixed with sewage and he also saw some structural damage to the house. The Tenant stated that he attempted to solve the problem and remove the standing water and sewage from under the house by digging a trench.

The Tenants testified that they contacted the Landlord via telephone about five days after they had found the water and sewage under the house in November 2014. They asserted that they first attempted to resolve the issues themselves and when their efforts did not work they contacted the Landlord five or six days later.

The Tenants argued that there was rapid mold growth inside the house due to the presence of raw sewage and water under the house. As a result they felt they had to vacate the property due to health reasons. The female Tenant submitted that due to the moisture and mold issues she began staying with her parents when the male Tenant was out of town. The Tenants stated that they met with the Landlord on December 21, 2014 and when the problems were not going to be resolved they decided to move out. They had fully vacated the property by January 15, 2015 at which time they returned the keys. The Landlord returned their security deposit shortly afterwards.

The Tenants now seek $11,959.40 as monetary compensation for replacement costs of their possessions which they argued were damaged by the mold. They submitted into evidence a Monetary Order Worksheet listing 10 items, along with a spreadsheet listing 33 additional items. The items claimed consisted of possessions made of or covered with fabric such as mattresses, box springs, microfiber furniture, luggage, clothing, etc. They also submitted claims for hard surface plastic or metal items, such as hand held or small appliances, an espresso machine, and wood or natural made items such as dressers and wicker baskets. All items were said to have been purchased less than 5 years ago except for the sofa chair and the antique night stand.

The Tenants stated that the amounts claimed were based on estimates they obtained by looking up the costs of the items on various suppliers' websites. They did not submit documentary evidence to prove the actual costs or the dates their items were purchased as they did not keep the original receipts.

The Tenants pointed to the "Initial Site Visit" report provided in their evidence and asserted that this report was created after they attempted to make a claim through their tenant content insurance. They said their insurance company arranged for this site inspection which was conducted on December 23, 2014. The Tenants testified that this report shows that there were moisture readings showing 100% inside the rental unit and the report also describes the extensive amount of mold inside the unit. The report stated as follows, on page 2 under the column "Misc. Notes":

> *There is multiple sources of loss that are ongoing and continuous over a long period of time. With all the windows having excessive condensation this would point to an extremely high relative humidity and is also a contributing factor to moisture and mold damage to the contents. The 2' crawl space under the house is not accessible as there is at least 8 inches of water in there. This water may be coming from the kitchen or bathroom or from an issue with the septic system or a combination of all. Moisture is definitely coming from under the house as well as secondary issues with the windows and walls.*
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> [Reproduced as written]

The Tenants stated that their insurance company sent them an email advising that their claim was denied because the issue had been ongoing for a long period of time. That email was not provided in their evidence.

In support of their claim the Tenants submitted a USB drive consisting of digital photographs which show their possessions, window blinds, walls, and ceilings, displaying the presence of a mold like substance along with the standing water or sewage that was underneath the house and in the yard. The Tenants also submitted the following documents into evidence: a letter dated June 1, 2013 that was written to the Landlords by the previous tenants requesting repairs to the rental unit; sample RTB Decisions; a Sewage System Standard Practice Manual; an invoice for the cost of a garbage bin rental and dumping fees; and a list of additional items being claimed.

The Landlord described the rental unit as being a small, 1000 square foot rancher style, 2 bedroom house located on 5 acres of land with full use of a large shop/barn. He submitted that the male Tenant operated a roofing business and that they were very interested in the rental property so they could operate their business out of the shop/barn.

The Landlord testified that when the Tenants came to look at the property they were told that there was no furnace so they would have to heat the house with the use of "block" portable heaters provided by the Landlords.

The Landlord confirmed that his previous tenants had filed a complaint with the Health Department who conducted testing on the septic system for three days back in May 2013. He said he was advised that no leaks were found at that time. He argued that he attempted to acquire a copy of the Health Unit report from 2013 and he was recently told that he would have to file a Freedom of Information Request if he wanted to obtain a copy of that report; even though he was the property owner.

The Landlord argued that they never received any complaints from the Tenants until December 2014, when the Tenants complained the rental unit was too cold. The Landlord said he allowed the Tenants to get another heater and deduct it from their rent. The Landlord argued that he heard nothing further until after the Tenants found out that the property had been sold. The Landlord submitted that a Real Estate Agent told the Tenants the property had sold.

The Landlord testified that the Tenants approached him and asked if the property had sold. He said the Tenants were upset because they were concerned the new owner was going make them move. The Landlord said he had told the Tenants they were okay to stay because their tenancy was for a fixed term that did not end until May 1, 2015. The Landlord asserted that the Tenants also said they were concerned that the new owner would raise the rent and that is when all of these problems began.

The Landlord disputed the Tenants' submissions and argued that they did not empty out the septic tank in October or November 2014. He asserted that there were no written complaints issued by the Tenants and the only oral complaint they received was for more heaters in December 2014. He stated that the Tenants were told they could purchase an additional heater and were given permission to deduct the cost of the heater off of their rent, which they did.

In closing, the Tenants summarized their submissions stating that they had met with B.D. in October 2014 to discuss the septic issues and a plumber came in October 2014 and put in a submersible pump. They initially stated they were not there when the plumber arrived and then changed their submission to say they were present when the plumber attended. They submitted that there was no need to file their application for dispute resolution sooner as they had no reason to doubt the Landlords would look after the issues as they had a good relationship with them. They argued that the issues occurred in December 2014 and related to "fast growing mold" due to the presence of sewage underneath the house.

Analysis

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

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. 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.

7(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.

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

Upon review of the former tenants' June 1, 2013 letter, I accept that this letter is evidence that the former tenants requested repairs and inspections a year prior to the start of these Tenants' tenancy. However, this letter is not in itself evidence that the repairs and inspections were not completed. Also, this letter is considered hearsay as the authors of this letter were not present at the hearing to provide testimony or to be cross examined by the Landlords. Therefore, I have

given this letter given very little evidentiary weight regarding the matters which are currently before me.

I accept that the documentary evidence supports that the rental unit required some repairs. That being said, I find the Tenants submitted insufficient evidence to prove they took reasonable steps to mitigate the loss of their possessions, as required by section 7(2) of the Act. I make this finding in part as there was no documentary evidence to prove the Tenants requested repairs to the rental unit or septic system prior to December 21, 2014. Notwithstanding the Tenants submissions that they had oral conversations with the Landlord(s) about these issues, the Landlords provided disputed testimony. As listed above, if the evidence to support an argument consists of nothing more than disputed verbal testimony the burden of proof is not met.

In addition to the foregoing, the Initial Site Visit report dated December 23, 2014, clearly stated that the sources of loss were “ongoing and continuous over a long period of time”. I find it presumptuously suspicious that the Tenants did not submit a copy of the refusal letter or email issued by their insurance company, as that letter or email would have provided an explanation as to why the Tenants’ insurance would not cover their loss.

The Tenants’ photographic evidence clearly shows an extensive amount of a mold like substance on or covering numerous surfaces that would have been in plain sight, or plain view, such as walls, window blinds, furniture, etc. Therefore, it is reasonable to conclude that the Tenants ought to have known or seen the presence of the mold like substance when it first began, long before it covered so many surfaces. The Tenants were required to take immediate steps to inform the Landlords of the problem and request repairs in writing when the issues first began. If the Landlords failed to respond to their initial requests then the Tenants ought to have sought assistance through dispute resolution to resolve the issues.

Based on the above I find the Tenants have provided insufficient evidence to prove they did whatever was reasonable to minimize the damage or loss as required by section 7(2) of the Act. Accordingly, their application is dismissed in its entirety.

The Tenants have not succeeded with their application; therefore, I declined to award recovery of their filing fee.

Conclusion

The Tenants have not been successful with their application and their application is HEREBY DISMISSED, without leave to reapply.

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: July 08, 2015

Residential Tenancy Branch