Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction
This hearing dealt with the tenants' application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The female tenant initially testified that the tenants handed the landlord's Resident Manager (JS) a copy of their corrected dispute resolution hearing package on June 30, 2015. Landlord JS testified that the tenants handed him this package along with 31 pages of written evidence on July 14, 2015. As the corrected Notice of Hearing was dated June 29, 2015, I asked the tenants to clarify this disputed testimony. The female tenant said that she had been mistaken in her earlier testimony, as she must have handed Landlord JS the corrected hearing package and written evidence on July 30, 2015. Although there remains a significant difference in the date of service identified by the two parties, I accept that Landlord JS confirmed that the landlord was duly served with the corrected hearing package and 31 pages of written evidence in accordance with sections 88 and 89(1) of the *Act*.

At the commencement of this hearing, the tenants clarified that their application involves only the rental unit identified above, which they vacated on or about September 27, 2012. The female tenant advised that the tenants had made a mistake in submitting the last 22 pages of their written evidence and photographs to the Residential Tenancy Branch (the RTB) because these documents pertained to their current rental unit in another building owned by the same landlord. The parties agreed that there is another hearing scheduled for October 14, 2015 to hear the tenants' application regarding their current rental unit. The tenants confirmed the landlord's claim that the tenants did not provide these last 22 pages or photographs to the landlord as part of the tenants' application regarding the dispute about their former tenancy. As the tenants did not provide the last 22 pages of written evidence and photographs to the landlord and the tenants confirmed that these documents relate to one of their other applications for dispute resolution and a different tenancy, I advised the parties that I would not be considering this evidence in reaching my decision.

Preliminary Issue- Landlord's Adjournment Request

At the commencement of the hearing, Landlord KS (the landlord) requested an adjournment of this application. He said that the person most familiar with this situation was the landlord's Regional Manager who was away on vacation. He asked that the adjournment be granted so as to enable the Regional Manager to participate and to allow the landlord to prepare and submit written evidence. The landlord confirmed that no written evidence was submitted by the Respondent.

Analysis – Landlord's Adjournment Request

Rule 6 of the RTB's Rules of Procedure establishes how late requests for a rescheduling and adjournment of dispute resolution proceedings are handled. Since the landlord did not make any written request for an adjournment in advance of this hearing, Rule 6.3 applies:

> ***6.3 Adjournment after the dispute resolution proceeding commences***
> *At any time after the dispute resolution proceeding commences, the arbitrator may adjourn the dispute resolution proceeding to a later time at the request of any party or on the arbitrator's own initiative.*

In considering this request for an adjournment, I have applied the criteria established in Rule 6.4 of the Rules of Procedure, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

> *(a) the oral or written submissions of the parties;*
>
> *(b) the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objective set in Rule 1 (objective and purpose);*
>
> *c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;*
>
> *(d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and*
>
> *(e) the possible prejudice to each party…*

At the hearing, I gave both parties an opportunity to make oral submissions regarding the landlord's request.

The landlord testified that he had only received the tenants' written evidence from Landlord JS the week before this hearing and was not fully prepared to proceed. I checked with Landlord

JS, who confirmed that he had been aware of this application since at least July 14, when he received the tenants' corrected Notice of Hearing and evidence package.

The male tenant objected to an adjournment of this hearing. He observed that the tenants' attempts to resolve this matter had been delayed since July 2014, when the landlord initially offered to allow the tenants to return to the rental unit in their former building very near their current rental building. He said that the landlord was attempting to "drag this out forever." The female tenant also objected to allowing the request for an adjournment, as she said that the tenants had followed all the rules in providing proper notice to Landlord JS, the landlords' resident manager.

In considering this late request for an adjournment, I found Landlord KS's request lacking. He initially objected to the tenants' reliance on service of the tenants' hearing package to only the landlord's Resident Manager. He said that the tenants should have also notified someone else within the landlord's company of their application. I find that the request appears to result from a communication problem within the landlord's own company as opposed to any lack of proper notice provided by the tenants. The tenants are in no way responsible for the apparent neglect in the landlord's channelling the tenants' application for dispute resolution to the appropriate official within this professional property management company. As noted at the hearing, I do not accept that the failure of the tenants to alert Landlord KS personally, or the Regional Manager, constitutes a valid reason for granting an adjournment.

I have also given weight to the tenants' objection to the granting of an adjournment as they have been attempting to resolve this matter since July 2014. Any further delay would only further prejudice them in their attempts to reach a resolution of this matter.

For these reasons, I advised the parties of my finding that the landlord had not met the criteria established for granting an adjournment and proceeded with this hearing.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for losses or damages arising out of this tenancy?

Background and Evidence

While I have turned my mind to all the documentary evidence, including the agreements signed by the parties, miscellaneous letters, notices and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

The tenancy in question in this application for the tenants' former rental unit began as a one-year fixed term tenancy on May 1, 2012, with the former owner of that rental building. Monthly rent for that two bedroom rental unit on the third floor of their original building was set at $850.00, plus hydro, payable in advance on the first of each month. The landlord continues to hold the tenants' $425.00 security deposit paid to the former owner of that building on or about May 1, 2012.

Shortly after this tenancy began, ownership of the property transferred to the current landlord/Respondent. The current landlord sent a Notice to All Residents on July 27, 2012, followed shortly thereafter by a second Notice to All Residents on August 3, 2012, both of which were entered into written evidence by the tenants. In the second of these Notices (the Second Notice), the landlord advised residents that they had been in contact with the RTB regarding their plans to undertake needed repairs to the rental building. Their Second Notice described the situation as follows:

> …We are attempting to deal with long outstanding issues which existed prior to our recent purchase of the building quickly wo that both our tenants and we can be proud of the living space offered by the building.
>
> *The facts:*
>
> - *The outstanding order form(sic) City of XX that the piping must be replaced*
> - *The leakage from the pipes resulted in breakdown of the fire-separation system resulting in the Fire Department issuing and order requiring a 24 hour fire watch for the building.*
> - *During the necessary repairs, water will need to be shut off for extended periods of time*
>
> (as in original but for anonymizing the name of the City)

In the Second Notice, the landlord stated that the repairs "will take up to 2 or more months" and advised that "it is in the best interest of our tenants and their safety that the building be vacated for repairs." The landlord identified "various options" and "determined that the temporary transfer" to other buildings was the best course of action. By doing so, the landlord maintained that they were "able to avoid giving you a notice under the Residential Tenancy Act to vacate your home permanently."

In the Second Notice, the landlord gave the tenants the following three options:

(a) move out if you wish;
(b) sign a new tenancy agreement for a unit in one of our many locations in (two other communities) until the building is completed, and then return to your current unit (at the current rent you are paying); or
(c) temporary transfer to the building across (the road) and pay your current rent amount.

All tenants were also offered a $300.00 credit from the landlord for the disruption involved in this move. The Second Notice also advised that "there will be a short term inconvenience but you will be returning to a better building with no changes to your current rental agreement."

After considering the three options made available to them, the tenants and the landlord's representative (Landlord JS) signed a mutual agreement (the Agreement) on August 27, 2012, in which the tenants agreed to transfer to a second floor rental unit in the landlord's rental building across the road from their previous building (i.e., option (c) as outlined in the Second Notice). They also checked the box in the Agreement stating their intention to return to their current suite (in the dispute address noted above) once that suite was available. They also checked the box that they did not plan to stay permanently at their new address.

To give effect to the Areement, the tenants and the landlord signed a new periodic tenancy agreement for the second floor rental unit in the building across the road from their original residence in the dispute address on September 27, 2012 for the same $850.00 monthly rent. The parties agreed that the landlord paid the female tenant the $300.00 credit promised in the Second Notice.

The tenants applied for a monetary award of $5,000.00 due to the landlord's alleged breach of a contractual agreement they entered into with the tenants when the tenants agreed to temporarily relocate to the landlord's building across the road. Whether or not the landlord decided to or was required to undergo more extensive repairs and renovations than was originally intended, the tenants maintained that the landlord made a clear commitment to allow them to return to their original rental suite under the same terms as their original tenancy agreement. At the hearing, the tenants testified that the amount claimed was intended to compensate them for the disruption they encountered in having to be constantly prepared to move back into their original rental unit on short notice. They said that the landlord's representatives gave them many estimates as to when the renovations and repairs to their original rental unit would be completed. They said that they had to leave many of their possessions in boxes so as to be ready to return to their original rental unit. In their sworn testimony and their written evidence, the tenants maintained that the rental unit they have been living in since the fall of 2012 is much inferior to the fully renovated and repaired original rental unit they were expecting to move back into once the landlord's work was done. The male tenant also testified that the landlord failed to honour the terms of the second Notice and the Agreement as he did not receive a $300.00 moving allowance. However, all parties in attendance at the hearing confirmed that the landlord did pay the female tenant the $300.00 moving allowance specified in the temporary relocation agreement between the parties.

The tenants entered into written evidence copies of the subsequent Notices of Rent Increase the landlord issued to increase their rent in their current premises by the allowed percentages established under the *Act* and by *Regulation*. By March 1, 2015, the tenants' rent in their current second floor rental unit across from the dispute address was set at $904.36.

The tenants also entered into written evidence a copy of the landlord's July 20, 2014 notice to them that the renovations to their original rental building had been completed and the municipality had issued a permit allowing the building to be reoccupied. In that notice, the landlord's noted that the renovations and repairs proved much more time-consuming and costly than had been anticipated. They maintained that municipal inspectors kept adding to the scope

of the work resulting in the whole process taking 1.5 years and costing approximately $20,000.00 per suite, including a range of work that was not anticipated when the tenants agreed to vacate their former rental units. This notice also confirmed the following:

> *…When we transferred you to an equal suite at **** and offered $300 moving fee, we stated that you will be able to move back to your original suite once work is done. Because of the extensive renovations and current condition of the suites, market value for that suite is now $1100 per month.*
> *Would you wish to now move back to that suite we will offer you a 1 month incentive, and the rent for the 1st year will be $1008…*

The landlord's two representatives at the hearing testified that the tenants did not respond to this request so the landlord re-rented their former rental unit to new tenants at the market rate. The tenants testified that they did respond to the landlord's request and entered into written evidence a copy of their response. The tenants advised the landlord that they expected to be allowed to move back into their former rental unit at the same $850.00 monthly rental they had been paying under their original tenancy agreement. They maintained that the landlord had arbitrarily chosen to ignore the terms of their original agreement to temporarily relocate but return to their former rental unit at the same monthly rent when the repairs to their former rental building had been completed.

The tenants also entered into written evidence a portion of a decision reached by RTB Arbitrator KL on October 3, 2014. The application before Arbitrator KL disputed an additional rent increase being applied to their original rental unit, and sought orders requiring the landlord to comply with the *Act* and to give them possession of their original rental unit. By the time of that hearing, the landlord had already re-rented the unit to new tenants. Under these circumstances, Arbitrator KL dismissed the tenants' application, noting that the tenants were at liberty to seek alternative remedies in a new application for dispute resolution.

At the hearing, Landlord JS confirmed that the tenants had been promised an opportunity to move back into their former rental unit under the same monetary terms. Landlord KS also confirmed this, stating that the time and expense of repairing and renovating the tenants' former rental building far exceeded anything anticipated when the temporary relocation was planned. He maintained that these changed circumstances warranted the landlord's decision to recover the additional costs of renovation by charging returning tenants more than they were originally paying prior to the renovations.

Analysis

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 their tenancy agreement, their contractual agreements with the landlord 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 tenants to prove on the balance of probabilities their application for a monetary award for damages arising out of the landlord's actions.

I will first address that portion of the male tenant's claim that the landlord breached the terms of the tenants' agreement to temporarily vacate their original rental unit because the landlord only paid the female tenant a $300.00 moving allowance. At the hearing, I advised the parties that I found no basis to the male tenant's claim that the Agreement between the parties signed on August 27, 2012 on the basis of the second Notice (i.e., the August 3, 2012 Notice from the landlord) entitled both tenants to separate $300.00 moving allowance payments from the landlord. As the parties signed a single tenancy agreement with the landlord as co-tenants, I find that the landlord's commitment was to pay the tenants/residents of each rental unit a single $300.00 moving credit and not individual moving credits to each individual who agreed to the temporary relocation. I dismiss this element of the tenants' application without leave to reapply.

Based on a balance of probabilities and after carefully considering both the terms of the various agreements signed by the tenants and their landlords, the correspondence between the parties and the sworn testimony during this hearing, I find that the landlord did breach the contractual agreement they entered into with the tenants. I find that in exchange for the consideration of the $300.00 moving allowance provided by the landlords to the tenants, the tenants agreed to a temporary move to the landlord's rental building across the road from their original rental building. In both Notices sent to residents of the original rental building, in the Agreement to vacate their original rental unit signed by the parties on August 27, 2012, and as confirmed in sworn oral testimony from the two tenants and Landlord JS, the tenants agreed to the temporary relocation on the basis that they would be returning to a better building with no changes to their current rental agreement. The tenants also entered into a separate and new periodic Residential Tenancy Agreement with the landlord for the rental unit on the second floor of the building where they have resided since moving from their original rental unit. I find that this new tenancy agreement does not negate the terms of their original tenancy agreement or the contractual obligation the landlords entered into in August 2012.

I find that the renovation and repair delays encountered by the landlords in no way ended the landlord's contractual obligations established in August 2012 to offer the tenants an opportunity to return to their original rental unit at the same rent as they were paying under the terms of their original one-year fixed term Residential Tenancy Agreement, signed in May 2012. That fixed term Agreement and the landlord's subsequent contractual obligation to the tenants committed the landlord to providing rental accommodation to the tenants for a period of one year at the monthly rental rate that the tenants committed to pay when they signed their initial fixed term tenancy in May 2012. I find that the tenants only enjoyed the use of their original rental unit for the first five months of their anticipated twelve month fixed term tenancy at their original rental

unit. After the expiration of that one-year fixed term tenancy, there was no commitment by either party that the monetary terms would remain the same. However, I find that the landlord did commit to honour the terms of the original rental agreement for an additional seven-month period once the renovations and repairs to their original rental unit were completed.

While I find that the landlord was in breach of its contractual agreement with the tenants, there is conflicting evidence before me as to whether the tenants suffered any actual loss as a result of the landlord's actions. This matter is complicated by the tenants' signing of a second tenancy agreement with the landlords for a rental unit across the road from their original building. Although the tenants testified that their current rental building is much inferior to the newly renovated building where they previously resided, the landlord\s representatives provided a much different perspective. The landlord's representatives gave undisputed sworn testimony that the building where the tenants currently reside was renovated shortly before the tenants moved into their current rental unit in 2012. The landlord's representatives also gave undisputed sworn testimony that the monthly market rental for new tenants wishing to reside in two bedroom units in either of these buildings is identical. They said that the buildings are across from one another and are equally attractive to potential renters.

I find that the parties have provided similarly convincing evidence regarding the comparative attractiveness of the tenants' current rental unit on the second floor of their current building versus their now fully renovated rental unit on the third floor of their previous building. Under these circumstances, I find that the most effective way to quantify the extent of the tenants' losses resulting from the landlord's failure to abide by the terms of their contractual agreement is to consider the difference in monthly rent paid by the tenants to the landlords for the seven-month period following the completion of the renovations to the tenants' former rental premises. Once that seven-month period ended, the landlords were under no further obligation to the tenants as per the terms of their original one-year fixed term tenancy agreement. At the end of a 12-month fixed term tenancy, the parties were free to negotiate whatever monetary terms were suitable for a continuation of the tenancy.

Since the tenants would have had to provide 30 days notice to the landlords of their intent to vacate their current rental unit, the earliest legal date when the tenants could have returned to their previous rental unit was September 1, 2014. For the six months from September 1, 2014, until February 28, 2015, the tenants' monthly rent at their current rental unit was $882.30. For March 2015, the tenants' monthly rent was set at $904.36, as per the landlord's November 23, 2014 Notice of Rent Increase. Thus, I find that the actual monetary loss suffered by the tenants for the six-month period from September 1, 2014 to February 28, 2015 was $32.30 per month. For the final month of their unfulfilled 12-month tenancy at their original rental unit, March 2015, the tenants were responsible for paying monthly rent of $904.36, instead of $850.00, the amount stated in their original tenancy agreement. This results in a difference of $54.36. Using this formula, I find that the actual loss demonstrated by the tenants over the remaining seven-month period of their initial tenancy agreement was $248.16 ({6 months x $32.30} + $54.36 = $ 248.16). I issue a monetary Order to the tenants in this amount.

In coming to this determination, I have also considered section 65(1)(c) and (f) of the *Act,* which allow 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." In this regard, I have considered the female tenants' assertion that there was a loss in the value of their tenancy agreement or in their quiet enjoyment of rental premises they rented from the landlord because of the uncertainty associated with not knowing when the landlord would have their original rental unit available for them. I find that the new periodic tenancy agreement for their current rental unit effectively prevented the landlord from insisting on a sudden demand that the tenants vacate their current rental unit and return to their original rental unit. The tenants could have sought the protections afforded under the Act for any attempt by the landlord to end their current tenancy. For these reasons, I find that the landlord is in no way responsible for the tenants' apparent decision to leave their possessions in boxes during the period from October 2012 until August 2014, or as it would seem beyond that date. I find no other reason to allow the tenants a monetary award for either their loss of quiet enjoyment or a reduction in the value of their original tenancy agreement as a result of the landlord's failure to abide by the contractual terms of the agreement the landlord entered into with the tenants in August 2012. I also find that the difference between the tenants' missed opportunity to reside in a newly renovated rental unit for a seven-month period as opposed to a very recently renovated rental unit is very negligible, especially given the landlord's undisputed sworn testimony that vacant two bedroom units in both buildings rent for the same amount.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of $248.16. The tenants are provided with these Orders in the above terms and the landlord must be served with this Order. Should the landlord 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.

This final and binding 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: August 24, 2015

Residential Tenancy Branch