Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MNDC, MNR, FF
For the tenants: MNDC, FF

Introduction

This was the reconvened hearing dealing with the parties' respective applications for dispute resolution under the Residential Tenancy Act (the "Act").

The landlord applied for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and alleged unpaid rent and for recovery of the filing fee paid for this application

The tenants applied for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and for recovery of the filing fee paid for this application.

This hearing began on July 7, 2015, was attended by the tenants' advocate and the landlord, and dealt only with the tenants' advocate's request for an adjournment and the landlord's request to amend her application seeking an increase in her monetary claim.

An Interim Decision, was entered on July 7, 2015, should be read in conjunction with this Decision and further, it is incorporated herein by reference. I note that the landlord did not object to the tenants' advocate's request for an adjournment and the tenants' advocate did not object to the landlord's increased monetary claim.

The parties were informed at the original hearing that the hearing would be adjourned in order to consider the issues contained in the parties' respective applications and the hearing proceeded on that basis.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

1. Is the landlord entitled to monetary compensation from the tenants and to recovery of the filing fee paid for this application?
2. Are the tenants entitled to monetary compensation from the landlord and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence was that the tenancy began on July 14, 2014, ended on June 30, 2015, monthly rent was $1000.00, and the tenants paid a security deposit of $500.00.

The rental unit is located in a condominium building.

Landlord's application-

The landlord's monetary claim is $700.00 for various strata fines for noise violations, the filing fee of $50.00, registered mail costs of $27.66, and loss of rent revenue of $1000.00 for July 2015.

The landlord's relevant evidence included, but was not limited to, a written submission, copies of email communication between the landlord and a strata company representative, a listing of the strata company's statement showing bylaw fines assessed against the rental unit, the written tenancy agreement, and letters from the strata company imposing the various fines.

In support of her application, the landlord submitted that the strata corporation has imposed and assessed 4 different fines due to noise complaints made against the tenants. Although the fines have been assessed against her account, the landlord stated that she has not yet paid the fines.

The landlord submitted further that there were 2 hearings set in order for the tenants to rebut the complaints, the tenants did not attend the meetings.

The landlord submitted further that the tenants are responsible for any strata fines, pursuant to the addendum in the written tenancy agreement. The addendum stated that the tenants were emailed a copy of the strata bylaws and rules currently in effect and that they were responsible for any fines imposed on the unit during the tenancy.

As to her claim for loss of rent revenue for July, the landlord submitted that the tenants reported a leak in the ensuite toilet on June 4, 2015, which led the landlord to call a restoration company. According to the landlord, she met with the restoration company onsite and the toilet was fixed; however, it was apparent that there was water damage and fans were set up to dry the damaged walls. According to the landlord, tenant "JM" phoned to complain that the removed vanity was in their way and to express concern about the asbestos testing. The landlord submitted further that the testing revealed that there was asbestos only in the glue and that precautions would not need to be taken until the flooring was removed, a 1 day job.

According to the landlord, she gave the tenants the choice of having the remediation completed while still living in the rental unit, or at the end of the tenancy, scheduled to be June 30, 2015, and as the tenants chose the second option, the 2 week remediation caused her to lose rent revenue for July 2015.

Tenants' response-

The tenants submitted that the source of the noise complaints was a neighbour, who targeted them to force them to move, and that the noise complaints were not valid. According to the tenants, they inquired of the landlord what could be done about this neighbour, but received no positive response. The tenants submitted further that they did not feel safe living in the rental unit, due to the neighbour, nor could they afford to live there due to the constant, unfounded fines.

The tenants submitted further that it was necessary to call the police due to the neighbour's behaviour, one instance being when JM's motorcycle was pushed over, causing damage.

The tenants submitted they did not know of any strata meetings in order to dispute the fines and that one strata member told them they were too young to live in the complex.

As to the landlord's claim for loss of rent revenue, the JM submitted that he noticed a leak when he was cleaning the bathroom and reported the problem to the landlord; the landlord and restoration company attended the rental unit, removed the vanity, and placed fans there to dry out the walls and floors, being run 24 hours a day.

JM submitted that he was concerned about the asbestos and that the restoration company informed him their testing was positive for asbestos, although the tests results were not shared with the tenants.

According to the tenants, the landlord said the remediation work would be easier after they vacated at the end of June and that the remediation appeared to be work that would take more than a day.

The tenants submitted that as they were given a choice, they chose to have the remediation done after they vacated.

Tenants' application-

The tenants' monetary claim is $1000.00, as compensation for an alleged loss of quiet enjoyment.

The tenants' relevant evidence included, but was not limited to, a written statement, support letters from other occupants in the condominium building, some referencing the neighbour of which the tenants spoke, proof that the monthly rent was paid for May and June 2015, and a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice").

In support of their application, the tenants submitted that they are entitled to compensation equivalent to one month's rent, for, among other things, the constant threats by the neighbour, the constant noise from the fans drying out the walls and floors, and the fear that their rental unit had asbestos in it.

The tenants submitted further that the landlord issued unfounded notices, including the 10 Day Notice and a 1 Month Notice to End Tenancy for Cause, which caused further distress. In explanation, the tenants submitted that they did not owe rent when the 10 Day Notice was issued, and that the $700.00 listed as unpaid rent was most likely the total strata fines. The tenants confirmed that they decided not to dispute the 1 Month Notice as they decided to move out by that time.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Landlord's application-

In this case the landlord failed to provide evidence that the tenants signed a Form K-Notice of Tenant's Responsibility with the tenancy agreement, which is a written acknowledgement that the tenants, renting within a strata development, have received a copy of the strata bylaws and agree to abide by them. Although the addendum in the written tenancy agreement states that the tenants have received a copy of the bylaws and rules, a Form K also provides other information to the tenants.

Without the form being signed by the tenants, the rules or bylaws do not become part of the tenancy agreement, and consequently, the tenants are not obligated to abide by the bylaws or pay the fines, as these issues are considered outside the jurisdiction of the Residential Tenancy Act.

As the tenants have not signed the Form K, which becomes part of the tenancy agreement, I find that the landlord has failed to prove that the tenants have violated the tenancy agreement or the Act, and I dismiss her claim for $700.00.

As to the landlord's claim for loss of rent revenue, I find the evidence supports that the landlord allowed the tenants to make a choice of when the remediation work was performed, to her detriment. As the landlord is responsible for repairs such as leaks in pipes, according to section 32 of the Act, it is upon the landlord to make the repairs in a timely manner. I do not find the landlord can hold the tenants responsible for the choice the landlord made in allowing a postponement of the remediation work.

Due to this finding, I dismiss the landlord's claim to hold the tenants responsible for any loss of rent revenue due to the remediation work being performed in July.

As to the landlord's claim for registered mail costs, the Act does not provide for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee. I therefore dismiss the landlord's claim for registered mail expenses of $27.66.

As I have dismissed the landlord's claim for strata fines, for loss of rent revenue for July 2015, and for registered mail expenses, I dismiss her application, including her request to recover the filing fee, without leave to reapply.

Tenants' application-

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the Act; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline 6, explains, among other things,

Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:

- *entering the rental premises frequently, or without notice or permission;*
- *unreasonable and ongoing noise;*
- *persecution and intimidation; or*
- *allowing the property to fall into disrepair so the tenant cannot safely continue to live there.*

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

In the case before me, I find the tenants submitted insufficient evidence to demonstrate that the landlord is responsible for a loss of their quiet enjoyment. For instance, the addendum to the written tenancy agreement does state that the landlord may treat fine levies as rent. Therefore I find it reasonable that the landlord believed she was within her rights to issue the tenants a 10 Day Notice, whether I have allowed the landlord compensation for those fines.

Additionally, the tenants confirmed they chose not to dispute the 1 Month Notice, and I therefore did not consider whether the 1 Month Notice was unfounded.

As to the tenants' complaints about the water leak and the inconvenience caused by that leak, I find the evidence supports that the parties negotiated when the remediation work would be performed and so I do not hold the landlord responsible for the tenants choosing to wait until the end of the tenancy before the work was done. Additionally, I find the landlord addressed the issue of the leak immediately by notifying her insurance company and thus having the restoration company attend the rental unit within a reasonable time frame.

As to the tenants' position that they are entitled to compensation due to the behaviour of the neighbour, I considered that the tenants have not presented evidence that they notified the landlord about an issue with the neighbour in the condominium building. I would have expected to see evidence that the tenants had notified that landlord in writing, to put the landlord on notice that they were being deprived of their quiet enjoyment and in order to investigate this matter with the strata corporation. Without such proof, I find the tenants have submitted insufficient evidence to hold the landlord responsible for the neighbour's actions.

Due to the above, I find the tenants have not supported their claim for a loss of quiet enjoyment, and I therefore dismiss their application, including their request to recover the filing fee paid for this application, without leave to reapply.

Conclusion

Due to the above, the respective applications of the parties have been 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: October 5, 2015

Residential Tenancy Branch