Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenants: MNSD, MNDC, FF
For the landlord: MNDC, MND, MNR, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (“Act”).

The tenants applied for a return of their security deposit, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

The landlords applied for a monetary order for money owed or compensation for damage or loss, unpaid rent, and alleged damage to the rental unit, and for recovery of the filing fee paid for this application.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other’s evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties 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.

Preliminary and procedural matters-

The tenants’ application was filed on or about July 7, 2015. On December 1, 2015, the landlords filed their application against the tenants and served their application on the tenants on December 3, 2015,by registered mail. The tenants submitted that they had just received the landlords’ application and did not have time to review and prepare a response.

Section 3.14 of the Rules require that evidence that a party intends to rely upon at a hearing must be served on the respondent, the tenants in the case of the landlords’ cross application, must be received by the respondent at least 14 days prior to the hearing. The respondent, the tenants in the case of the landlords’ cross application,

must be served on the applicant and Residential Tenancy Branch ("RTB") at least 7 days prior to the hearing.

In the instance of the landlords' cross application, Section 90 of the Act states that documents served by registered mail are deemed delivered 5 days later. Thus, without evidence to the contrary, the tenants were deemed to have received the landlords' application on December 8, 2015, and therefore, the tenants did not have the landlords' application or evidence at least 14 days prior to the hearing on December 17, 2015.

In reviewing the landlords' application and evidence, I find that most of the evidence was available well in advance of the date the landlords filed their application, which led me to conclude the landlords unreasonably delayed in making their application.

I therefore dismiss the landlords' application, with leave to reapply, having made no findings on the merits of their application for dispute resolution.

As to the tenants' application, the undisputed evidence shows that the tenants served only landlord DJR with their application, as required by section 89(1) of the Act; I have therefore excluded landlord SDR from further consideration in this matter.

The parties are reminded that when serving an application for dispute resolution on multiple parties, each party must be served separately, and if choosing service by registered mail, the documents must be sent in individual envelopes.

The hearing proceeded to consider the merits of the tenants' application.

Issue(s) to be Decided

Are the tenants entitled to a return of their security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence shows that this tenancy originally began on November 1, 2012, ended on or about April 30, 2015, that monthly rent was $1700.00, and that the tenants paid a security deposit of $850.00.

The tenants' monetary claim was comprised of $850.00 for a return of their security deposit, and the balance of their $10,125.00 claim was a loss of personal property in the rental unit.

In support of their claim, the tenants submitted that they provided the landlords their forwarding address in an emailed notice that they were vacating on April 16, 2015, to which the landlords responded on April 24, 2015. To date, the landlords have not returned their security deposit, according to the tenants.

The parties agreed that there was no move-in or move-out inspection of the rental unit with the respective parties.

In support of their claim for a loss of personal property, the tenants submitted that within a few months after they moved into the rental unit, they discovered mould on their clothes and other items. The tenants submitted further that the window sills were covered in water. The tenants attempted to keep the windows free from water and to clean the mould, but the mould was too fast growing to keep it in check, according to the tenants. The tenants submitted further that everything in the closet was covered in mould and that the vents and fans did not work properly, causing the tenants to throw out a number of items of personal property.

The tenants submitted that they contacted the landlords about the mould issue and that the landlords had a contractor attend the rental unit. The tenants submitted that they have never seen anything like the amount of water coming from the building elements, and that by the second winter, the situation with the mould had progressively worsened. The landlords, after notification, installed commercial dehumidifiers, but the issue remained, according to the tenants.

By the third winter, the mould issue had escalated, with water dripping from the upstairs bathroom, and more items of personal property had to be thrown away. These items included mattresses and box springs, couches and a loveseat, bedding and pillows, luggage and a camera bag, electronics, a guitar amplifier, clothing, collectible books and a carpet. The tenants submitted photographs of the items of personal property show with mould.

The tenants submitted that they were very concerned for their health, due to the extreme amount of mould.

Landlord's response-

The landlord submitted that the initial contact by the tenants about the mould was by a phone call, which led to him inspecting the rental unit. According to the landlord, there was a slight bend in the pipe and a small amount of water, but nothing as described by the tenants. The landlord submitted further that the bend was straightened.

The landlord submitted further that as the tenants continued to complain, he contacted his insurance company, who in turn had a contractor attend the rental unit for an inspection and remediation. According to the landlord, the contractor could not understand how mould continued to develop. According to the landlord, the contractor informed him the issue was an air flow problem, as the tenants were not using the fans and windows properly. According to the landlord, the contractor stated that if the air in the rental unit is not properly circulated, mould will result.

The landlord submitted further that the tenants did not make use of the fans and heating, which led to a failure to the remediation efforts by the contractors. The

landlord submitted further that he had installed a professional fan and timer, but that when he returned to the rental unit, the fan was turned off by the tenants.

The landlord submitted further that when he attended the rental unit in the spring after the tenants vacated, he turned on the baseboard heating, and an immediate burning smell came from the heating, which suggested that the tenants had not turned on the heating all winter, as this smell occurs after the first use of the heating each winter season.

The landlord's relevant evidence included, but was not limited to, receipts for a dehumidifier, a statement from the contractor regarding the use of, or rather the lack of use of, the bathroom fans, another statement from the contractor regarding the installation of drywall due to the dampness in the existing drywall, and a statement from another professional company stating that when they attended the rental unit, the air was quite cold and damp, which led to a replacement of the dehumidistat.

As to the tenants' security deposit, the landlord submitted that the terms in the written tenancy agreement allowed retention of the security deposit for carpet cleaning.

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.

Claim for loss of personal property due to mould-

Under section 32(1) of the Act, a landlord must provide and maintain a residential property in a state of decoration and repair that complies with health, safety and housing standards required by law given the age, location and character of the rental unit.

Under section 32(2) of the Act, a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant.

In reviewing and weighing the evidence of the parties, I find that the tenants have submitted insufficient evidence to support that they made written requests to the landlord concerning their mould issue, which in turn the landlords failed to address. In contrast, the landlord submitted evidence which showed that they did in fact quickly address the tenants' complaints, had contractors attend the rental unit, and that the

mould was directly attributable to the actions of the tenants. Two credible experts have attributed the presence and growth of mould in the rental unit due to the tenants not making use of the exhaust fans or heating during the winter months. After reading the landlords' evidence, I find that the tenants are the likely cause of the development and growth of the mould due to their failure to provide proper ventilation and heating of the rental unit.

I have also considered that the tenants have not provided a mould assessment report or any other evidence which would show that the mould issue was a structural issue, which would tend to be a landlord matter, rather than a surface issue, which I find would tend to be a tenant issue.

The tenants had the burden of proving that the cause of the mould was a result of a breach of the Act by the landlord and I find that the tenants have submitted insufficient evidence to prove their allegations.

I therefore dismiss their monetary claim for a loss of their personal property due to mould, without leave to reapply.

Security deposit-

Under section 38(1) of the Act, within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy, a landlord must either repay a tenant's security deposit or to file an application for dispute resolution claiming against the security deposit. Section 38(6) of the Act states that if a landlord fails to comply or follow the requirements of section 38(1), then the landlord must pay the tenants double the amount of their security deposit.

In the case before me, the undisputed evidence was that the tenancy ended on or about April 30, 2015. The tenants submitted that they provided the landlord their written forwarding address in an email on April 16, 2015, although that information was not contained in the copy of the email provided by the tenants into evidence.

Under section 88 of the Act, email transmissions are not an acceptable method of delivery of documents, and I therefore find the tenants did not sufficiently serve their forwarding address in writing to the landlords prior to making their application for a return of their security deposit. As a result, at the time the tenants filed this application, their claim was premature.

As the tenants' forwarding address was provided on the tenants' application for dispute resolution, the landlord is hereby put on notice that he is deemed to have received the tenants' forwarding address in writing 5 days from the date of this Decision. The landlord must either make an application for dispute resolution or return the security deposit to the tenants no later than 15 days after this Decision is deemed received.

I therefore dismiss the tenants' application, with leave to reapply in the event the landlord fails to return the tenants' security deposit or file an application claiming against the security deposit.

As the tenants have not been successful with their application, I dismiss the tenants' request for recovery of their filing fee.

Conclusion

The tenants' monetary claim for a loss of personal property is dismissed, without leave to reapply.

The tenants' claim for a return of their security deposit is dismissed, with leave to reapply.

The landlords' application for monetary compensation was dismissed, with leave to reapply, due to their late application.

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: December 21, 2015

Residential Tenancy Branch