Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF; MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the Act for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenants FvU, MM, and SS attended the hearing. The tenant NI was represented by her agent MI. The tenants were assisted by an advocate. The landlord attended the hearing. All parties 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 landlord elected to call one witness DP.

The parties admitted service of all documents before me.

Procedural History

The landlord filed her application 15 May 2015. The landlord received a copy of the notice of dispute resolution hearing on 19 May 2015. The dispute resolution package was served by registered mail on 6 October 2015. The hearing date was originally set for 28 October 2015.

Section 59 of the Act and rule 3.1 of the *Residential Tenancy Rules of Procedure* (28 June 2014) require an applicant to serve the dispute resolution package within three days. As a result of the landlord's late service it was necessary to adjourn the hearing to reconvene after the tenants had time to review the landlord's application and provide evidence in response.

Scope of Applications

The tenants' claim sets out that in addition to return of their security deposit they seek compensation pursuant to subsection 38(6) of the Act. The tenants claim for $1,885.00:

Item	**Amount**
Return of Security Deposit	$750.00
Subsection 38(6) Compensation	750.00
Recover Filing Fee	50.00
Total Monetary Order Sought	**$1550.00**

The landlord amended her claim 20 May 2015 to seek compensation in the amount of $1,189.09 as well as recovery of her filing fee. The landlord claims for $1,239.08:

Item	**Amount**
Utilities (Municipal)	$106.98
Utilities (Electric)	84.09
Cleaning	294.01
Mould Remediation	367.50
Mould Remediation	105.00
Mould Remediation Report	31.50
Repair of Wall	200.00
Recover Filing Fee	50.00
Total Monetary Order Sought	**$1239.08**

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, damage and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Are the tenants entitled to a monetary award for the return of a portion of his pet damage and security deposits? Are the tenants entitled to a monetary award equivalent to the amount of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the witnesses, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenants' claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began 1 August 2014. The tenancy ended 30 April 2015. Monthly rent of $1,500.00 was due on the first. The landlord collected a security deposit in the amount of $750.00 on 3 April 2014. The landlord continues to hold the full amount of the tenants' security deposit.

The rental unit is contained within a house. The house was built in 1968. The rental unit contains three bedrooms and one bathroom.

The parties entered into a written tenancy agreement. The tenancy agreement addendum provides at clause 3 that the tenants are responsible for one-half the utilities. Payment is due within seven days of provision of the invoice. Pursuant to clause 17(I) of the tenancy agreement addendum, the landlord controlled the heat to the rental unit.

The landlord testified that she first presented the tenants with the invoices in October when the landlord filed her application for dispute resolution. I was provided with an electrical invoice in the amount of $278.46. The landlord calculated the tenants' portion of the invoice as $84.08. I was provided with an invoice for municipal utilities in the amount of $298.55. The landlord calculated the tenants' portion of this invoice as $106.98.

The tenants began to occupy the rental unit the last week of August 2014. The landlord submitted that the tenants' parents would have noticed the mould growth when the tenants were moving in and brought it to the landlord's attention if it existed at that time.

The first condition inspection report in respect of this tenancy was created 2 October 2014. On that date mould growth was discovered on the wall of the south bedroom. The tenants emailed the landlord on 18 October 2014 to inform her that the mould in the bedroom required remediation. On 28 October 2014 the tenants emailed the landlord to inform her that the mould was getting worse. In late October or early November, the venting from the bathroom was changed so as to vent to the outdoors (it originally extracted air into the attic area). On 2 November 2014, the tenants confirmed compliance with the mould remediation regime.

On 3 November 2014, a mould remediation company inspected the rental unit. I was provided with a copy of the report. The report indicates that minor fungal staining was observed in the southwest bedroom where the south wall intersects with the ceiling. The report sets out that the likely cause of the staining was "cold spot condensation…as a result of chronically high relative humidity." The outdoor humidity on the day of the report was 85%. The indoor humidity on the day of the report was 67%. The relative humidity in the attic was 68%. The landlord testified that recommended humidity is below 50%. This humidity rose to 70%.

The witness is a planner and inspector. The witness testified that excess humidity will lead to mould growth. In order to mitigate mould growth airflow is important. The witness testified that mitigation should result in a decrease of humidity. The current code requires fans to run at all times. Humidity is added to the environment by cooking and bathing. Internal humidity cannot be managed by bringing in outside air. The witness testified that one generally expects indoor humidity in the range of 40 to 60%. The witnesses testified that at humidity greater than 60% mould will begin to form. The witness testified that in his opinion there would not be a mould problem if the humidifiers and fans were used properly.

I was provided with an email dated 23 November 2014 in which the tenants complain to the landlord that the rental unit is too cold and ask for the heat to be turned up.

The landlord testified that the tenants would keep the windows shut and submitted that this combined with the tenants' long showers caused the humidity within the rental unit to rise. The landlord testified that she asked the tenants to open the windows and use the kitchen and bathroom fans. The landlord provided two dehumidifiers in late October with instructions to the tenants to use the dehumidifiers continuously. The landlord

testified that the tenants did not operate the dehumidifiers continuously and that this was at the instruction of the agent MI.

I was provided with an email from the tenants to the landlord dated 30 January 2015. In that email the tenant NI notes that the screws holding the curtain rod into the drywall had given way. The landlord claims for the cost of repairing the drywall in the dining room where a curtain rod was attached. The landlord testified that she received an email from the tenant NI informing the landlord that the curtain rod had fallen out of the wall. The landlord surmised by the extent of the wrinkles in the curtain that the curtain had been on the floor for some time. The landlord has not yet repaired the wall. The landlord estimates that it will cost $200.00 to repair the damaged area. I was provided with a photograph of the damage. The photograph shows that the drywall has broken away from the wall. The witness testified that he would not expect the curtain rod to just fall out of the wall if it was affixed to wood.

The landlord testified that she provided the tenants with a clean rental unit but that it was not left that way. I was provided with photographs of the condition of the rental unit at the end of the tenancy. The rental unit is not clean. The landlord hired professional cleaners to attend to the rental unit. The cleaners spent 10.5 hours cleaning. I was provided with an invoice for cleaning in the amount of $294.01

The tenant NI's mother provided a statement of the state of the rental unit on occupancy. NI's mother notes that the rental unit was dirty and required extensive cleaning. NI's mother notes that the condition of the rental unit on move out was equal to the condition at the beginning of the tenancy. I was provided with a written statement by the tenant SS. She writes that the tenants cleaned the rental unit before vacating. The tenant MM provided a written statement. The statement sets out that the tenants fully cleaned the house.

The tenant FvU testified that the tenants' forwarding address was provided to the landlord on 29 March 2015. The tenant FvU testified that she shared the master bedroom with the tenant SS. The tenant FvU testified that she first saw the mould growth in October. The tenant FvU testified that the dehumidifiers were placed in the master bedroom and the living room. The tenant FvU testified that the tenants used the dehumidifiers as instructed. The tenant FvU testified that the tenants would empty the water reservoirs in the dehumidifiers as needed.

The tenants did not agree with the condition move out inspection report. The tenants submit that the damages cannot be proven because of the landlord's failure to conduct a condition inspection at the beginning of the tenancy. The tenants submit that they

acted diligently in reporting issues with the tenancy and complied with the mould remediation regime.

Analysis

Landlord's Application

The landlord claims for various losses associated with the tenancy. For the purposes of the landlord's claim sections 32, 37, and 67 are applicable.

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains.

Subsection 32(4) of the Act provides that the tenant is not responsible for making repairs for reasonable wear and tear.

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

Utilities

The landlord claims for $191.06 ($84.08 and $106.98) for unpaid utilities.

The terms of the tenancy agreement provide for payment of utility invoices seven days after presentation of the invoice to the tenants. As the landlord did not present the invoices to the tenants prior to filing this application, the landlord filed her claim

prematurely. On this basis, this portion of the landlord's claim is dismissed as the tenants' liability for the amounts had not yet crystallised at the time of this application.

The landlord may refile this portion of her claim once her claim against the tenants for the amount has crystallised.

Cleaning

The landlord claims $294.01 for cleaning.

Pursuant to subsection 37(2), the tenants' obligation is to leave the rental unit "reasonably clean" at the end of the tenancy. The condition of the rental unit at the beginning of the tenancy informs what is reasonable at the end of the tenancy.

The landlord provided me with photographs of the rental unit. The photographs show that the rental unit was not immaculate, but that some efforts had been made to clean the rental unit. The landlord testified that the tenants left the rental unit in worse condition than it was provided in at the beginning of the tenancy. The tenants provided evidence that the rental unit was in the same or better condition at the end of tenancy than at the beginning. The tenant's provided written statements of the effort they extended to clean the rental unit. There was no condition inspection report created at the beginning of this tenancy.

Pursuant to section 21 of the *Residential Tenancy Regulation* (the Regulation), a condition inspection report is very strong evidence of the condition of the rental unit at that time. By failing to complete a condition inspection report at the beginning of the tenancy, the landlord has denied herself the best possible evidence of the condition of the rental unit at the tenancy's commencement.

On the basis of the evidence before me, I find, on a balance of probabilities, that the rental unit was returned to the landlord in a state that was substantially the same as at the beginning of the tenancy. Accordingly, I find that the tenants did not breach subsection 37(2) of the Act as they returned the rental unit "reasonably clean". As the tenants did not breach the Act, the landlord is not entitled to compensation for her cleaning costs.

Mould

The landlord claims for $504.00 ($367.50, $105.00 and $31.50) in respect of the mould remediation.

The landlord claims that mould damage was caused to the rental unit through the tenants' action or neglect. The tenants deny that they caused the damage and say that complied with the mitigation and remediation asked of them.

The mould damage was present in one area of the master bedroom and not present in other areas of the rental unit. The type of mould growth was described as the result of "cold spot condensation…as a result of chronically high relative humidity".

In particular, the mould growth in one spot in the master bedroom and not the bathroom or other high-humidity areas militates against a finding that the tenants' showers were in some way related to the mould growth. While cold spot condensation occurs when there is humidity in the air, there must also be a cold area of the wall. The landlord has not sufficiently shown that the tenants caused this mould growth. In particular the landlord has not shown that any investigation occurred into the building envelope or in respect of the adequacy of the insulation at that point.

For these reasons, I find that the landlord has failed to show, on a balance of probabilities, that the tenants caused, through their actions or neglect, the mould formation in the master bedroom. On this basis, the landlord is not entitled to compensation for the cost of remediation.

Wall Repair

On the basis of the photographic evidence before me, I find that the curtain rod was installed into the drywall. I find that the damage was caused as the drywall could not sustain the weight of the curtain rod and curtains and gave out. On the basis of these facts I find that the tenants are not responsible for the costs associated with repairing the wall as they did not cause the damage through their actions or neglect.

Tenants' Application

Section 38(1) of the Act sets out how a landlord must deal with a security deposit at the end of the tenancy:

> Except as provided in subsection (3) or (4) (a), within 15 days after the later of
> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,
> the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

[emphasis added]

If a landlord fails to comply with subsection 38(1) of the Act, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

Subsection 38(6) of the Act may be avoided where the landlord makes an application within the specified time or returns the tenant's security deposit.

The tenancy ended 30 April 2015. The tenants provide their forwarding address in writing on 29 March 2015. In accordance with subsection 38(1) of the Act, the landlord had until 15 May 2015 to return the tenants' security deposit in full or file to retain amounts from the security deposit. The landlord filed her application on 15 May 2015; however she did not serve her application until 6 October 2015. In order to determine whether subsection 38(6) is triggered I must determine whether an application filed, but not yet served is made.

Section 59 sets out some of the procedural requirements for applications for dispute resolution:

(2) 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.

(3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

[emphasis added]

Subsection 59(3) of the Act describes the requirement for service after an applicant "makes" an application. From this wording, a landlord "makes" an application prior to serving it. On this basis, I find that the landlord made her application by filing an application in the approved form with full particulars and paying the prescribed fee on 15 May 2015. As the landlord made her application within the time limit prescribed by

subsection 38(1) of the Act, she is not liable to pay compensation to the tenants pursuant to subsection 38(6) of the Act.

As the landlord has not been successful in her claim, the tenants are entitled to return of their security deposit.

On the basis of the tenants' relative success in their application, I award the tenants recovery of their filing fee.

Conclusion

I issue a monetary order in the tenants' favour in the amount of $800.00 under the following terms:

Item	**Amount**
Return of Security Deposit	$750.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	**$800.00**

The tenants are provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: February 02, 2016

Residential Tenancy Branch