



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF, O

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution dated October 3, 2015, as amended on November 4, 2015 (the "Application"). Specifically, the Tenants are seeking a monetary order for money owed or compensation for damage or loss under the Act, and for repayment of the filing fee.

Both parties were represented at the hearing. D.B. appeared on behalf of the Tenants. She was assisted by A.W., a friend and advocate. The Landlord appeared at the hearing on her own behalf and was assisted by A.A., a representative of the property manager. Although named as a landlord in these proceedings, I have not included the property manager as a respondent in this Decision.

The hearing process was explained and the participants were asked if they had any questions. All parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Issues to be Decided

Are the Tenants entitled to compensation for damage or loss that resulted from the Landlord failing to comply with the Act, the regulations or a tenancy agreement?

Background and Evidence

The parties agreed, and the documentary evidence confirms, that the Tenants entered into a fixed-term tenancy commencing May 1, 2014, and ending April 30, 2015. Rent in the amount of

\$1,500.00 was due and payable on the first of each month. A security deposit of \$750.00 was paid to the Landlords.

The Tenants provided oral and documentary evidence in support of their claim for compensation. Specifically, the Tenants highlighted a number of issues that arose during the tenancy, namely issues with an ant infestation, the upstairs fridge, and stairs to the deck. The Tenants say their concerns about these items were not adequately addressed by the Landlord.

In addition, the Tenants say they are entitled to be paid two months' rent pursuant to section 51 of the Act, and are entitled to be paid double the security deposit pursuant to section 38 of the Act.

I will address each of the Tenants' issues in turn.

First, the Tenants seek compensation for what they referred to during the hearing as an ant infestation. The Tenant gave oral evidence concerning ants and submitted a photograph of ants along a baseboard.

The evidence submitted by both parties confirms the Tenant first made complaints about ants in or about July 2014. The Landlord made arrangements to have a local pest control company attend and spray in August 2014.

The Tenants says the ants returned in early January 2015. On January 14, 2015, the Tenants sent an email to the property manager to advise of the problem. The property manager submitted into evidence a copy of the response to the Tenants, sent within the hour, to advise that a local pest control company had been contacted. The representative of the pest control company responded to the Landlord's request, suggesting it was too early to treat the problem. He indicated the issue would slow down when the temperature declined. The representative offered to contact the Tenants, although I heard no evidence that this occurred.

On February 3, 2015, the Tenants again contacted the property manager via email about the ants. The email was forwarded to the pest control company, and a representative responded the same day to advise he could spray when the Tenants wished.

In response, the Landlord submitted documentary evidence in the form of a hand-written note dated April 1, 2015, from the property manager's records. The Landlord submits that delays were a result of the Tenants' actions. Specifically, the note states the representative of the pest control company was "put off again today – 2nd x...wife cancelled 2 weeks ago because of illness...not ready again today."

Second, the Tenants found the fridge to be unsatisfactory. The documentary evidence submitted confirms the Tenants' concerns about the fridge were first sent to the property manager by email on July 10, 2016. The email stated: "the very old fridge on the main

level...can barely keep things frozen...We are concerned that it could stop working all together and spoil our food.” The Tenants followed up with an email to the property manager on July 23, 2014, advising that the fridge in the rental unit was not working and that food was spoiling.

The oral evidence provided by A.A. was that, based on the July 10 email, the property manager’s understanding was that the fridge was not working optimally but was still functioning. However, as soon as they received the Tenants’ July 23 email, the property manager’s response was immediate. On July 24, 2015, the property manager sent an email to an appliance service company to see if a fridge was available to fit the dimensions. The fridge was replaced the following week.

Unfortunately, the replacement fridge also stopped working. In an email dated August 28, 2014, the Tenants advised the property manager that the fridge had stopped working and that more food had spoiled.

During the hearing, A.A. advised that the fridge was under warranty and was repaired quickly. A.A. also indicated that a second fridge was available downstairs in the rental unit which could have been used to preserve food items.

Third, the Tenants say the Landlord was required to repair rotting stairs that were brought to the Landlord’s attention. The Tenants say the stairs presented a safety issue. In an email to the property manager on November 20, 2014, the Tenant wrote: “the stairs off the back deck are rotting away...This is a safety concern.”

In an email dated November 24, 2014, the Landlord asked R.G. if he would be able to address the Tenant’s concern about the stairs as repairs may be needed. On December 20, 2014, after dealing with a dishwasher issue and the installation of a vacuum, R.G. advised the Landlord he had inspected the stairs and stated his opinion: “I think the stairs can wait...”

A.A. also submitted that no claim for compensation for the above issues was advanced by the Tenants until well after the tenancy ended. Indeed, the Tenants did not file their Application until October 8, 2015, 11 days before the hearing of the Landlord’s application referred to below.

Significantly, A.W. confirmed during the hearing that the Tenants had hoped to stay in the rental unit, despite the issues concerning the ants, fridge, and stairs.

Fourth, the Tenants also claim they are entitled to be paid two months’ rent pursuant to section 51 of the Act. In the Tenants’ documentary evidence, A.W. referred me to an email from the property manager to the Tenants, dated January 16, 2015. The email states: “the Owner is planning on moving back into her home as of May 1st, 2015 and will not be renewing your fixed term lease.”

The Tenants provided oral testimony confirming they returned to the rental property some 7-1/2 months after the tenancy ended and observed the subject property had been listed for sale. The Tenants provided an internet printout of the real estate listing.

The Landlord, however, included in their documentary evidence a page from the residential tenancy agreement between the parties. Paragraph 4 indicates this was a fixed-term tenancy commencing on May 1, 2014 and concluding on April 30, 2015. It provided: "At the end of this time the tenancy is ended and the tenant must vacate the rental unit." A.A. submitted that a 2 month notice to end tenancy was never issued by the Landlord.

Fifth, the Tenants say they are entitled to be paid double the security deposit pursuant to section 38 of the Act.

In the Tenants' documentary evidence, I was directed me to a previous arbitrator's decision, made on October 21, 2015, which I have read. The file number for this matter is listed on the cover page for ease of reference.

In the previous decision, the arbitrator concluded that the Landlord filed her application for dispute resolution claiming against the security deposit within 15 days of the tenancy ending. The arbitrator found the Landlord had complied with section 38 of the Act and that the doubling provisions did not apply. The arbitrator went on to order the landlords to retain \$400.74 from the security deposit in satisfaction of their claim and refund the balance of \$349.26 to the tenants.

Analysis

Based on the affirmed testimony of the parties and the documentary evidence submitted, and on a balance of probabilities, I find:

Section 67 of the Act empowers me to order one party to pay compensation to the other for damage or loss that results from the party failing to comply with the Act, the regulations or a tenancy agreement.

Policy Guideline #1 (the "Guideline") clarifies the responsibilities of landlords and tenants regarding maintenance, cleaning, and repairs of residential properties. The Guideline stipulates that landlords are responsible to "ensure that rental units and property...meet 'health, safety and housing standards' established by law, and are reasonably suitable for occupation." These standards are not necessarily the standards of the arbitrator, the landlord or the tenant.

The Tenants seek compensation arising due to the Landlord's failure to adequately address an ant problem in the rental unit. I find the Landlord took all necessary and reasonable steps to address the ant problem in the rental unit, and that treatment was delayed due to the actions of the Tenants.

The Tenants also seek compensation of \$426.00 for food they say was spoiled as a result of the Landlord's response to repairing the upstairs fridge in the rental unit.

The Guideline indicates that Landlords are responsible to repair major appliances, unless the damage is caused by the deliberate actions or neglect of the tenant.

However, I find that the Landlord acted reasonably when addressing the Tenants' concerns about the fridge. As soon as the fridges were not functioning properly, the property manager and Landlord took steps to replace or repair them.

Further, I agree with A.A. and find that it would have been reasonable for the Tenants to use the downstairs fridge to preserve perishable items until the fridge could be repaired or replaced.

The Tenants have also submitted they are entitled to compensation because the stairs to the deck were rotting and presented a safety concern.

On the balance of the evidence before me, I find the Landlord responded reasonably and appropriately in response to the Tenants' concerns about stairs. The Landlord retained a professional to assess the stairs and was advised repairs were not needed at that time.

The Tenants further claim they are entitled to be paid \$3000.00, or two months' rent, for wrongful termination of the lease, contrary to section 51 of the Act. However, I find the Landlord and Tenants were parties to a fixed-term tenancy, ending on April 30, 2015.

Further, I note that section 52 of the Act requires a 2 month notice to be in the approved form. In the absence of any evidence that a 2 month notice in the form required by the Act was issued by the Landlords, I find that a 2 month notice was not issued. Accordingly the Tenants are not entitled to compensation pursuant to section 51 of the Act.

Finally, the Tenants are seeking the return of double the security deposit, pursuant to section 38 of the Act. Pursuant to section 77(3) of the Act, and the legal principal of *res judicata*, I find I cannot grant the Tenant's request to hear the issue of the security deposit as this matter was already heard and a final and binding decision was issued on October 21, 2015.

The Tenant requests reimbursement of legal fees in the amount of \$28.00, and agent fees in the amount of \$125.40. These claims are denied as they are not compensable under the Act.

As the Tenants have been unsuccessful in their claim, I decline to grant the Tenants their filing fee.

Conclusion

For the reasons above, the Tenants' Application is dismissed in its entirety without leave to reapply.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: April 26, 2016

Residential Tenancy Branch