Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNDC, MNSD, FF

Introduction

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

- an order of possession for cause, pursuant to section 55;
- a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- authorization to recover the filing fee for this application, pursuant to section 72.

The two landlords (collectively "landlords") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 147 minutes in order to allow both parties to fully present their submissions and due to repeated interruptions from both parties.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing, package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlords' Application.

The landlords confirmed receipt of the tenant's written evidence package, which the tenant said was served by way of registered mail on June 21, 2016. The landlords were asked repeatedly and answered repeatedly during the hearing that they did not object to the admissibility of the tenant's written evidence, despite the fact that it was received late, contrary to Rule 3.15 of the *Residential Tenancy Branch* ("RTB") *Rules of Procedure*. In accordance with sections 88 and 90 of the *Act*, I find that the landlords were duly served with the tenants' written evidence and I considered it at this hearing

and in my decision, given that the landlords consented to its admissibility and did not show any prejudice regarding the late receipt of the evidence.

Preliminary Issue – Inappropriate Behaviour by both Parties during the Hearing

Rule 6.10 of the RTB *Rules of Procedure* states the following:

> *Interruptions and inappropriate behaviour at the dispute resolution hearing*
>
> *Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

At the outset of the hearing, I advised both parties about the rules of the conference, to respect each other and myself, that one person was to speak at any given time, that parties were not to interrupt while others were talking, and that both parties would be given a chance to speak. Throughout the hearing, both parties repeatedly interrupted the other party and me. Both parties displayed disrespectful and inappropriate behaviour. I repeatedly warned both parties to stop their inappropriate behaviour but they continued. I notified them that they could be excluded from the hearing if they continued with their behaviour. However, I allowed both parties to attend the full hearing, despite their inappropriate behaviour, in order to provide them with an opportunity to present submissions and evidence.

I note that both parties had three previous hearings with the same Arbitrator regarding their tenancy and they were warned about the same disruptive behaviour, which lengthened those hearings. I caution both parties not to engage in the same behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and they may be excluded from future hearings.

Preliminary Issue – Amendments to Landlords' Application

At the outset of this hearing, both parties confirmed that they had three previous hearings for one cross-application, regarding this tenancy with a different Arbitrator. The file numbers for those hearings appear on the front page of this decision. The Arbitrator at the previous hearing dismissed the landlords' claims for the cost of repairs related to the toilet overflow with leave to reapply. Therefore, the landlords have

reapplied for this relief at this current hearing and I find that I have jurisdiction to hear this matter.

Both parties agreed that the landlords' monetary claims for the filing fee of $100.00 from the previous hearing, lost wages of $1,814.45 and punitive damages of $5,000.00 were dealt with at the previous hearings. Both parties agreed that the security and pet damage deposits with dealt with at the previous hearings. Accordingly, these issues are *res judicata*, meaning they have already been dealt with by another Arbitrator, and I cannot deal with these matters again at this hearing.

Both parties agreed that the tenant has already vacated the rental unit and the landlord does not require an order of possession for cause. Accordingly, this portion of the landlords' application is dismissed without leave to reapply.

Issues to be Decided

Are the landlords entitled to a monetary award for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the landlords entitled to recover the filing fee for their Application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords' claims and my findings are set out below.

The landlords stated that this tenancy began on September 1, 2012, while the tenant said that it was on September 15, 2012. Both parties agreed that this tenancy ended on May 2, 2015. Both parties agreed that monthly rent in the amount of $1,306.00 was payable on the first day of each month. The landlords confirmed that a move-in condition inspection report was completed for this tenancy, while the tenant disagreed. Both parties agreed that no move-out condition inspection report was completed for this tenancy. The rental unit is the main floor of a house.

The landlords seek a monetary order of $10,923.39 plus the $100.00 filing fee for this Application. The landlords seek $157.50 for a bathroom repair report, $315.00 for emergency cleanup of bathroom floods, $2,612.00 for a loss of revenue for two months to repair the unit, $200.00 for the disposal of construction and flood waste, and

$1,250.00 for one month free rent provided to the basement tenant. The landlords also seek a reduced amount of $6,388.89 from the $6,881.89 that was originally sought in their Application for the cost and expense to repair the bathroom including labour and materials. The landlords confirmed that they had accidentally duplicated two claims for $315.00 for the emergency cleanup and $178.00 for the disposal of waste, as already noted above.

Both parties agreed that the tenant's son caused a bathroom toilet to overflow in the rental unit on April 3 and 4, 2016. The landlords stated that the toilet overflowed three times, while the tenant maintained it happened twice. The landlords testified that they had to perform emergency cleanup of the overflows themselves because they occurred during a weekend and no restoration companies were available to clean. The landlords said that they had to replace the bathroom toilet, floor tiles, bathtub, drywall, counter, vanity cabinet, sink, medicine cabinet and door because the black water from the toilet overflowed and contaminated the above areas. The landlords said that the repair took two to three months to complete and that they lost rent for this unit for at least two months. They also noted that they had to compensate the tenant living in the basement of the house for one month's rent because the overflows from the toilet leaked through his ceiling into his rental unit. The landlords provided receipts for some materials obtained to repair and replace items in the bathroom, as well as a breakdown of labour costs that they charged to clean and repair the bathroom themselves. Both parties also provided photographs of the affected areas.

The tenant explained that a washing machine overflowed at the rental unit on March 18, 2016 and caused leaks near the bathroom, which the landlords had not finished cleaning or repairing at the time that the toilet overflows occurred. Therefore, the tenant said that she is only responsible for a portion of the toilet repairs and cleaning because the washing machine leak was still ongoing at the same time. The landlords disagreed, saying that the laundry machine leaks and repairs were separate from the toilet issues and were covered by insurance. The tenant said that she cleaned and ensured the areas surrounding the toilet were dry before the landlords performed any repairs or cleanup of the toilet overflows. The landlords disagreed, saying that the tenant did not clean and left the area wet and dirty. The tenant claimed that the landlords took approximately six months to renovate the bathroom, when they could have performed repairs earlier and more quickly. The tenant said that she is not responsible for the bathroom renovation, saying the house was from the 1960's. The tenant said that the toilet was in working condition and only had to be removed to be cleaned, not replaced.

Analysis

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlords must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlords $50.00 of the $200.00 sought for disposal of the construction and flood waste. The tenant agreed to pay the above amount. The landlords did not provide a receipt for this cost, as required by part 3 of the above test, even though they had a copy in front of them during this hearing. Therefore, I only award the amount that the tenant agreed to pay.

I award the landlords $416.67 of the $1,250.00 sought for the one month of free rent that the landlords said they provided to the basement tenant, due to the toilet overflows from the tenant's rental unit above. The tenant agreed that she was responsible for the above amount, which she said represented one third of the monthly rent. The landlords did not provide sufficient documentary evidence or witness testimony from the basement tenant that he received free rent for a month, failing parts 1 and 3 of the above test. Therefore, I only award the amount that the tenant agreed to pay.

I award the landlords $400.00 of the $6,388.89 sought for the cost and expense to repair the bathroom including labour and materials. The tenant agreed to pay the above amount. The landlords did not provide a sufficient explanation to justify the labour amounts claimed, stating that they had performed the work themselves and were experts in this area. The landlords only provided receipts for some materials that did not add up to the amounts claimed. I find that the tenant is responsible for the toilet overflows and the landlords had to at least remove, repair and clean the toilet, as well as clean the surrounding areas. However, I find that the landlords are attempting to claim for a full renovation of the bathroom, for which I find the tenant is not responsible. The tenant testified that the bathroom was from the 1960's and the landlords did not dispute this fact. According to Residential Tenancy Policy Guideline 40, the useful life of mechanical systems related to toilets, tubs and sinks is between 20 and 25 years. The useful life of bathroom cabinets and counters are 25 years and flooring is between 10 and 20 years. Accordingly, the above areas would likely have to be replaced in any event. Therefore, I only award the amount that the tenant agreed to pay.

I dismiss the landlords' claim of $157.50 for the bathroom repair report, without leave to reapply. The landlords did not provide a receipt for this cost, as required by part 3 of the above test, even though they had a copy in front of them during this hearing.

I dismiss the landlords' claim of $2,612.00 for two months of lost revenue at the rental unit, without leave to reapply. I find that the landlords did not provide sufficient evidence as to why it took two months to repair and clean the toilet and surrounding areas. As noted above, I found that the tenant was not responsible for a full bathroom renovation. I find that the landlords failed parts 1, 2 and 4 of the above test.

I dismiss the landlords' claim of $315.00 for the emergency cleanup of the toilet overflows, without leave to reapply. As noted above, I have already accounted for waste disposal of $50.00 and repairs and cleanup of $400.00. The landlords claimed that the $315.00 was for a labour cost but did not provide a sufficient explanation as to why they were claiming $15.00 per hour for 21 hours of cleanup, stating only that the RTB had recommended this hourly rate. I find that the landlords failed part 3 of the above test.

As the landlords were mainly unsuccessful in this Application, I find that they are not entitled to recover the $100.00 filing fee from the tenant.

Conclusion

I issue a monetary order in the landlords' favour in the amount of $866.67 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant 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.

The landlords' Application for an order of possession and to recover the $100.00 filing fee is dismissed without leave to reapply.

The landlords' Application to retain the tenants' security and pet damage deposits and for monetary orders for the filing fee of $100.00 from the previous hearing, lost wages of $1,814.45 and punitive damages of $5,000.00 were dealt with at the previous hearings and are *res judicata*.
The previous interim and final decisions and orders issued by the Arbitrator at the three previous hearings are still in full force and effect.

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: July 05, 2016

Residential Tenancy Branch