Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Amacon Property Management Services Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, OLC, RP

Introduction

This hearing dealt with an application by the tenant for a monetary order, including return of the security deposit; a repair order; and an order compelling the landlord to comply with the Act, regulation or tenancy agreement. The tenant appeared at the hearing' the landlord did not.

Preliminary Issue(s) to be Decided

Has the tenant named the proper party as the respondent on this application?
The documents submitted by the tenant show two different companies named on them as the landlord.

The respondent is named as the landlord on the following documents:

- The Prospective Tenant Application dated November 5, 2015.
- The Addendum to the Tenancy Agreement, although the tenancy agreement itself names DT, the on-site manager, as the landlord.
- The Notice of Final Opportunity to Schedule a Condition Inspection dated July 30, 2016.
- The notice outlining the duties of an outgoing tenant.

However, another company is named as the landlord on the following documents;

- Shelter Information Form dated November 6, 2015.
- Letters to the tenant dated March 14 and March 15, 2016.
- Notice of Entry form dated January 18, 2016.

One document, a breach letter dated March 2, 2016 has the respondent's name on the letterhead and the other company's name as the landlord on the bottom of the page.

I find that as the respondent did describe itself as the landlord on several of the documents it presented to the landlord that it is properly named as the landlord on this application.

Was the landlord properly served?

The tenant sent his Application for Dispute Resolution , Notice of Hearing, and supporting evidence by registered mail addressed to DT, the on-site manager on August 12, 2016. DT had signed the Notice of Final Opportunity to Schedule a Condition Inspection on July 30, 2016. The registered mail item was returned to the tenant by Canada Post. The records of Canada Post say: "Item refused by recipient. Item being returned to sender." The tenant submitted the actual envelope as evidence. The Canada Post sticker on the envelope says "Moved/Unknown". The tenant testified that he knows from friends who reside in the building that DT still resides there and is the building manager.

Section 89 provides that an application for dispute resolution must be served on the landlord in one of the following ways:

a) by leaving a copy with the landlord;
b) by leaving a copy with an agent of the landlord;
c) by sending a copy by registered mail to the address at which the person carries on business as a landlord; or,
d) as ordered by an arbitrator.

DT signed all of the documents either as the landlord's agent or an on-site caretaker. She acts for the landlord and her unit in this building is one of the addresses at which the landlord carries on business. Accordingly, I find that the Application for Dispute Resolution, Notice of Hearing and supporting evidence were properly served on the landlord.

Issue(s) to be Decided

- Should a repair order or another order be made against the landlord and, if so, on what terms?
- Is the tenant entitled to a monetary order and, if so, in what amount?
- What order should be made regarding the security deposit?

Background and Evidence

This tenancy commenced November 15, 2015, as a six month fixed term tenancy and continued thereafter as a month-to-month tenancy. The monthly rent of $750.00 was due on the first day of the month. The tenant paid a security deposit of $375.00.

The rental unit is a one bedroom apartment located on the main floor.

The tenant is a 53 year old man who suffered a stroke and a heart attack five years ago. He has been on disability ever since. Two years ago he was in a motor vehicle accident which left him with nerve damage in his legs and arms. A letter from his doctor says that the tenant has sensitivity to mold as a result of mycotoxin poisoning experienced in his previous residence.

The tenant testified that Saturday, March 12, 2016, a stream of water flowed from his bedroom ceiling for about one hour. This was the only occasion on which this happened.

He went to DT's unit that day to report the situation; she told him it was her day off. Later that day she called and told the tenant a plumber had been called. He said the plumber never showed up.

The tenant testified that the smell in the unit after the water leak was so bad he went to stay with a friend for four days.

During this time his advocate was calling the landlord about his situation but they were not prepared to offer him any accommodation.

On Monday March 14 DT wrote the tenant. She started by saying that someone had called the head office about his unit: "I was told by [property manager] that we had permission to enter your unit to investigate an issue which had caused a problem over the weekend, this happening on Saturday, March 12, 2016. Apparently there had been an issue with a pipe leaking or something of that nature."

DT goes on to say that when they went to access the unit they found that the master key did not work. She tells the tenant that changing the lock without the landlord's permission or providing the landlord with a key is contrary to the *Residential Tenancy Act* and asks him to rectify the situation. The tenant said that he had changed the lock because he had lost his keys and he had given DT a set of keys to his unit at that time.

On March 15, 2016, the landlord gave the tenant notice of entry to the unit for the next day.

The maintenance man did come to the tenant's unit. About half of the bedroom carpet and a four foot square of the plaster ceiling were wet. The tenant testified that the maintenance man did not cut out the wet plaster; he applied paper towel and new plaster over the damaged area and painted it.

Some time later the tenant removed the patch because he felt it was so poorly done. This left an open hole in the ceiling. The landlord also cleaned the carpet.

The tenant testified that no fans or dehumidifiers were installed and no other measures were taken to dry out the room.

The tenant testified that although he returned to the unit he never used the bedroom again because of the smell. He moved his couches out of the unit and moved his bed into the living room. He also moved his belongings from the bedroom into the other parts of the unit. The tenant testified that he shut the door on the bedroom and never went in again.

The tenant moved out of the unit at the end of July. He left behind his bed, which he said smelled like mold, and the wooden dresser, which he said had gotten wet. He testified that he never went back into the bedroom to see if mold developed on the dresser.

The tenant never gave the landlord a written request for repairs nor did he file an application to the Residential Tenancy Branch asking for a repair order until he filed this application after he had moved out. He said there were text message between him and DT where she refused to help him but he did not file copies of those messages in evidence.

The tenant was not sure whether he had given the landlord his forwarding address in writing after he moved out.

The tenant claims compensation for the cost of his bed, the dresser, and moving.

He said the bed was given to him about five years ago as a gift. It was about six months old when he received it and his friend told him it was worth $3000.00 new. The tenant submitted a photograph of the dresser and it appears to be an older colonial style pine or maple dresser with a mirror.

As far as his moving costs go, the tenant was able to borrow a truck from the Food Bank where he volunteers. He would like to make a donation to the Food Bank in return for use of the truck. Two of his friends helped him and he would like to give them some money for doing so. They worked for a total of five hours.

Analysis

Applicable Law

Section 32(1) of the *Residential Tenancy Act* states that a landlord must provide and maintain residential property in a state of decoration and repair that:

- complies with the health, safety and housing standards required by law; and,
- having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 7(1) of the *Residential Tenancy Act* states that if a landlord or a tenant does not comply with the Act, regulation or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Even in situations where the landlord has complied with its obligation to repair and maintain a rental unit but the tenant has been inconvenienced by the repair a landlord may still have to compensate the tenant for the loss of use of the unit. This is based upon the law of contract and is explained in *Residential Tenancy Policy Guideline 16: Claims in Damages:*

> "Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected."

Section 65(1) allows an arbitrator who has found that a landlord has not complied with the Act, regulation or tenancy agreement to order that past or future rent must be

reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement.

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

Section 7(2) requires any party who claims compensation from the other for damage or loss to do whatever is reasonable to minimize the damage or loss.

Should a repair order or another order be made against the landlord and, if so, on what terms?

As this tenancy has ended the application for a repair order or any other order, other than a monetary order, against the landlord is no longer relevant.

Is the tenant entitled to a monetary order and, if so, in what amount?
I accept the evidence of the tenant, which included written statements from visitors to his unit, that it smelled and that the likely cause of the odor was mold or mildew. I also accept the tenant's evidence, supported by the doctor's statement, that he is more sensitive to mold because of his previous experiences.

The evidence is clear that the landlord knew of the water leak as soon as it occurred. The actions taken by the landlord are not consistent with the evidence we normally hear in cases involving water leaks. Generally the procedure described is one of removing the wet drywall; using shop vacs to remove excess water; pulling back the carpet and underlay to thoroughly dry the subfloor and sometimes replacing one or the other or both; installing fans and dehumidifiers to dry out the unit; ensuring that the area behind the ceiling plaster is thoroughly dry; and then patching the plaster. Just plastering over the wet area would not be sufficient to ensure that the unit was dry and to prevent the development of mold. However, the actions of the tenant by just shutting the door to the unit would also have encouraged the development of mold.

When a rental unit is damaged tenants are expected to mitigate their damages by first requesting repairs in writing and then, if necessary, filing an application with the Residential Tenancy Branch for a repair order. Tenants cannot delay filing their application for a repair order and then claim compensation for the time during which they did not take action. However, even when a tenant does file an application for a

repair order there is generally a wait of at least two or three months before the hearing will take place.

I find that the tenant was unable to use the bedroom for 4.5 months because of the odor that developed in it and that this resulted in a loss of use equivalent to 20% of the value of the tenancy agreement. However, I am reducing this amount by half because of the tenants' failure to mitigate his losses by applying for a repair order sooner and by ensuring that the bedroom was properly aired out. Accordingly, I award the tenant the sum of $337.50 for loss of use of a portion of the rental unit.

With regard to the tenant's claims for his bed and dresser, the law is that the measure of damages is the market value of those items, not the replacement value. The tenant was not able to say whether the dresser had been damaged by the water or not. Further, he did not take any steps to mitigate any possible damage by removing the dresser from the bedroom and/or taking any steps to dry it out or clean it. The bed is at least seven years old. There was no evidence as to its actual value as a used bed, which would be minimal at best. Accordingly, the tenant's claim for compensation for furniture is dismissed.

With regard to the claim for moving expenses firstly, the tenant decided to move out of the unit rather than pursue a repair order and secondly, he did not incur any actual costs of moving. Nothing will be allowed for moving expenses.

What order should be made regarding the security deposit?

Pursuant to section 38(1) the landlord's obligation to take any action with regard to the security deposit does not start until the later of the date the tenancy ends or the date the tenant gave the landlord his forwarding address in writing. The tenant was not able to provide any proof that he had given his forwarding address in writing. Accordingly, any claim for return of the security deposit is dismissed with leave to re-apply.

Conclusion

For the reasons set out above the tenant is awarded damages against the landlord in the amount of **$337.50** and a monetary order in that amount is granted to the tenant. If necessary, this order may be filed in the Small Claims 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 Section 9.1(1) of the Residential Tenancy Act.

Dated: October 19, 2016

Residential Tenancy Branch