Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC O FF – Landlords' application
MNSD OLC FF – Tenants' application

Introduction

These matters convened on November 22, 2016 for 46 minutes at which time the hearing was adjourned and an Interim Decision was issued November 23, 2016. As such, this Decision must be read in conjunction with my November 23, 2016 Interim Decision. Each party confirmed receipt of my Interim Decision with the Notice of Reconvened Hearing.

These matters reconvened for the final session on January 12, 2017 for 344 minutes (2 hours 24 minutes), during which both Landlords and the male Tenant were present. At the outset of the reconvened hearing I reminded the parties that their affirmation remained in full force and effect. The male Tenant affirmed he would be representing both Tenants. The female Landlord presented all evidence on behalf of both Landlords; therefore, for the remainder of this decision, terms or references to the Landlords and Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

I reviewed receipt of evidence submitted by each other; at which time I determined the Tenant had not served the Landlords with the exact same documents as he served to the RTB. The Landlords confirmed receipt of 15 pages of evidence from the Landlord; however, the package received at the RTB included the aforementioned 15 pages plus two additional pages consisting of a Monetary Order Worksheet.

I pointed the Tenant to my Interim Decision pages 3 and 4 where I wrote, in part, as follows:

> *The Tenants were ordered to serve any documentary evidence they wished to rely upon to the Landlords and the RTB. That evidence must be served to each party no later than* ***December 23, 2016*** *and must consist of the exact same evidence (written/photographic/ email/text message/usb/c.d. and/or any other format); with consecutive page numbers, if in printed form; and served in the exact same order and format to the Landlords and the RTB, in accordance with section 88 of the Act, as copied to the end of this interim decision.*
>
> *Submissions received from either party which do not meet the specifications of the above orders will not be considered. Both parties were advised that they must be*

prepared to prove service of the subsequent submissions if requested to do so at the reconvened hearing.

[Reproduced as written]

I then asked the Tenant why he had not served the Landlords with the exact same evidence he had served to the RTB. I heard him state that the monetary order work sheet was important to me and not to him, so he did not feel the need to serve it upon the Landlords. I reminded the Tenant that, as per my previous Orders, I would not be considering any evidence that was not served upon the Landlords.

I then asked each party if they had each other's evidence in front of them, in the same order it was served upon them. I heard the Tenant and female Landlord both answer yes. I then reminded the parties that as we discussed in the previous hearing, if they wished me to consider their evidence they must reference the page number of their evidence they were presenting during their oral submissions so everyone could follow along.

On a procedural note, shortly after the Landlord began her presentation, the Tenant interrupted to request clarification whether he should be following along through the Landlord's evidence. I answered yes and then shortly afterwards I checked in with the Tenant to ensure he was still following along as the Landlord referenced different page numbers in her evidence package. I checked in with the Tenant a second time to which I found the Tenant's response to be curt. Given the Tenant's last response I felt it necessary to remind the parties that this proceeding was being conducted as an Administrative Tribunal, a less formal proceeding, as provided for by the Rules of Procedure.

Common law has established that a hearing process conducted by an administrative tribunal is designed to be less formal than a legal proceeding conducted by the Courts. The Residential Tenancy Branch Rules of Procedure 7.18 provides that an arbitrator may determine in which order submissions and/or cross examinations will be conducted or allowed. Rule 7.23 provides that an arbitrator may ask questions of a party or witness in order to: manage the hearing process; to determine the relevancy or sufficiency of evidence; to assess the credibility of a party or a witness; or to otherwise assist the arbitrator in reaching a decision.

Both parties were provided with a full and fair opportunity to present relevant oral evidence; to ask questions; and to make relevant submissions. While I have considered all relevant submissions, submitted in accordance with my Interim Orders and all relevant oral submissions, not all those submissions are listed in this Decision.

Issue(s) to be Decided

Have the Landlords proven entitlement to monetary compensation for repairs and cleaning of the rental unit?

Background and Evidence

The parties entered into a fixed term tenancy agreement which began on June 1, 2014 and was scheduled to end on May 31, 2016. Rent of $1,250.00 was payable on the first of each month. The Tenants paid $625.00 as the security deposit on or around June 1, 2014.

Each party was represented at the move in inspection on June 3, 2014 and the move out inspection which was conducted on May 15, 2016. Condition inspection report forms were completed and signed by both parties at move in and move out. The Tenants signed the move out condition report indicating they were not in agreement with the damages listed by the Landlords. The condition inspection report form was submitted into evidence and stated, in part, "water damage to countertop beyond normal wear and tear".

The Landlord submitted evidence that they had emailed the Tenants on January 7, 2016 to advise they had listed the house for sale and would not be extending the tenancy past the end of the fixed term. At the end of that email the Landlords wrote, in part, as follows:

> …*If you have any questions please do not hesitate to call us (our preferred way of communication) as e-mail contact may be delayed…*
>
> [Reproduced as written]

After discussions about how the unit must be empty of the Tenants' possessions, the parties mutually agreed to conduct the move out inspection on May 15, 2016. The Tenant stated they had vacated the unit as of May 6, 2016.

I heard the Landlord submit they were seeking $2,824.95 to replace the kitchen countertop plus $472.50 to replace the under sink cabinet due to water damage. They asserted the Tenants failed to inform them of a water leak in a timely manner. She stated the Tenants sent them an email on March 29, 2016, to advise them of a bulge in the countertop. The Landlord submitted the Tenant waited to call and inform them of the water on the floor, until the evening of April 1, 2016; even though the Tenant stated he saw water on the floor that morning.

The Landlord argued the Tenant's email was an inappropriate form of communication for an emergency repair involving a water leak, as the Landlords did not check their emails regularly. While the Landlord continued her submissions I heard her state that when communicating with the Tenants she "liked to follow up with an email to have proof of communications in writing".

In addition to the costs for repairs the Landlords claimed for one month's lost rent for June 2016 in the amount of $1,250.00. The Landlord submitted they were not able to list the house for sale and were not able to re-rent it while the repairs were being

conducted. She asserted the water had to be shut off, the sink removed, and the dishwasher disconnected until the new counter was installed.

The Landlord testified they sought $765.00 for their labour to clean up the yard. I heard the Landlord say they determined their claim amount based on the low end of what a professional landscaper would charge which was $45.00 per hour based on their estimates. She stated they worked for 14 hours to put the yard and gardens in the same condition they were in when the tenancy first began; as supported by the before and after photographs she submitted into evidence.

The Landlord confirmed they did not specify in writing or in the tenancy agreement the condition the grounds must be kept in during the tenancy. She asserted the Tenants were provided with the required equipment, including a lawnmower, weed eater, and other tools and that it was understood that they would upkeep the grounds.

The Landlord testified the house remains empty and was taken off the real estate market on April 2, 2016 pending the counter and cabinet repairs. She stated they did not advertise the unit for rent due to its condition and now seek a loss of rent of $1,250.00 for October 2016. She stated the house was re-listed for sale for three months during the summer and is currently off of the real estate market and is not being advertised for rent.

Although not clearly identified as an item claimed on their application for Dispute Resolution, the Landlord submitted evidence of an additional loss relating to the Tenants giving the mailbox keys to the post office instead of returning them to the Landlords. The Landlord stated the post office no longer has the keys and is going to charge them $35.00 to have the mailbox rekeyed.

The Tenant disputed all of the items claimed by the Landlords and asserted the Landlords' claims were "flim flam". The Tenant stated that he did not deny there was damage to the countertop; rather, he challenged the circumstances of how it was damaged.

I heard the Tenant state that on March 29, 2016 when he noticed the counter bulge and sent the email to the Landlords there was no visible sign of a water leak. He noted that there was no water in the cabinet below, on the floor, or on the counter, on that date.

The Tenant confirmed that he saw water on the floor the morning of April 1, 2016 after which he immediately shut off the water to the faucet and wiped up the water in the cabinet and on the floor. He acknowledged that he called the Landlords that day to inform them of the water leak and that he told the male Landlord he had shut off the water to the faucet. The Tenant testified the Landlords showed up the next day, April 2, 2016, with a new faucet. He said the male Landlord installed the new faucet and turned the water back on for the Tenants' use until their tenancy ended the following month.

I heard the Tenant state they simply used the faucet in a normal fashion by turning it on and off. He argued they did not notice the bulge in the counter until they moved their trivet (tray) that held their detergent and sponges. He noted it was a bulge, a defect, and not a blister so no cracks were present to draw their attention to the area. The Tenant asserted he acted appropriately by turning off the water immediately, wiping up the water in the area, and by calling the Landlords the same day he saw the water on the floor. The Tenant argued the damage to the countertop was caused by a failure of the plumbing and not by their negligence.

A copy of the Tenant's March 29, 2016 email was submitted into evidence and stated, in part, as follows:

> *I'm concerned about a bulge under the veneer of the kitchen counter in front of the sink. I suspect a slow leak from the sink is causing the swelling. No water is visible under the sink compartment.*

I heard the Tenant submit they vacated the rental unit May 6, 2016 and mutually agreed to conduct the move out inspection on May 15, 2016. The Tenant argued the cabinet under the sink was not damaged at the time they moved out of the rental unit. He then pointed to the move out condition inspection report form where there was no indication that the cabinet under the sink was damaged as of the inspection date. I heard the Tenant state the Landlords were meticulous when conducting the move out inspection so if there was damage to the under counter cabinet it would have been noted on the move out report.

The Tenant testified the Landlords' photographs, which were taken after the May 15, 2016 inspection, displayed the lawn after almost two week's growth. He asserted they did not have a chance to make the lawn pristine and asserted that it was not perfect when they moved into the rental unit.

The Tenant testified they never agreed to conduct yard maintenance like a $45.00 per hour landscaper would do. He argued the tenancy agreement did not obligate them to do any yard maintenance so anything they did do was done by their own volition.

The Tenant submitted they had attempted to negotiate with the Landlords for the tenancy agreement to continue on a month to month basis as they were not able to regain possession of their condo by the end of May 2016. He noted that the rental house was no longer listed for sale and they had full use of the kitchen after the Landlord replaced the faucet. The Tenant stated the Landlords refused their request to stay in the unit longer. He argued the Landlords had the opportunity to continue to rent the unit and they chose not to so he should not have to pay for a loss of rent. The Landlord did not dispute that the Tenants requested to stay in the unit longer.

The Tenant testified he went into the local post office to arrange for their mail to be forwarded and the post mistress told them they had to hand in the mail box keys before their mail forwarding could be completed. I heard the Tenant state the keys and mailbox

were the property of Canada Post and they had no choice but to turn in the keys in order to have their mail forwarded.

In closing the Landlord argued the bulge was not a defect, it was water damage. She noted the Tenant saw the water on the floor and in the cabinet during the morning of April 1, 2016 and they waited until the evening to call them. I heard the Landlord say that they gave the Tenants the two mail keys and expected them to return those keys to the Landlords and not the post office.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

> 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 provides that the party making the claim for damages must satisfy each component of the following: the other party failed to comply with the *Act,* regulation or tenancy agreement; the loss or damage resulted from that non-compliance; the amount or value of that damage or loss; and the applicant acted reasonably to minimize that damage or loss. I concur with this policy and find it is relevant to the Landlord's application for Dispute Resolution.

Regarding the Landlords' claim for replacement of the countertop and cabinet I find the Landlords submitted insufficient evidence to prove the Tenants failed to comply with the *Act,* Regulation, or tenancy agreement. I make this finding, in part due to the undisputed evidence that the move out condition inspection report form did not indicate the presence of any damage to the under sink cabinet. In addition, the Tenants notified the Landlords, via email, of the countertop bulge when they first noticed it. Although the Tenant did state he was "suspect" of a "slow leak from the sink" in his email, I was not convinced that at the time the Tenants noticed the bulge it would be considered an emergency.

I was not convinced the counter top bulge required the Tenants to call the Landlords instead of emailing them. The bulge in and of itself did not constitute an emergency repair and while there was evidence that the Landlords had a preference the Tenants called if they had any questions regarding the Landlords listing the house for sale, I considered that from her own submissions, the Landlord said she preferred to send emails to have a written record of their communications. Also, from the evidence before me it was evident that the parties had established email as a form of communication between them.

Furthermore, I accept that when the Tenants noticed water was leaking onto the floor and into the cabinet they took reasonable actions by immediately turning off the water to the tap and wiped up the water, preventing further damage. I do not find it unreasonable that the Tenants waited a few hours before calling the Landlords as the situation was no longer an emergency as the water had been shut off. If the Landlords truly thought it was an emergency situation I trust the Landlords would have attended the rental unit that evening instead of waiting until 10:00 a.m. the next day.

Residential Tenancy Policy Guideline 1 provides that normal wear and tear or reasonable wear and tear means the reasonable use of the rental unit by the tenant and the ordinary operation of natural forces. An example of normal wear and tear would be gradual deterioration of the paint finish on a wall that would occur from reasonable washing.

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

I accept the Tenant's submissions that they used the faucet to turn the water on and off; as it was intended to be used. I further accept that any damage to the countertop would not have been readily visible as there was no noticeable pooling of water at the outset and not blistering or cracking. Rather, it is reasonable to conclude that the water leaking was form the faucet was initially being absorbed by the countertop. As such, I conclude the damage to the countertop was the result of the faucet failing, after normal use, and not by the Tenants' misuse. Accordingly, I find the Landlords submitted insufficient evidence to prove their claim for costs to replace the counter top and under sink cabinet. As such the claims for $2,824.95 and $472.50 are dismissed, without leave to reapply.

I accept the undisputed evidence that the Tenants attempted to extend their tenancy for a few more months and the Landlords simply refused. The Landlord's also decided to take the house off of the real estate market and simply chose not to advertise the unit for rent. As such, I conclude the Landlords submitted insufficient evidence to prove they took reasonable action to mitigate any future loss of rent, as required by section 7 of the *Act.* If the Landlords truly wished to continue to receive rental income they ought to have considered extending this tenancy or sought new tenants with a reduced rent until the repairs were completed. As such, I find the Landlords submitted insufficient

evidence to prove their claim for loss of rent, and it is dismissed, without leave to reapply.

Residential Tenancy Policy Guideline 1 provides, in part, that generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds only if the tenancy agreement requires a tenant to maintain the flower beds. The landlord is generally responsible for major projects, such as tree cutting and pruning.

Regarding the claim of $765.00 for yard clean up the undisputed evidence was the tenancy agreement did not include a term requiring the Tenants to maintain the yard, gardens, or flower beds. I accept the Tenant's submissions that they never agreed to keep the yard in the same condition that a professional landscaper would. Upon review of the Landlords' photographic evidence, I do not accept the Tenants were required to return the yard and gardens to the meticulous state the Landlords preferred. Rather, I find the Tenants maintained the rental property in a reasonable fashion when considering the tenancy agreement was silent on the subject of yard and garden maintenance. Accordingly, I find the Landlords submitted insufficient evidence to prove their claim for landscaping and the claim of $765.00 is dismissed, without leave to reapply.

Regarding the claim of $35.00 for mail box keys, the tenancy agreement did not stipulate the mail box keys were to be returned to the Landlords. Furthermore, there was insufficient evidence to prove the Landlords were the owners of those keys and not Canada Post. As such, I conclude there was insufficient evidence to prove the $35.00 claim; and it is dismissed, without leave to reapply.

The Landlords have not succeeded with their application; therefore, I declined to award recovery of the filing fee.

The Landlords' claim was dismissed in its entirety; therefore, the Landlords are not entitled to retain the Tenants' $625.00 security deposit or any interest that has accrued. The Residential Tenancy Branch interest calculator provides that no interest has accrued on the $625.00 security deposit since May 25, 2014. Accordingly, I find in favor of the Tenants' application and Order the Landlords to return the $625.00 security deposit to the Tenants forthwith.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Tenants have succeeded with their application; therefore, I award recovery of the filing fee in the amount of **$100.00**, which is to be paid by the Landlords, pursuant to section 72(1) of the Act.

In the event the Landlords do not comply with the above Orders, the Tenants have been issued a Monetary Order for **$725.00** ($625.00 + $100.00)**.** This Order must be served upon the Landlords and may be enforced through Small Claims Court.

Conclusion

The Landlords were not successful with their application and it was dismissed in its entirety. The Tenants were successful with their application and were awarded monetary compensation of $725.00.

This decision is final, legally binding, 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: January 16, 2017

Residential Tenancy Branch