



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$11,600 for damages to the rental property
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order that the landlord make emergency repairs
- b. An order that the landlord make repairs
- c. A monetary order in the sum of \$25,000
- d. An order for the return of the tenant's security deposit.
- e. An order that the landlord provide services or facilities required by law
- f. An order that the landlord comply with the Act, regulation and/or the tenancy agreement
- g. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was served on the Tenants by mailing, by registered mail to where the Tenants reside on July 18, 2016. I find that the Application for Dispute Resolution was filed by the Tenants was sufficiently served on the landlord some time after September 2, 2016 as the landlord acknowledged service.

The tenancy ended on June 30, 2016. I dismissed the following claims made by the Tenants as those issues are no longer relevant:

- a. An order that the landlord make emergency repairs
- b. An order that the landlord make repairs
- c. An order that the landlord provide services or facilities required by law
- d. An order that the landlord comply with the Act, regulation and/or the tenancy agreement

The Application for Dispute Resolution filed by the Tenants claimed \$3800 for asbestos exposure. The Tenants asked to withdraw this claim. I determined it was appropriate to do so and I dismissed the Tenant's claim for compensation for asbestos exposure with liberty to re-apply. I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period including the period included in section 60 of the Residential Tenancy Act which provides as follows:

Latest time application for dispute resolution can be made

60 (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

(2) Despite the [Limitation Act](#), if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).

(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?
- d. Whether the Tenants are entitled to monetary order and if so how much?
- e. Whether the tenants are entitled to an order for the return of the tenant's security deposit.

- f. Whether the Tenants are entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a one year written tenancy agreement that provided that the tenancy would start on July 15, 2015 and end on June 30, 2016. The tenancy agreement provided that the tenant(s) would pay rent of \$1400 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$700 prior the start of the tenancy.

The tenancy ended on June 30, 2016 and the Tenants vacated the rental unit at that time.

The landlord seeks a monetary order in the sum of \$11,600 based on the following evidence:

- The tenancy agreement includes a “no pets” clause.
- The tenants owe utilities in the sum of \$105.92.
- The landlord claims \$360 for the cost of cleaning and disposing of animal feces from the back yard. The tenant had a dog which was not permitted in the tenancy agreement. She testified the tenants failed to remove the animal feces from the back yard. She charged herself out at \$45 per hour. Her claim was for 3 hours of travel time and 5 hours to clean.
- The Condition Inspection Report which prepared following an inspection provides the inspection was conducted on June 29, 2016. It indicates the flooring was replaced in 2015 with engineered hardwood. It states Part Z which deals with Damage to the Rental Unit that the Tenant is responsible “nothing of significance”
- The rental unit was vacant from June 30 to July 10 when the new tenant moved in.
- On July 10, 2016 the landlord notices there were scratches in the hardwood floor.
- The landlord relies on a number of photographs showing the scratches.
- A flooring company was called in and gave an estimate dated July 13, 2016 of \$11,134 to replace the flooring. The landlord produced an e-mail from the flooring company that included the following statements:
 - “Sanding, staining and refinishing the existing produce would give you an inferior produce so we do not recommend that.”
 - “There are so many damaged boards that selectively replacing them is not an option. The installed product is no longer available, we will have to use an alternative of equal quality.”

- The landlord testified she subsequently learned from neighbors that the Tenants had a dog and she blames the dog for the damage to the hardwood floor.

The Tenants dispute the landlord's claim and gave the following evidence:

- The Tenants have separate families and they decided it was too early for the families to live together when the rental unit was first rented.
- Thus the female tenant lived in the rental unit with her children. The male Tenant lived in another residence which he owns.
- The male Tenant owned a dog. However, he testified the dog was never in the house and was always outside. The female Tenant is allergic to dogs. After the tenancy ended the female tenant and her family moved into the residence owned by the male Tenant. The male tenant had to give his dog to his father because of the female tenant's allergies..
- It is impossible from the location of the neighbor's house for the neighbor to determine whether the dog entered the rental unit.
- They left the house in an immaculate condition. The tenant refers to the Condition Inspection Report which states "nothing of significance" in the section which provides for Damage which the Tenants are responsible for.
- The tenants were shocked upon receiving the landlord's claims.
- He testified he talked to the present tenant who has not made any complaints and stated that the flooring was one of the main reasons why he rented the rental unit.
- He denies feces were left in the backyard. He spent a day cleaning the backyard and weeding prior to vacating the rental unit.

The tenants gave the following evidence in support of their monetary claim:

- The female tenant was sick on and off throughout her tenancy and she blames it on mold in the rental unit.
- She gave some evidence dealing with exposure to asbestos. However, she withdrew that claim and it is not necessary to set out this evidence.
- There was a leak in the master shower area. The wall needed to be replaced. The landlord was advised of this problem on many occasions but failed to rectify it including an e-mail in April 2016.

The landlord responded to the Tenants claim with the following testimony:

- The ensuite bathroom was taken out and repaired in late 2010 or 2011. There was water pooling in an area.

- The landlord explained to the Tenants at the start of the tenancy that it was necessary for them to wipe up any water that may occur as a result of showering.
- A plumber went in and could not find a problem with water leaking from the shower area.
- The Addendum includes a clause that provided that the Tenants were to "...keep the base of the shower dry to prevent mould developing or excess standing water to damage the premise i.e. walls, sills, and/or flooring...."

Landlord's Application

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Section 21 of the Residential Tenancy Act Regulations provides as follows:

Evidentiary weight of a condition inspection report

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Analysis:

With respect to each of the landlord's claims I find as follows:

- a. I determined the landlord is entitled to \$105.92 for the cost of utilities. The tenants did not dispute this claim at the hearing.
- b. I dismissed the landlord claims of \$11,134 for the cost to replace the floors for the following reasons:
 - The Condition Inspection Report provides that damages that the Tenants were responsible for was of "little significance."

- Section 21 of the Regulations provides the report is evidence of the state of repair and condition unless the applicant has a preponderance of evidence to the contrary.
 - I determined the landlord failed to provide a preponderance of evidence to the contrary. The report appears to be carefully filled out by the landlord. If the damage is as significant as alleged by the landlord one would have expected that the landlord would have seen it during the inspection. While the photographs that were taken later show some damage I determine the damage is nothing more than reasonable wear and tear.
 - The landlord has not replaced the flooring. There is insufficient evidence the present tenant is not satisfied with the condition of the flooring.
 - The landlord alleged the tenants allowed their dog inside. However, I determined there was insufficient proof to prove this allegation.
- c. The landlord claimed the sum of \$360 for the cost of cleaning dog feces. I determined this claim is inflated and is not reasonable. I am satisfied there was some dog feces left by the male tenant's dog in the backyard. However, I determine the sum of \$100 is reasonable compensation for this claim.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$205.92 plus the \$100 filing fee for a total of \$305.92.

Security Deposit

I determined the security deposit totals the sum of \$700. I determined the landlord is entitled to retain the sum of \$305.92 from the security deposit leaving a balance of \$394.08.

Tenant's Application:

With respect to each of the Tenants' claims I find as follows:

- a. The tenants withdrew the claim for asbestos exposure and as a result it is not necessary to consider that claim.
- b. I dismissed the Tenants claim in the sum of \$3000 for black mold in the house that ruined clothes and dress. The Tenants failed to present sufficient proof to establish that the tenant suffered this loss or the quantum of this loss.
- c. The Tenants claim \$16,800 (12 months x \$1400 per month) for black mold in the house for the entire term of the tenancy agreement. I am satisfied there was some mold on the wall in the ensuite bathroom. However, the amount claimed by the Tenants is excessive and not supported by the evidence. The tenants received significant value in the tenancy. The tenants alleged she was ill on and

off throughout the tenancy but failed to provide medical evidence to support this. There has been some reduction in the value of the tenancy caused by the mold. However, there is insufficient evidence to establish that the mold extended beyond the ensuite bathroom. Further, the tenants failed to mitigate their loss by filing an application when it became apparent that the landlord was not going to make the needed repairs. The Residential Tenancy Branch gives an application for repairs priority and it is likely that matter would have been heard and the repairs completed within 3 months of the date the application is filed. I determined the tenants are entitled to \$50 a month for 3 months for a total of \$150 for the reduced value of the tenancy.

- d. I determined the tenants are entitled to recover the balance of their security deposit in the sum of \$394.08. I dismissed the claim for the doubling of the security deposit as the landlord filed her claim within 15 days of the end of the tenancy.

In summary I determined the Tenants have established a claim against the landlord in the sum of \$544.08 plus \$100 for the cost of the filing fee for a total of \$644.08

It is further Ordered that this sum be paid forthwith. The parties are given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the 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 section 9.1(1) of the Residential Tenancy Act.

Dated: January 21, 2017

Residential Tenancy Branch