Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BELMONT GOLF COURSE LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT CNR MNR MNDC MNSD O FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenants on January 4, 2017. The Tenants originally filed seeking the following: more time to file their application to dispute a Notice to end tenancy; to dispute a 10 day Notice to end tenancy for unpaid rent; monetary compensation for the cost of emergency repairs and for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; the return of their security deposit; for other undisclosed reasons; and to recover the cost of their filing fee.

The hearing was conducted via teleconference and was attended by the Landlord and both Tenants. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

During the course of this hearing I heard the Tenants state they vacated the rental unit on January 10, 2017 and were no longer seeking more time to dispute the Notice. I also heard they wished to proceed with their request for the return of their security deposit after they were told to remove that request when submitting their application. Based on the aforementioned, I proceeded to hear the Tenants' requests for monetary compensation and the return of their deposit, pursuant to section 62 and 64 of the *Act.*

The Landlord acknowledged receipt of the Tenants' application for Dispute Resolution; the hearing documents; the Tenants' documentary and digital evidence. No issues regarding service or receipt were raised by the Landlord. I heard the Landlord state he did not submit documentary or digital evidence in response to this application. As such, I accepted the relevant submissions from the Tenants as evidence for these proceedings.

Each person was provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Although I was provided a considerable amount of evidence, including verbal testimony, written and digital submissions, with a view to brevity in writing this decision I have only summarized the parties' respective positions below.

Issue(s) to be Decided

1. Have the Tenants proven entitlement to reimbursement for the cost of emergency repairs?
2. Are the Tenants entitled to the cost of potable water?
3. Are the Tenants entitled to reimbursement for the cost of portable electric heaters?

Background and Evidence

The parties entered into a written fixed term tenancy agreement which commenced on December 1, 2016 and was scheduled to switch to a month to month tenancy after November 30, 2017. As per that written tenancy agreement the Tenants were required to pay rent of $1,100.00 on the first of each month. On November 10, 2016 the Tenants paid $550.00 as the security deposit.

Upon negotiation of the tenancy agreement the Landlord informed the Tenants they would be required to provide their own water as the well water was not drinkable. The Landlord did not complete a condition inspection report form at move in or at move out.

The rental unit was described as being a very old house which was built in the early 1900's. The Tenants submitted the house had appeared to have undergone a couple of renovations and had some baseboard electric heaters and a natural gas fireplace. At the start of the tenancy the Landlord had offered to have the fireplace serviced if the Tenants intended on using it.

The Tenants stated they viewed the rental property at night time prior to agreeing to rent the property. I heard the Tenants state that when they moved into the rental unit on December 2, 2016 they found the unit was dirty, in need of repairs, and was "not fit to live in". The Tenants submitted the kitchen sink drain went into the ground instead of into the sewer drain and was plugged. The dishwasher did not work; there was not sufficient heat in the rental unit; and the house required electrical repairs.

The Tenants testified they emailed the Landlord with a list of their concerns on December 3, 2016. On December 5, 2016 the Landlord had a handyman and a cleaner attended the rental unit. The Tenants asserted the cleaner was too tired to conduct a proper cleaning and the handyman told them he needed to order parts and would return at a later date.

On December 12, 2016 the Tenants contacted the Landlord to find out the status of the repairs. I heard the Landlord state that during that conversation he told the male Tenant if they were not happy with the place they could provide the Landlord notice and he would work to find suitable replacement tenants. On December 28, 2016 the Tenants sent their repair requests to the Landlord in writing.

The Tenants vacated the property on or before January 10, 2017. The Tenants served the Landlord with their forwarding address and returned the keys via registered mail on January 10, 2017.

The Tenants sought reimbursement for the following: (1) $316.98 for electrical work and inspection conducted on December 12, 2016; (2) $305.55 for plumbing work completed on December 13, 2016; (3) $180.60 for the cost to rent a water dispenser and purchase of 12 containers of water; (4) $216.98 ($150.00 + $66.98) for the purchase of portable electric heaters.

The Landlord disputed the Tenants' application and argued he did not authorize the purchases and repairs that were completed by the Tenants. I heard the Landlord state he received numerous emails from the Tenants after the first night after which he attempted to work things out by sending the handyman and cleaner. The Tenants were advised the handyman would be returning December 10, 2016 to which the Tenant replied that was too long and they simply had the work completed themselves.

The Landlord submitted he was not aware the Tenants had planned to move out until he received the keys and their forwarding address by registered mail. The Landlord could not recall which date he signed receipt of that registered mail. Neither party objected to looking up the Canada Post tracking information during the hearing. It was determined the Landlord signed for the registered mail consisting of the keys and the Tenant's forwarding address on January 12, 2017. I heard the Landlord state that he had not returned the deposit to the Tenants; he did not have the Tenants' written permission to keep the security deposit; and as of this hearing on January 30, 2017, the Landlord had not yet filed an application to retain the security deposit.

The tenancy agreement, as submitted into evidence, provided, in part, as follows:

> *…The following appliances belonging to the Landlord are left on the premises for Tenant(s') use:*
>
> ***Fridge, Stove, Dishwasher.***
>
> *Landlord warrants the aforesaid appliances will be in good working order at the commencement of the lease term and will be maintained in a good state of repair…*
>
> [Reproduced as written p 2]
>
> *… Other specifications:*
> ***All Utilities, Water and Cablevision extra.***
> ***Drinking water extra…***
>
> [Reproduced as written p 2]

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.

Section 67 of the Residential Tenancy *Act* states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

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.

In determining the matters before me I first considered section 32 of the *Act* which requires a landlord to 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.

I also considered section 33(1) of the *Act* defines **"emergency repairs"** as repairs that are: (a) urgent, (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and (c) made for the purpose of repairing major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; the primary heating system; damaged or defective locks that give access to a rental unit; the electrical systems; or in prescribed circumstances, a rental unit or residential property.

Section 33(3) of the Act stipulates that a tenant may have emergency repairs made only when all of the following conditions are met: (a) emergency repairs are needed; (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs; (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

Section 33(5) of the *Act* provides that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord, and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

The undisputed evidence was the Tenants informed the Landlord on December 2, 2016 the rental unit required repairs to the electrical and plumbing systems; repairs which I find constituted emergency repairs, as defined by 33(1) of the *Act.* There was sufficient evidence before me to support the emergency repairs were not completed by the Landlord as of December 10, 2016, after numerous emails and telephone calls from the Tenants.

Based on the above, I find the Tenants were at liberty to have the emergency electrical and plumbing repairs completed; as supported by the invoices dated December 12, 2016 and December 13, 2016. Accordingly, I grant the Tenants' application in the amount of **$622.53** ($316.98 + $305.55), pursuant to section 67 of the *Act.*

From their own submissions the Tenants were aware the rental unit had well water that was not potable and they had signed the tenancy agreement agreeing they would have to supply their own water. Therefore, I find there was insufficient evidence to prove the Tenants' application for reimbursement of a one year contract for a water dispenser or for the purchase of bottled water; and that claim is dismissed, without leave to reapply.

In response to the claim for the purchase of portable electric heaters, I find the Tenants provided insufficient evidence to prove the Landlord would be responsible for the costs to purchase those heaters. I make this finding in part as there was insufficient evidence to prove the Tenants attempted to mitigate their loss by attempting to use or set up the natural gas fireplace to supplement the existing electric baseboard heaters. Furthermore, a landlord would not be responsible to pay for portable heaters that remained the property of the tenants and removed from the rental unit when the tenants moved out. Accordingly, the claim for heaters is dismissed, without leave to reapply.

Regarding the disbursement of the security deposit I considered that a landlord and tenant together must inspect the condition of the rental unit and complete a condition inspection report form, in accordance with the Regulations, at move-in and move-out respectively, pursuant to sections 23 and 35 of the *Act*.

If the landlord does not complete condition inspection report forms, in compliance with sections 23 and 35 of the *Act,* the right of the landlord to claim damages against the security deposit is extinguished, pursuant to sections 24 and 36 of the *Act.* If a landlord

extinguishes their right to claim against the security and/or pet deposit the landlord is required to return the deposits to the tenant in accordance with section 38(1) of the *Act.*

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

Section 44(1)(d) of the *Act* stipulates that tenancy ends on the date the tenant vacates or abandons the rental unit.

This tenancy ended when the Landlord received the keys and the Tenants' forwarding address in writing on January 12, 2017. Therefore, the Landlord was required to return the security deposit to the Tenants in full or file for an application for losses other than damages no later than January 27, 2017, pursuant to section 38(1) of the *Act.* As of this hearing date of January 30, 2017 the Landlords had not returned the deposit and had not filed an application for Dispute Resolution.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the $550.00 security deposit since November 10, 2016.

Based on the above, I find the Landlord is now subject to section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit. Accordingly, I grant the Tenants the return of double their security deposit in the amount of **$1,100.00** (2 x $550.00).

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 partially succeeded with their application; therefore, I award recovery of the filing fee in the amount of **$100.00**, pursuant to section 72(1) of the Act.

The Landlord is hereby ordered to pay the Tenants the sum of **$1,822.53** ($622.53 + $1,100.00 + $100.00) forthwith.

In the event the Landlord does not comply with the above Order, the Tenants have been issued a Monetary Order for **$1,822.53.** This Order must be served upon the Landlord and may be enforced through Small Claims Court.

Conclusion

The Tenants were partially successful with their application and were issued a Monetary Order in the amount of **$1,822.53.**

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: February 01, 2017

Residential Tenancy Branch