Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC FF

Introduction

This hearing convened by teleconference on January 11, 2017 for 63 minutes at which time the hearing time expired and an Interim Decision was issued. The matters were adjourned to this hearing on February 10, 2017 for 52 minutes. As such, this Decision must be read in conjunction with my January 16, 2017 Interim Decision.

During both proceedings the Landlord and Tenant provided affirmed testimony. Both parties were 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 submissions; and photographic evidence; with a view to brevity in writing this decision I have only summarized the parties' respective positions below.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation for damages to the rental unit?

Background and Evidence

As per the tenancy agreement the Landlord and two co-Tenants entered into a written fixed term tenancy that commenced on November 1, 2013 and was scheduled to end on July 31, 2014. Rent of $1,100.00 was payable on the first of each month. In November 2013 the Tenants paid $550.00 as the security deposit plus $550.00 as the pet deposit.

The rental unit was described by the Landlord as being a manufactured home that had been built in 1996. The Tenants rented the manufactured home under the *Residential Tenancy Act* (the *Act).* The Tenant described the rental unit as being built in 1993. The Landlord occupied the home until 2010 and then began to rent it. The laminate flooring and wall trim had been installed in 2009.

The Landlord attended the rental unit on July 31, 2014 to conduct the move out inspection. The female Tenant's (the Tenant) father appeared to conduct the inspection on behalf of the Tenant; at which time they determined the Tenant still had possessions

inside the rental unit and storage shed. The Landlord argued the Tenant's father became involved with loading the possessions for removal so the condition inspection report form was not fully completed or signed.

Initially no rent was paid for July 2014. The male co-Tenant requested the Landlord use the security and pet deposits as payment for the July 2014 rent. As a result the Landlord was not holding any deposits as of the end of this tenancy on July 31, 2014.

The Landlord filed his application listing a monetary amount of $13,179.91. In his evidence the Landlord submitted a breakdown of the claim which was comprised of $8,704.11 listed on a Monetary Order Worksheet; plus $2,300.00 loss of two month's rent; plus $415.80 for the Landlord's travelling expenses to work on the home; plus $1,760.00 labour to clean and repair the rental unit.

The Landlord's submissions to support the amounts and items claimed are summarized as follows:

- During the tenancy the rental unit sustained damages during a break and enter
- An act of arson occurred during the tenancy which caused damages to the Tenant's vehicle and the rental unit fence.
- The Landlord was originally going to claim the aforementioned damages through his insurance. I heard the Landlord state he decided to pay for repairs himself as he was of the opinion it would be cheaper for him in the long run.
- The Landlord alleged the Tenant's father told him on July 31, 2014 that the break and enter was a "drug rip" as the Tenant fell into a drug addiction.
- The Landlord argued the damages from the break and enter and arson were the result of the Tenant's criminal activity so the Landlord now sought to recover the $1,260.00 for the repairs resulting from the break and enter plus $493.50 for the arson damage.
- The tongue and groove wood flooring, which was installed in 2009, was water damaged in all areas: kitchen; hall; bathroom and could not be repaired.
- The Landlord asserted the home sustained damages to: flooring; light switches; drapes and hanger; screens and window pulls; dishwasher; shower faucets; toilet; fence; and the lawn and bushes.
- I heard the Landlord state that by the time he had his repair person attend the unit to look at the dryer, the Tenants had already moved it into the shed.
- The Landlord was not able to re-rent the unit until October 1, 2014 arguing that it could not be rented until the completion of the repairs.

The Tenant disputed the items claimed by the Landlord and argued the Landlord added items to the condition inspection report form, after the form was completed and sent to her, in order to falsify his claim. I heard her state the Landlord was trying to claim for items that should have been repaired by the Landlord as general maintenance. In addition, the Tenant asserted she was told the Landlord had claimed the damage from the break and enter through his insurance and is now trying to commit fraud for double indemnity.

The Tenant accepted responsibility for some items which were listed in the Landlord's July 25, 2014 email and asserted they returned to the rental unit and completed the required work to correct those items that were identified by the letters A; F; H; I; J; L; and M in her evidence package section "J". She argued that items B and E were the Landlord's responsibility and all remaining items either the Tenant was not aware of the issues; the damage was pre-existing; or the shrubs grew back. She asserted the Landlord failed to conduct repairs and maintenance when requested.

The Tenant admitted the rental unit required additional cleaning; however, she asserted the Landlord was trying to claim too much. She stated she resided in the rental unit for 10 months and there was no way they caused over $13,000.00 damage to the older trailer that was built in 1993.

The Tenant asserted she ended the tenancy on July 15, 2014. The Landlord disputed that submission and argued the tenancy ended July 31, 2014 as per the tenancy agreement and because the Tenant's possessions were still being removed on July 31, 2014.

In closing, the Landlord confirmed he had added items to the condition inspection report form after he had emailed it to the Tenant's father on August 6, 2014. The first time he served the Tenant with a copy of the amended condition inspection report form was when he served it with his application for Dispute Resolution in July 2016.

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.

When determining the $8,704.11 listed on the Landlord's Monetary Order Worksheet, I first considered the $1,260.00 which was identified as being damages caused by the break and enter plus $172.93 ($96.42 + $28.42 + $48.09) for fence damage caused during the arson.

I then considered that section 32(3) of the *Act* stipulates that a tenant of a rental unit 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. While there was undisputed evidence that the Tenant had been suffering from an addiction, there was insufficient evidence before me to prove the break and enter or the arson resulted in damages caused by the Tenant or caused by a person permitted on the rental property by the Tenant.

Furthermore, there was sufficient evidence that the Landlord had insurance coverage and that he had told the Tenant the aforementioned damages would be claimed through his insurance. There was insufficient evidence before me to prove the Landlord would suffer an increased loss, over and above the cost of the repairs, if he had filed to recover those losses through his insurance. As required by section 7(2) of the *Act,* the Landlord is required to do what is reasonable to minimize his loss, which in this case would be to seek to recover the cost of those repairs through his insurance. As such, I find there was insufficient evidence to prove the merits of the application for the $1,260.00 and the $172.93 claimed from the break and enter and the arson against the Tenant. Accordingly, those amounts claimed are dismissed, without leave to reapply.

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.

When considering the remaining amounts for damages being claimed by the Landlord, I find the Landlord`s actions of: (1) changing the condition inspection report form to add items that were allegedly damaged during this tenancy; and (2) not providing the Tenant a copy of that form until two years later; to be presumptuously suspicious. The Landlord's actions lent some credibility to the Tenant`s submissions that the Landlord was attempting to charge her for costs that should have been the Landlord`s responsibility of maintaining an older manufactured home or his attempts to collect money for his choice to renovate the older home.

I have then considered awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate

depreciation of the replaced item, I have referred to *Residential Tenancy Policy Guideline 40* which provides the normal useful life of certain items as follows: carpet 10 years; clothes dryer 15 years; dishwasher 10 years; and faucets 15 years. It should be noted that many of the items sought by the Landlord are not listed in Policy Guideline 40.

In addition, I considered *Residential Tenancy Policy Guideline* 16 which states that an Arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there is insufficient evidence to prove a significant loss. In those cases nominal damages are awarded as an affirmation that there has been an infraction of a legal right.

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.

In consideration of the forgoing, and in regards to the remaining amounts listed on the Monetary Order Worksheet of $2,271.18 ($8,704.11 - $1,260.00 break and enter - $172.93 arson - $5000.00 flooring) I accept the Landlord's submissions that the Tenant was in breach of section 37 of the *Act,* leaving the rental unit with some damage and requiring some additional cleaning. However, given the age of the manufactured home, and in absence of evidence to prove the actual age of each damaged item claimed, excluding the laminate flooring, I concluded that the damaged items claimed of $2,271.18 would have exceeded their normal useful life. Accordingly, I award nominal damages equal to 5% of the amounts claimed of **$113.56**, pursuant to section 67 of the *Act.*

I accept the Landlord's submissions that the 5 year old laminate flooring suffered severe water damage during this tenancy. However, I note the estimate invoice submitted into evidence by the Landlord indicated a quote for both the carpet and laminate flooring to be removed and replaced by vinyl plank flooring. Changing the flooring to a more durable type of flooring would not put the Landlord in the same financial position; rather it would improve the Landlord's position. In addition, there was insufficient evidence before me to prove what the actual cost of the laminate flooring was back in 2009. Policy Guideline 40 is silent on the normal useful life of laminate flooring. Therefore, I have granted the claim for damaged laminate flooring based on 50% of the August 9, 2014 quotation submitted by the Landlord for the vinyl flooring and depreciated that amount based on a normal useful life of 15 years (50% of $5085.76 x 5/15) for a total award of **$847.63**, pursuant to section 67 of the *Act.*

In response to the Landlord's claim of $2,300.00 for a loss of two month's rent; I find the Landlord submitted insufficient evidence to prove the damages were so extensive that he could not re-rent the unit for two months. The Tenant's monthly rent was only $1,100.00 and I find there was insufficient evidence before me to prove when the Landlord began advertising the unit for rent after this tenancy ended. As indicated

above, the Landlord was required to do what was reasonable to minimize his loss and try and re-rent the unit for as soon as possible. Although the Landlord had chosen to conduct some of the work himself, and traveled from a different municipality, I find there was insufficient evidence there had to be a two month delay in purchasing many of the items listed on the receipts submitted into evidence. That being said, I do find there was sufficient evidence to prove the Landlord may have lost one month's rent pending completion of some cleaning and repairs. Accordingly, I grant the application for loss of rent in the amount of **$1,100.00,** pursuant to section 67 of the *Act*.

It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In the presence of the Tenant's disputed testimony and evidence, I find the Landlord submitted insufficient evidence to prove the claim of $1,760.00 for his labour to clean and repair the rental unit. The Landlord's claim was absent of details of the hourly rate he was seeking and the actual amount of time he spent working on the rental unit on items that were the responsibility of the Tenant. Therefore, as the Tenant had admitted the rental unit required additional cleaning; in consideration of the photographic evidence before me; and in consideration of the amounts awarded above would be inclusive of some labour costs; I grant the claim for the Landlord's labour costs in the amount of (20 hours @ $30.00 per hour) **$600.00**, pursuant to section 67 of the *Act.*

In regards to the amounts claimed for the Landlord's travelling expenses to attend the rental unit, I find that the Landlord has chosen to incur these costs by choosing to reside in a different municipality. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act and not for personal choses to operate a business as a landlord in a different municipality. Accordingly, I find that the Landlord may not claim those costs, as they are costs which are not denominated, or named, by the *Residential Tenancy Act,* and the amount claimed is dismissed, without leave to reapply.

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

The Tenant is hereby ordered to pay the Landlord the total amount of **$2,761.19** ($113.56 + $847.63 + $1,100.00 + $600.00 + $100.00), forthwith.

In the event the Tenant does not comply with the above order, The Landlord has been issued a Monetary Order in the amount of **$2,761.19** which may be enforced through Small Claims Court upon service to the Tenant.

Conclusion

The Landlord was partially successful with his application and was granted a **$2,761.19** Monetary Order.

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 16, 2017

Residential Tenancy Branch