Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dakeras International Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, RR, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking rent reductions and a monetary order.

The hearing was originally convened via teleconference on March 29, 2017 and was attended by the tenant and the landlord. I adjourned the hearing pursuant to my Interim Decision dated March 29, 2017 and it was reconvened on April 28, 2017 with both parties attending.

As per my Interim Decision I ordered the landlord was allowed to serve any relevant evidence he intended to rely upon to the tenant and the Residential Tenancy Branch no later than April 18, 2017. The landlord submitted evidence by that date and the tenant confirmed received of the landlord's evidence.

I also allowed, in my Interim Decision, for the tenant to submit additional evidence responsive to the landlord's submissions no later than April 26, 2017. The tenant did not provide any additional evidence during the adjournment.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for not using the rental unit for the stated purpose after ending the tenancy for landlord's use of property; for double the amount of the security deposit; for a rent reduction for services agreed upon but not provided; for loss of use of areas of the rental unit; for water damage to the tenant's personal property; for cleaning up the rental unit after work completed; and for loss of quiet enjoyment and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 32, 38, 49, 51, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The parties agreed the tenancy began in October 2011 for a monthly rent of $1,400.00 due on the 1st of each month. The parties also agreed the tenancy ended on September 30, 2014 after the landlord had issued a 2 Month Notice to End Tenancy for Landlord's Use of Property.

The parties could not agree on how much of a deposit had been made to the original landlord at the start of the tenancy. The tenant submitted that the original landlord had collected a total of $1,700.00 in deposits. The tenant acknowledged receipt of $1,000.00 on November 28, 2014 from the landlord for return of these deposits.

The tenant relied on an email from the former owner/landlord to the respondent/landlord dated April 25, 2012 that states to the respondent/landlord "at closing, you should get the $1,700.00 dollar credit noted on the sale contract for damage deposit of $1,400.00 and $300.00 in pet deposit" [reproduced as written]

The landlord, at the outset of the hearing, agreed that since he returned $1,000.00 he has found documentation confirming the tenant had paid the original landlord $1,300.00 for deposits and is willing to provide the tenant with this additional amount.

The landlord relied upon a copy of a tenancy agreement where it appears that the original landlord had indicated a security deposit of $1,000.00 and no pets allowed but later changed that to include a security deposit of $1,000.00 plus a pet damage deposit of $300.00. The changes are initialled by both the male and female tenant and each page of the tenancy agreement is signed by the landlord and both tenants. The tenant does not believe that this document was signed or initialled by him.

The tenant wrote in his written submission that the landlord did not have a copy of the tenancy agreement for a previous hearing and that the tenant himself could not find his copy of the tenancy agreement. The landlord submitted that he received this copy of the tenancy agreement from the original landlord since the time of the first hearing.

The tenant testified that he provided the landlord with his forwarding address by letter faxed on October 17, 2014. The landlord stated he received a faxed letter on that date but it did not include a forwarding address. The tenant stated he provided his address by registered mail on November 12, 2014.

I note the landlord submitted into evidence a letter addressed to the tenant's new address on October 27, 2014 providing them with a cheque for the last month's rent. The tenant seeks compensation in the amount of $3,400.00 for double the amount of the deposits less $1,000.00 for the amount already returned for a total of $2,400.00.

The tenant also seeks compensation in the amount of $2,800.00 which is the equivalent of 2 months' rent because the landlord did not use the property for the stated purpose after ending the tenancy for landlord's use of property.

The parties agreed the tenancy ended as a result of the landlord issuing a 2 Month Notice to End Tenancy for Landlord's Use of Property on July 14, 2014 with an effective vacancy date of September 30, 2014 citing that the conditions for the sale of the property had been met and the purchaser or a close family member intended, in good faith, to occupy the rental unit. Both parties provided a copy of the Notice to End Tenancy.

The tenant submitted that he spoke with the purchaser's real estate agent on June 22, 2014 who told him that the purchaser was an investor and that the tenants could continue their tenancy but at a higher rent than they were currently paying. Regardless, the tenants did not dispute the 2 Month Notice to End Tenancy for Landlord's Use of Property issued on July 14, 2014 and vacated the rental property in accordance with that Notice.

The landlord provided no evidence that he had a written request from the purchaser that they required the unit to be vacated so that they or a close family member could move into the rental unit.

The tenant seeks compensation for a number of issues that occurred during the tenancy including the failure of the landlord to provide services or facilities; the failure of the landlord to complete repairs; disturbances and loss of use of facilities or services during the repairs and other monetary losses resulting from a flood as outlined in the following paragraphs.

The tenant submitted that prior to renting the unit it had been advertised showing a hot tub on the property but that he signed the tenancy agreement before he was aware that the landlord had sold the hot tub and it had been removed and that the downstairs flooring that had been promised was not going to be completed. He also submitted that after moving in they found that the basement bathroom did not work properly and that the basement gas fireplace did not work and that the landlord was not going to complete flooring work promised.

As a result, the tenant seeks the following rent reductions:

- $44.44 per month for not providing a hot tub for 36 months - $1,600.00;
- $20.00 per month for not providing a working basement fireplace for 36 months - $720.00;
- $50.00 per month for the problematic basement bathroom for 36 months - $1,800.00; and
- $100.00 per month for no flooring in the basement bedroom for 36 months - $3,600.00.

The tenant submitted that when they moved in they also found that the patio door did not work problem and they identified this issue to the landlord. He states that at first the original landlord refused to fix it; then the new landlord and the original landlord could not agree on who should pay to fix it but it was eventually fixed in November 2012, 13 months after the start of the tenancy. The tenant seeks a rent reduction for that period of $20.00 per month for a total of $260.00.

The landlord submitted, in response to these claims, copies of an email exchange between the original landlord and the female tenant beginning August 11, 2011 where the landlord confirms that the security deposit will be $1,000.00 plus a pet damage deposit of $300.00 and that he is trying to sell the hot tub. In one response from the landlord he states that the hot tub will only remain as part of the tenancy if he does not sell it.

As noted above the landlord submitted a copy of a tenancy agreement signed by the parties on August 11, 2011 that lists what is included in the rent. This list states that rent includes: stove and oven; dishwasher; refrigerator carpets; window coverings; parking for 4 vehicles; lawn mower; washer; dryer; and microwave.

The landlord submitted that the door replacement was completed by July 2012. In support of this position the landlord submitted a copy of a rent cheque dated July 31, 2012 in the amount of $1,255.06 indicating that it was for August rent less expenses and $50.00 for installation and a receipt in the amount of $19.82 dated July 17, 2012.

The tenant submitted that in August 2012 they discovered “black mould” in the master bathroom and second bedroom upstairs. Despite reports on August 15, 2012 and August 28, 2012 to the landlord the tenant submits it took the landlord until October to repair the two rooms. The tenant seeks a rent reduction in the amount of $85.00 per week for 20 weeks for loss of use of the master bedroom for a total of $1,700.00 and $88.50 per week for 20 weeks for loss of use of the second bedroom for a total of $1,770.00.

The landlord submitted that the notes from the file indicate that a leaking shower unit was reported to the landlord on August 28, 2012; that the property was attended by the landlord’s contractor on September 4, 2012 and the work began in October and finished on November 9, 2012.

The tenant also seeks compensation in the amount of $150.00 for having to clean up the rental unit during and after these repairs had been completed. The tenant submits that this includes vacuuming dust and debris and washing bedding and clothes.

The tenant submitted that as a result of the above noted repairs the landlord replaced the previously installed jetted tub with a non-jetted tub. The tenants seek compensation in the amount of $100.00 per month for 25 months for a total of $2,500.00.

The tenant submitted that in October 2013 the furnace stopped working and they reported it to the landlord. He submits that the repairman’s temporary fix did not work and the furnace was repaired by November 8, 2013. The tenant seeks a rent reduction of $100.00 per week for 4 weeks for a total of $400.00.

The tenant also seeks a rent reduction in the amount of $30.00 per month for 11 months for a total of $330.00 for failure of the landlord to repair the upstairs fireplace after it was reported to him in November 2013.

In response to the issues for both the upstairs and downstairs fireplaces the landlord submitted that he has no way of knowing if either of the fireplaces was working at the start of the tenancy nor were they listed in the tenancy agreement. He wrote in his written submission:

> "As these fireplaces were nothing more than cosmetic and appear to not have been working at all through the tenancy, I do not see how [landlord] would be responsible for their up-keep as they were not a source of heat in the house."

The tenant claims $200.00 for cleaning up after a realtor's open house when he returned home to find that someone had left the tap in the master bathroom running.

The tenant seeks compensation in the amount of $670.00 for various items damaged as a result of a flood in the garage. The tenant listed a number of items and their costs and provided 6 photographs: two photographs show two separate empty wooden tool box; 1 shows an empty cardboard box; 2 show two cardboard boxes with assorted undiscernible contents; and 1 shows a plethora of items on the garage floor. The tenant also seeks $300.00 for compensation for cleaning the garage and moving his stored items to facilitate the repairs required.

The tenant seeks compensation in the amount of $2,800.00 for the loss of quiet enjoyment for the months of December 2013 and January 2014 – or the return of both months' rent. The tenant submits that during this time he had to respond to over 120 calls and text messages from the landlord's listing agent. He wrote in his submission that during this time the rental unit was seen by almost 45 agents and their clients, including on an open house day that was just for realtors.

The tenant stated that for the period of February to June 2014 the landlord did not have the rental unit on the market but they were led to believe that it was. He stated, in his written submission, that as a result they "had kept house clean and tidy as possible for 5 months. We did this because of the off chance of showing happening." The tenant seeks a rent reduction in the amount of $200.00 per month for a total of $1,000.00.

The landlord submits that during the period the rental unit was listed the property was viewed by 8 potential purchasers even though the landlord's realtor had requested 32 possible showings. The landlord submits at no time did the landlord request that the tenants do any cleaning of the rental unit for any of the showings.

Analysis

From the evidence submitted by both parties, I find on a balance of probabilities that the landlord's evidence confirms the original landlord was paid $1,300.00 for all deposits currently held by the respondent landlord. I find the email of August 11, 2011 indicates the original landlord's intentions to collect $1,300.00 and in the absence of any evidence that the tenancy agreement submitted by the landlord is fraudulent I find the copy submitted also confirms the amount.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit in full or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I accept the landlord had received the tenant's forwarding address earlier than October 27, 2014 as this was when the landlord wrote to the tenant. As such, I find the landlord was required under Section 38(1) to either return all of the deposit or file a claim against it no later than November 11, 2014. As the

landlord returned only $1,000.00, as per his own submission, I find the landlord has failed to comply with Section 38(1) and the tenant is entitled to double the amount of the deposit less the amount already received or $2,600.00 less $1,000.00 for a total of $1,600.00.

Section 51(2) states that in addition to compensation received at the end of the tenancy, if steps have not been taken to accomplish the stated purpose for ending the tenancy under Section 49 within a reasonable time after the effective date or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice the landlord must pay the tenant an amount that is the equivalent of double the amount of rent payable under the tenancy agreement.

There is no dispute between the parties that the tenancy ended as a result of the landlord issuing a 2 Month Notice to End Tenancy for Landlord's Use of Property under Section 49 of the *Act*. There is no dispute that the Notice cited that "all of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit".

Despite the fact that the tenant was aware even before he received the 2 Month Notice that the purchaser had no intention of moving into the rental unit compensation provided under Section 51(2) of the *Act* is triggered upon the issuance the 2 Month Notice. While the landlord issued the 2 Month Notice he cannot provide sufficient evidence to establish that he was asked by the purchaser, in writing, for vacant possession. As such, the obligation for this compensation rests with selling landlord. Therefore, I find the tenant is entitled to double the amount of rent, pursuant to Section 51(2) in the amount of $2,800.00.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 27 of the *Act* states a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement. The section goes on to state that the landlord may restrict or terminate a service or facility that is not essential or a material term if the landlord gives 30 days' written notice of the termination or restriction, and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Section 32(1) of the *Act* requires the 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 make it suitable for occupation by a tenant.

Section 33(1) of the *Act* defines "emergency repairs" as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and 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, or
- The electrical systems.

Section 33(3) states a tenant may have emergency repairs made only when all of the following conditions are met:

- Emergency repairs are needed;
- 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; and
- Following those attempts, the tenant has given the landlord reasonable time to make the repairs.

Section 33(4) states a landlord may take over completion of an emergency repair at any time. Section 33(5) stipulates 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.

Section 33(7) allows that if a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Section 7 of the *Act* states if a party to a tenancy does not comply with the *Act*, regulations or their tenancy agreement, the non-complying party must compensate the other party for any damage or loss that results.

The section goes on to state that the party who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, regulation or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In regard to the services and facilities the tenant submits were supposed to be a part of the tenancy but were not provided or were found to not be working I find the tenant, for the most part did raise issues with the landlords during the course of the tenancy, with the exception of the hot tub.

However, I also find that the tenant had a number of avenues to pursue the very claims he is making now that could have resulted in, in some cases, the landlord providing those services and facilities during the tenancy and minimizing any or all losses. For example, if the tenant felt the value of the tenancy had diminished because the basement fireplace did not work or the flooring was not completed he could have pursued a rent reduction at the time with the landlord or by filing an Application for Dispute Resolution during the tenancy to have the landlord provide and/or repair the fireplace. Instead the tenant went through the entire duration of the tenancy and, in fact, waited a further 2 years to file a claim.

I find it would have been reasonable to seek remedies to the complaints the tenant raised for these services and facilities during the tenancy thus minimizing or eliminating any losses suffered by the tenant. As such, I find the tenant has failed to meet his obligation to mitigate losses pursuant to Section 7 of the *Act*.

As a result, I dismiss the tenant’s claim for compensation in the form of rent reductions for the hot tub; basement fireplace; basement bathroom; and basement bedroom, flooring.

I find the same is true for any of the repairs that may have taken extended periods of time to complete, such as the door. In the case of the door repairs, I find the tenant could have had the doors repaired on his own, pursuant to Section 33 – emergency repairs and be reimbursed after the repairs were made.

Furthermore, I find the landlord attended to the repairs in a timely fashion, with the possible exception of the patio doors, and as such was never in violation of his obligations under Section 32.

In addition, I find the tenant has failed to establish he took reasonable steps to mitigate any losses in the value of the tenancy for repairing the patio doors and removal of the jetted tub, because he failed to pursue these claims and seek orders from an arbitrator to have these items repaired and/or restored.

As a result, I dismiss the tenant's claim for compensation in the form of rent reductions for the main floor fireplace; jetted tub; patio door; and furnace repairs.

As to compensation for 20 weeks in the amount of $100.00 per week for each of the master bathroom and bedroom or a total of $4,000.00 I find the tenant has failed to establish that black mould was the reason for the repair; that if black mould existed in the rooms that it posed any health concerns; or that for any other reason they could not use these rooms in whole or in part during the repairs.

I make this finding in part because while the tenant submitted the need for repairs arose when they found black mould the landlord testified that there was only a water leak. When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position. In this case, the burden rests with the tenant.

Furthermore, the tenant submitted the repairs were first identified on August 15, 2012 and started in October 2012 – the tenant did not indicate when they were completed. The landlord submitted they had been completed by November 9, 2012. If both parties are correct with the dates provided the maximum duration of any problems would be just over 12 weeks, not 20.

In addition, since I have found the tenant has not established any danger to the him or his family prior to when the repairs began the most the tenant might have been entitled to for compensation would be for the time the repairs were being made or approximately 4 weeks. Even so, I found above the tenant has failed to provide any evidence they could not use this part of the rental unit during the repairs.

Based on the above, I dismiss the tenant's claim for compensation in the form of a rent reduction the period when they reported a problem with the master bathroom and the repairs were complete.

I note that the tenant also sought compensation in the amount $650.00 for cleaning up after the master bathroom repairs; after the master bathroom flood after an open house; and for cleaning up and moving his belongings for repairs in the garage.

In regard to cleaning up after the master bathroom repairs, I find the tenant has failed to establish that he reported any problems with the outcome of the repairs. As such, I find the landlord could not have arranged for cleaning if it was required because he was not aware of any problems. I find the tenant is not entitled to compensation in the amount of $150.00 for this work.

As to the claim for cleaning up after a flood in the rental unit after a realtor's open house, the tenant had submitted that the cleaning up consisted of turning off the water and sopping up the water with towels. The tenant did not explain how he determined $200.00 for this work.

I accept this was an emergency situation and in such circumstances a tenant may complete repairs pursuant to Section 33 of the *Act* and be reimbursed for any costs they have incurred. I also find the tenant provided no evidence how he established the amount claimed. As the tenant has provided no evidence that turning off the tap and sopping water cost him anything or how he determined the amount of his claim, I find the tenant is not entitled to this compensation.

Likewise, in regard to the tenant's claim for moving his possessions and cleaning up the garage I find a tenant may be entitled to compensation for the costs of emergency repairs but this tenant has provided no evidence that he incurred any costs or how he established the value of this claim. Therefore, I dismiss the portion of the tenant's claim for cleaning in the amount of $300.00.

In regard to the tenant's claim to be compensated for his personal possessions that he alleges were damaged as a result of the flooding in the garage, I find the tenant has, despite the submission of 6 photographs, failed to provide evidence that any of the items that got wet during the water problems in the garage were damaged at all, with the exception of cardboard boxes that the possessions were in.

For example, the tenant submitted 2 photographs of wooden tool boxes in which he identified as "water soaked wood box" but has provided no explanation as to why they could not have been dried out and used again. Three of the other photographs each show a cardboard box (1 empty; 2 with various unidentifiable small contents). The last photograph shows a number of unidentifiable items on the garage floor that the tenant identified as "water soaked box, wood boxes, and contents damaged from Respondent's Contractor's plumbing leak into garage".

Furthermore, even if the tenant had established that these items were damaged and required replacement, I find the tenant provided no evidence that he had any insurance or that if he did have insurance he claim reimbursement from his insurance. As a result, I find the tenant has failed to establish he took reasonable steps to mitigate this loss. I dismiss the portion of the tenant's claim for $670.00 to replace these items.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and the use of common areas for reasonable and lawful purposes, free from significant interference.

Based on the submissions of both parties, I find the landlord has established that there were a minimal number of showings to potential purchasers and that the landlord took reasonable steps to minimize disruptions to the tenant by allowing his realtor to hold an open house for realtors.

I also find that the evidence submitted by both parties establishes that if the landlord and/or his agent contacted the tenant on multiple occasions that many of those contacts were in response to the tenant's refusal to allow showings or to complaints raised by the tenant regarding notices of showings.

For these reasons, I am not satisfied that the tenant has established, on a balance of probabilities, that the landlord has violated Section 28 of the *Act*. I dismiss the tenant's claim for the return of all rent for the months of December 2013 and January 2014.

Section 32(2) states a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and Section 32(3) states 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 property by the tenant.

In regard to the tenant's claim for a rent reduction of $200.00 for 5 months for keeping the rental unit clean because he thought the property was listed for sale during a period that it was not, I find the tenant has provided no evidence that there was a need to do anything more than the requirements set forth in Section 32(2) of the *Act* to keep the rental unit reasonably clean and within health and sanitary standards. As such, I dismiss this portion of the tenant's claim.

Section 62(4) of the *Act* states the director may dismiss all or part of an application for dispute resolution if there are no reasonable grounds for the application or part, the application or part does not disclose a dispute that may be determined under this Part, or the application or part is frivolous or an abuse of the dispute resolution process.

While I have found that the tenant has failed to establish the bulk of his claim on the basis of the evidence submitted by both parties, I also find the majority of the tenant's claim was frivolous and unwarranted, with the exception of the part of his claim for return of the full security deposit and compensation for the landlord's failure to use the property for the stated purpose.

For this reason, I dismiss the tenant's request to recover the filing fee for this Application for Dispute Resolution from the landlord.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **$4,400.00** comprised of $1,600.00 security deposit and $2,800.00 compensation for not using the rental unit for the stated purpose.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: May 31, 2017

Residential Tenancy Branch