Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act, (the "Act"), for a monetary order for loss or other money owed, to have the landlord comply with the Act and to recover the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Procedural matter

It should be noted that during the hearing the Arbitrators telephone line disconnected due to a power outage. The Arbitrator conducting the hearing was not within the same geographical location as the named parties. The Arbitrator immediately dialed back into the telephone conference. During this brief disconnection on my part due to circumstances I could not control, the tenants made the choice to exit the hearing. The landlord, the landlords counsel and witness remained on the line.

Prior to the Arbitrators telephone line disconnecting the tenants' were upset, indicating things, such as they would get a lawyer as they were unhappy with the question that I was asking them. I find the tenants actions of disconnecting from the hearing was their own choice. They did not dial back into the hearing, even after; I gave the tenants sufficient time to do so.

I conducted the balance of the hearing in the absent of the tenants. A party who purposely disconnects from the hearing cannot establish that they were unable to attend the hearing on ground 1 for review consideration.

Issues to be Decided

Are the tenants entitled to a monetary order?

Background and Evidence

The tenancy began on November 1, 2016. Rent in the amount of $2,000.00 was payable. The tenants paid a deposit of $1,500.00. The tenants gave the landlord permission to keep the deposit at the end of the tenancy.

The tenants claim as follows:

a.	Replacement of items, cleaning and damages	$25,000.00
	Filing fee	$ 100.00
	Total claimed	**$25,000.00**

The tenants testified that starting December 5, 2016, that they loss quiet enjoyment of the rental unit from typical disturbance what are associated with a renovation as the upper unit was being renovated.

The tenants testified that they had concerns about the dust that was coming into their rental unit. The tenants stated they contacted the landlord of their concerns by email on March 24, 2017, to confirm that there were no hazardous materials. The tenants stated the landlord responded to them that there was no hazardous material and had an air test completed. Filed in evidence are what are said to be copied emails.

The tenants testified that dust from the construction site and from the air test covered their belongings and those items had be disposed of, an itemized listed was submitted on their monetary worksheet. The list contains items such as a blow dryer, 4 helmets, shower curtain, a pair of snow board boots, 5 carwashes, and other additional items. Filed in evidence are photographs. Filed in evidence are online copies of items said to be purchased.

The tenants testified that they also seek $6,000.00 each for their health impacts for a total of $12,000.00. Filed in evidence is medical note for the tenant HA, dated May 8, 2017, which reads as follows:

> "has attended this clinic with complaints of skin rashes, sore throat, nasal congestion and headaches which is **possibly** a result of the dust that she has been exposed to you while her renovations have been taking place"

[Reproduced as written]
[**My Emphasis added]**

It was at this point during the hearing, where I the Arbitrator, asked the tenants specific questions, such as were are their medical reports to support their medical claim for $12,000.00. I also asked the tenants why they would have to dispose of items that could we simply been washed.

The tenants did not like my questions; however, I informed them that I had a right to ask question that are relevant to their damages claim. The tenants were upset and chose to exit the hearing. I gave the tenants additional time to redial back into the hearing; however, they did not do so.

Counsel for the landlord submits the tenants knew the upper rental unit was going to be renovated before they entered into the tenancy agreement and they knew this would have some noise and dust. Counsel submits the tenants' claim is unfounded and not supported by any credible evidence. Counsel submits the landlord has incurred expenses such as expert report and legal fees. Counsel seeks that the tenants' application be dismissed without leave to reapply.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the tenants have the burden of proof to prove their claim.

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.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, I accept the rental unit may have had some dust while the upper rental unit was being renovated as that would be expected; however, the tenants knew the unit was going to be renovated prior to the tenancy commencing.

Further, the first time the tenants wrote to the landlord was on March 24, 2017, five months into the tenancy. In the email the tenants asked the landlord if there were any hazardous material. The landlord responded that they can be assured that there is not.

In this matter the landlord has filed substantial evidence such as an expert reports. I find it not necessary for me to review or consider them. Since the tenants have the burden of proof to prove a violation of the Act by the landlord.

I find the photographs of dust or a self-reporting letter from a doctor does not establish the rental unit was hazardous from dust or any other substance. Further, the doctor's letter indicates that the dust was a possible source of the female tenant's aliments, not that it was the source of their aliment. There was no medical evidence provided for the male tenant.

Further, I find disposing of items based on dust such as bicycle helmets, a blow dryer and having bicycles service is unreasonable. I find it highly unlike that dust would have any impact on these items, and in any event, these items can be wiped cleaned.

Furthermore, if the tenants chose to dispose of these items, that was their personal choice and not the responsibility of the landlord. No documentary evidence such as a report from a qualified person was provided by the tenants to show these items had any hazardous dust or materials on them.

I also note in the tenants' evidence at page 22, states,

> "local upholstery cleaner stated that our leather furniture cannot be cleaned"

[Reproduced as written]

I find that is highly unlikely and not supported by any documentary evidence, such as a report from a qualified leather person who has physically inspected the furniture.

Furthermore in the same paragraph, the tenants write,

> "therefore living room set given away and stressless chair whipped down till can be replace".
>
> [Reproduced a written]

I find the actions of the tenants support that there was no hazardous materials as it would be unreasonable to give away such items if hazardous from dust. Further, dust; even saw dust can be wiped off of items, as the tenants did with the stressless chair.

Furthermore, I find there is no evidence the landlord has breached the Act. The tenants knew the upper unit was going to be renovated before entering into their tenancy agreement, it is only reasonable that there would be construction noise and additional dust. The landlord responded to the tenants concerns in March 2017 and had the air test completed by an environmental expert. If the tenants were not satisfied with the landlords expert report they could have paid and had their own test completed.

Based on the above, I find the tenants have failed to establish any of the requirements for the four part test. Therefore, I dismiss the tenants' claim for monetary compensation without leave to reapply.

Conclusion

The tenants' application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *ACT Tenancy Act*.

Dated: July 18, 2017

Residential Tenancy Branch