



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MND MNDC MNSD FF

Introduction:

Both parties and witnesses for the tenant attended the hearing and gave sworn testimony. The landlord said the tenant served the Application for Dispute Resolution personally. I find that the landlord is legally served with the Application according to section 89 of the Act. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order or rent rebate pursuant to Sections 7, 32, 33, 65 and 67 for damages suffered due to lack of maintenance and repair by the landlord; and
- b) For the return of his security deposit.

Issue(s) to be Decided:

Has the tenant proved on a balance of probabilities that they have suffered damage and loss due to act or neglect of the landlord? If so, to how much compensation have they proved entitlement?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. They agreed that the tenancy commenced March 1, 2014 with early move-in February 2014, that monthly rent was \$850 and a security deposit of \$425 was paid. The tenant vacated on February 1, 2018 and said he provided his forwarding address on that date. I advised the tenant that according to section 38 of the Act, the landlord has 15 days from February 1, 2018 to return his deposit or claim against it. Therefore, I will not deal with the application for the return of the deposit today as it is premature.

The tenant claims compensation of \$12,929 based on the following:

1. \$4284: for 18% rebate of rent from March 2014 for 28 months to July 2016.
2. \$2970: for 50% rebate of rent increase after flood (July 2016 to Jan. 2018)
3. \$5250 –for 50% rebate for 7 months.
4. \$425: for refund of security deposit (premature as outlined above)

The tenant outlined his claim in 9 points in a copy of an email. Both parties submitted copious documents in support of their position. All the evidence was reviewed and considered but not all of it is quoted in the decision which covers the points relevant to the decision.

The tenant complained that the unit was uncomfortable from the beginning of the lease. He complains in 9 points in his email

1. **"instead of a legal lease, you asked me to sign a paper agreement between me and [the company], actually you hide yourself and your family behind a company name which there is no relation between your family and [the company]. Note [] inserts by me to omit the company name. i just from entrance looked at inside and found the size is ok but did not check anything by 3 reasons, there were people living in, i was not at the mood of doing that, you even by the time of moving in did not show up to inspect and write the condition and sign the paper describing conditions because you knew what was inside the unit...**

The landlord explained there was a lease and the paper to which the tenant refers is the Form K for the strata. He said there was a tenant in the unit when this tenant looked at it and the unit was in good shape. He provided photographs taken when the previous tenant vacated. However, he says the building is about 40 years old and maybe dated but all is in good condition and this email was the first notification that the tenant sent. He supplied evidence of the tenant complaint about a shower head shortly after move-in and that he went over immediately and addressed the problem.

2. The tenant complains there was a washing machine in the unit above him but he was denied this convenience. He further said it was posed a risk of flooding which was unacceptable to him and is not allowed by city code.

The landlord said the strata bylaw now prohibit washing machines but the unit above the tenant's machine was grandfathered. He said that plumbers had done some work in the building and no issue with the machine was noted. The flood that happened in July 2016 was caused by a blocked pipe on common property. The landlord provided professional reports noting this.

3. The tenant noted he had rats and mice in his unit and it was not addressed by the landlord. The landlord said the tenant advised him for the first time in December 2016 of the problem. A text is in evidence advising him to call the property manager to contact an exterminator. The landlord said he went over the next day with steel wool to deal with holes in the walls and put a sweep under the front door to keep mice from entering from the hallway. He said the tenant did not complain about the mouse problem again so he assumed it had been handled by the manager. At that time the tenant also complained the cupboards were dated and the landlord said he offered to waive the one year term of the lease if the tenant found the older building unsuitable for him. He emphasized they were in good working order and provided a photograph of them. He said there were no complaints in writing but he responded to the telephone calls by text immediately.
4. The tenant complains of inadequate heat and claimed he needed to buy an electric heater. The landlord said it is hot water heating and if he was advised of a problem, the strata would check the zone control first. He had no idea the tenant was using an electric heater as no previous tenant had need and he did not either when he lived there

himself. On November 8, 2017, he said the tenant first complained about the heat by telephone. He gave the tenant the property manager's contact information and authorized them to have someone fix the problem. A professional report in file shows it was a zone problem (strata responsibility) and fixed on November 9, 2017, one day after the complaint.

5. The tenant notes the wiring is old and inadequate and the breakers were turning off causing him discomfort. The landlord provided a photograph of the tenant's kitchen arrangement in July 2017 showing a four prong outlet installed on a two prong with three appliances plugged into it. He noted the tenant was over loading the circuits and could not understand why he needed an electric heater.
He reiterated there was nothing wrong with the wiring during other tenancies or when he used the unit himself.
6. The tenant notes the walls were old and scratched and he had to cover them with shelves and wall hangings. The landlord denied this and provided photographs showing undamaged walls. Again, the landlord said there were no complaints at the time.
7. The tenant complained there were no screens on the windows. The landlord said there never had been and he did not want to install them.
8. On July 24, 2016, the parties concur there was a flood in the unit. Many of the tenant's items had flood damage and the tenant filed a claim in court which was apparently settled and he received \$2,000 in compensation. He told a contractor that he had no tenant insurance. The tenant said the owner and property manager told him to move out to a hotel but the owner denies this. The owner/landlord said that a contractor suggested that tenant insurance would cover a hotel stay but the tenant chose to stay in the unit while it was remediated. The remediation company report states in August 15, 2016 that the kitchen cabinets do not need replacing and the drywall was fine. The landlord pursued the strata for cabinet and flooring repair and it was finally settled on July 26 and 27, 2017. The work was completed August 16, 2017, fifteen days after it began. He noted he undertook the bathroom renovation because of damage done by the tenant and this doubled the projected time. Photographs of the kitchen and bathroom before and after the renovation are in evidence. The landlord emphasized that everything was in good working order during this time although the unit was possibly uncomfortable while the remediation company dried it out. He said the tenant did not complain of problems in writing or by telephone either.
9. The tenant states that the lack of repair and living in a contaminated unit caused him to stay at his family home out of town. While there he was hospitalized for a stroke which he maintains was brought on by the landlord's neglect at finishing the reconstruction. The landlord states he does not know why the tenant chose to travel and maintains there was no need to vacate the unit as it was in working order. There was no contamination as evidenced by the remediation report and no need to replace items as alleged by the tenant, although the landlord chose to do some renovations.
10. The tenant claims he was deprived also of a dishwasher. The landlord said he removed the dishwasher and installed cupboards for storage instead at the request of the tenant

as he had many large pots and pans to store. He submitted a photograph in evidence of this.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], 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.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the tenant who is the applicant to prove on the balance of probabilities that the landlord through act or neglect caused his losses. Section 32 of the Act provides as follows:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) Complies with the health and safety and housing standards required by law, and
- (b) Having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Paragraph 32(1) (b) above is intended to take into account the fact that older units will not and are not expected to be of the same standard as a newly constructed unit and that the unit must only meet the standard of being suitable for occupation and comply with health, safety and housing standards required by law. For these reasons, older units tend to rent for much less than newer units. I note in this case the rental unit is approximately 40 years old; however the tenant is seeking compensation of \$12, 929 for the period of the tenancy from March 2014 to January 2018. Considering the monthly rent is \$875.58, I find the tenants' request excessive especially since the items listed as causing him discomfort did not preclude the tenant from occupying any part of the rental unit and the tenant did not demonstrate any significant damage

or monetary loss. As noted in the hearing, he settled in Small Claims Court for compensation claimed for his valuable objects and pain and suffering.

I find insufficient evidence to support his application. I find the landlord's evidence credible that they made appointments for repair people to correct any problems when notified by the tenant, for example for repair of the zone heating and the shower head.

In respect to the washing machine issue, I find the landlord had no control over who was permitted to have them by strata bylaw. I find no evidence that the washing machine in the upper unit caused the flood or any damage to this tenant. I find insufficient evidence that the landlord arbitrarily removed the dishwasher. I find the landlord's evidence more credible that this was done at the tenant's request to get more storage room for his pots. The landlord's credibility is supported by the photograph of the kitchen showing a significant need of the tenant for more storage.

Regarding the condition of the unit, I find insufficient evidence to support the tenant's claim. I find the landlord's evidence persuasive that it was in good physical shape as he provided many photographs of individual rooms to support his statement. I find the tenant viewed the unit without screens and it was not the landlord's obligation to provide them later in the tenancy. While this is an older unit, I find the landlord's evidence supports his statement that he did not neglect maintenance of the unit. I find the lack of screens is not a safety or housing standard issue.

Regarding the claim of the mouse infestation, I find the landlord acted promptly to address it by plugging some holes and using a door sweep. He provided contact information for the tenant to call the property manager who would handle pest control. I find his evidence credible that he heard nothing further from the tenant so assumed it was handled properly. I note the tenant has provided insufficient evidence that he contacted the property manager and it was an ongoing problem.

Although it was likely uncomfortable to reside in the unit while the remediation company dried it out, I find the flood was not caused by act or neglect of the landlord. The tenant would likely have mitigated costs of lodging and other items by reimbursement by his insurer if he had chosen to obtain tenant insurance. The landlord is not the tenant's insurer. I find insufficient evidence to support the tenant's allegations that he was residing in a 'contaminated' unit or that it did not meet the safety, health or housing standards required by law. The professional reports of the remediation company state the drywall is fine and the kitchen cupboards do not need replacement although there is some water damage. I find the tenant was told this by email on September 16, 2016 and never replied or complained further. I find the weight of the evidence is that the landlord did not violate the Act or the tenancy agreement or caused losses to the tenant. I dismiss the Application of the tenant. I find insufficient evidence that any of the tenant's health concerns or travel were caused by act or neglect of the landlord.

Conclusion:

I dismiss the Application of the tenant without leave to reapply. I dismiss his Application for the refund of his security deposit but give him leave to reapply for the refund if the landlord does not comply with section 38 of the Act and either return it or file an Application to claim against it within 15 days of February 1, 2018.

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: February 07, 2018

Residential Tenancy Branch