Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNRT MNSD

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67 and authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

The landlord/respondent did not attend this hearing, although I waited until 11:36 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 11:00 a.m. The tenants (applicants) both attended the hearing. The tenants were given a full opportunity to be heard, to present affirmed testimony and to make submissions. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the two tenants and I were the only ones who had called into this teleconference.

Tenant LM testified that she served the landlord with the tenants' Application for Dispute Resolution ("ADR") with Notice of this Hearing on December 11, 2017 by registered mail. The tenants submitted a copy of a registered mail receipt with a Canada Post tracking number. Tenant LM testified that the landlord's registered mail package was 'returned to sender'. The Canada Post information confirmed that the package had been returned to the sender. Tenant LM testified that she sent the package to the address for service provided by the landlord on the residential tenancy agreement. Tenant LM testified that she also sent copies of her Application for Dispute Resolution to the landlord's post office box in the town where the rental unit. The tenants submitted a copy of the residential tenancy agreement showing the address for service of the landlord: the same address is on the tenants' registered ADR mailing.

Based on the undisputed testimony of the tenants and their supporting evidence, including registered mail receipts, I find that the landlord was deemed served as of

December 16, 2017 (5 days after the registered mailing) in accordance with section 89 and 90 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary order from the landlord including;

- return of their rent paid to the landlord during the tenancy as a result of the failure of the landlord to meet his obligation in providing a safe, healthy rental property?
- return of their security deposit?
- return of an amount equivalent to their deposit for the landlord's failure to return the deposit in compliance with the Act?

Background and Evidence

This tenancy began on July 26, 2017. The tenants submitted a copy of the residential tenancy agreement: it was set as a fixed term tenancy agreement for a 5-year period, signed by all parties and with an $850.00 monthly rental amount. The agreement also showed that the tenants paid a $425.00 security deposit to the landlord at the outset of the tenancy. The tenants testified that they vacated the rental unit on December 1, 2017 as a result of the condition of the rental unit and their inability to have the landlord take action to improve the condition. They sought $5102.86 for the return of their security deposit, an amount equivalent to their security deposit for the landlord's failure to return the deposit in accordance with the Act and the return of their monthly rent paid to the landlord as a result of the unsatisfactory living conditions.

The tenants testified that they met the landlord one time only. They testified that he did not live in the community and most of their communication with the landlord was done by email and telephone. The tenants testified that, for a number of practical matters, they dealt with a representative of the landlord (the "manager"). The manager did not take requests for repairs or communicate with the landlord on behalf of the tenants.

Tenant RT testified that the tenants (two adults and 2 young children) were forced to relocate as a result of extensive forest fires in the area of their previous residence. He testified that the tenants were desperate and took the rental unit sight unseen after corresponding with the landlord. The tenants testified that, on arrival in the small community, they had nowhere else to stay and remained in the unit for a period of time out of mere necessity while attempting to communicate with the landlord at the start of the tenancy and, eventually searching for another rental unit. The tenants testified that they paid monthly rent – Tenant LM provided copies of her banking statements showing

monthly rent payments from August 2017 to November 2017 (5 months of tenancy) as well as the security deposit paid by the tenants at the outset of the tenancy.

Tenant RT testified that, on arrival, the rental unit looked bad: he testified that they had hoped to improve the condition of the unit and speak to the landlord about its condition. He testified that, once they resided in the rental unit for a period of time, they began to make more concerning discoveries including but not limited to: smell of damaged, burning electrical wires; electrical problems; floor bubbling with water underneath; and a moldy smell.

Tenant RT testified that he and his co-tenant (Tenant LM) contacted the manager and attempted to contact the landlord on a number of occasions. The tenants both testified that, at the end of September, as the floor and water damage became more apparent, they continued to try to communicate with the landlord and his representative (the manager) in town. The tenants submitted copies of text messages and provided testimony to describe the details of their attempts to contact the landlord. The tenants also testified that, in early October when it was extremely cold and the heat was not working, they tried again to ask the landlord to fix the heat and the other damage in the rental unit but he did not respond.

In November 2017, the tenants called the small town's inspector to ask him to inspect the unit so they would have an objective opinion of the condition of the rental unit. The tenants submitted two letters written by the town inspector in contemplation of this hearing. One letter indicated that the inspector told the landlord not to rent the unit until a series of repairs had been addressed. The inspector also wrote the rental unit was 'condemned' and not liveable. The tenants testified that they decided to move as soon as possible after the inspector completed his inspection, reported back to them and after the inspector showed them the inside of the basement portion of the unit (that they did not have access to) and the basement had been destroyed by fire.

After receiving the information from the inspector and prior to the start of December 2017, the tenants both testified that they wrote to the landlord and advised the manager that they intended to move out because of the condition of the rental unit. The tenants testified that the landlord responded only by text message to say he thought the unit was fine as it was. The tenants testified that the landlord said he would have the manager look at the place but that the manager did not make any improvements to the unit. The two tenants both testified that ultimately, the landlord texted them to say that if they vacated the rental unit, they weren't going to get their security deposit back because the tenancy was set for a fixed term that was not at an end.

The tenants both testified that the landlord had told them the rental unit had passed an inspection by the inspector. They testified that he refused to acknowledge the need for repairs to the unit. After searching and finding a new place to live, the tenants vacated the rental unit on December 1, 2017.

Analysis

Section 32 of the Act provides a basic outline of the rights and obligations to the physical maintenance of the property by both parties during a tenancy,

> **32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
>
> (a) complies with the health, 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.
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> (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
>
> …
>
> (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I accept the undisputed testimony of both tenants that the rental unit was in a condition that did not comply with health, safety and housing standards required by law, and that the rental unit was not suitable for occupation by tenants during the time they resided in the unit. I note that the testimony of both tenants was believable and supported by their documentary evidence and the photographs of the rental unit submitted for this hearing. The tenants were candid in their admissions regarding their circumstances and their willingness to take the rental unit sight unseen. As well, I found that tenant LM had provided documentation to prove the steps that she took to communicate (and make requests to) the landlord directly.

I find the evidence from the town’s inspector compelling. It corroborates the testimony of the tenants and is logically connected to the other evidence submitted by the tenants including the photographic evidence of the unit. I also find that the tenants’ text messages submitted for this hearing, while they printed out poorly, support the

testimony of the tenants with respect to the interaction between the landlord and the tenants.

Residential Tenancy Policy Guideline No. 1 provides further guidance to clarify the responsibilities of the landlord (and the tenant) with respect to the condition and maintenance of the rental unit and the residential property. The guideline reiterates section 32 - that the landlord is responsible for ensuring the unit and the property meet health, safety and housing standards. Further, it states that that the unit and property must be “reasonably suitable for occupation given the nature and location of the property”. The guideline states that it is within the purview of an arbitrator of the Residential Tenancy Branch to determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards.

In all of the circumstances, I find that the tenants have shown that the rental unit was not liveable for the entirety of their tenancy (from July 26, 2017 to December 1, 2017). I find that their evidence proves that the unit did not meet health or safety standards and that it was not suitable for occupation. I accept the evidence of the inspector as well as the other supporting documentary evidence and the testimony of the tenants all support the tenants’ claim that the unit was not liveable.

I accept the undisputed, supported testimony of the tenants that they paid $850.00 each month for 5 months (August, September, October, November and December 2017) and that they paid a $425.00 security deposit in accordance with the residential tenancy agreement submitted for this hearing.

Residential Tenancy Policy Guideline No. 30 states that a tenant may end a fixed term tenancy only when the tenant has given proper notice and the landlord has breached a material term of the tenancy agreement. The breach must be so serious that “it goes to the heart of the tenancy agreement”. In this exceptional case, where the tenants have provided sufficient evidence to show that the unit was without heat and had been deemed unliveable by the authorities in the area, I find that the landlord had breached the terms of the tenancy agreement not only by failing to provide a house in a liveable condition but also failing to make any repairs to the rental unit in order to make the conditions in the rental unit meet a minimum, reasonable standard for the safety, health and comfort of the tenants and their children.

The tenants have proven that their rental unit was deemed not liveable and the tenants were entitled to breach the fixed term tenancy agreement. However they resided in the rental unit for approximately 5 months. I appreciate that the tenants resided in the unit

mainly out of necessity however section 26(1) of the Act establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.” Rent is a payment to reflect access and use of a rental unit or premises – the tenants were able to use the rental unit, albeit in a sub-par manner.

Based on the evidence submitted by the tenants and undisputed by the landlord, the rental unit was unsafe during the time the tenants and their children resided in the unit. In these particular circumstances, where the tenants have proven that the rental unit was in unliveable condition for the entirety of their tenancy, I find that the tenants are entitled to a rent reduction of 75% of their monthly rent ($637.50 per month for 5 months of tenancy). Therefore, I find that the tenants are entitled to recover $3187.50 in rent paid to the landlord.

The tenants seek the return of double the value of their security deposit from the landlord, totaling $850.00. The tenants testified that they did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return any of the security deposit to the tenants or make an application for dispute resolution to claim against this deposit, within 15 days of the end of this tenancy.

However, section 38 requires a landlord to return the deposit after the later of the end of the tenancy AND the provision of the forwarding address in writing. The tenants testified that they provided their forwarding address by way of email to the landlord. Emails are not considered “written notice” for the purposes of service under section 88 of the *Act*. Accordingly, I find that the tenants’ forwarding address was not proper notice under the *Act*, as it was not served in accordance with section 88.

I find that the landlord has now been notified of the tenants’ forwarding address by way of their application for this hearing. Earlier in this decision, I found that the landlord was deemed served with the tenants’ ADR in accordance with the *Act*. Accordingly, I dismiss with leave to reapply the tenants’ application for the return of double their $425.00 security deposit.

The landlord is put on notice that he is deemed to have received the tenants’ written forwarding address five (5) days after the date of this decision (by May 22, 2018). The landlord then has 15 days after deemed receipt (until May 27, 2018) to either return the tenants’ security deposit in full or to file an application for dispute resolution. If the landlord does not complete the above actions by May 27, 2018, the tenants may take

further action with respect to their security deposit by applying for the return of double the amount of their $425.00 security deposit in accordance with section 38 of the *Act*.

With respect to the rent reduction that I have found is appropriate in the circumstances, I find that the tenants are entitled to a monetary order as follows,

Item	**Amount**
75% of Rent $850.00 per month x 5 months	$3187.00
Total Monetary Order to tenants	**$3187.00**

Conclusion

I dismiss with leave to reapply the tenants' application under section 38 of the Act regarding their security deposit.

I issue a monetary order to the tenants in the amount for $3187.00.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 17, 2018

Residential Tenancy Branch