Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

On March 27, 2019, an Adjudicator appointed pursuant to the *Act* issued a substituted service order enabling the tenants to serve the landlord with a copy of the dispute resolution hearing package and written evidence by email. As the landlord confirmed that on March 29, 2019, they received a copy of the tenants' dispute resolution hearing package sent by email, I find that the landlord was duly served with this package in accordance with sections 71(1) and 89 of the *Act.* Since both parties confirmed that they had received one another's written evidence, I find that the written evidence of the parties was served in accordance with section 71(1) of the *Act* by the tenants to the landlord and in accordance with section 88 of the *Act* by the landlord to the tenants.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for losses or other money owed arising out of this tenancy? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, reports, miscellaneous letters, text messages and e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

This tenancy for the lower level of a two unit rental home began as a six month fixed term tenancy by Tenant AL (the tenant) on March 1, 2017. When the initial six-month term expired on September 1, 2017, the tenancy continued as a month-to-month tenancy. During the course of this tenancy, the second tenant (the tenant's friend) moved into the rental unit with the tenant. Monthly rent until September 1, 2017 was set at $850.00, payable in advance on the first of each month. On September 1, 2017, the monthly rent increased to $900.00 for the remainder of this tenancy. Although the tenant paid a $425.00 security deposit when this tenancy began, the parties agreed that the tenant allowed the landlord to keep that deposit as payment for the last half month of this tenancy. There is no remaining security deposit in place for this tenancy.

The parties agreed that the tenant sent the landlord an email on February 15, 2019, advising the landlord that the tenant intended to end this tenancy by March 15, 2019. The tenant sent this notice by email instead of in writing because the tenant maintained that the landlord had never provided the tenant with a mailing address and that their written communication was by email and text message throughout this tenancy. The landlord accepted the tenant's notice to end this tenancy and the tenants vacated the rental unit by March 15, 2019.

In the tenants' application for a monetary award of $19,600.00 plus recovery of the $100.00 filing fee, the tenants advised that this amount was sought as compensation for the landlord's failure to address a rat infestation problem and a black mould problem. The tenants' Monetary Order Worksheet entered into written evidence sought the recovery of $850.00 in monthly rent for each of the four months from May 2017 to August 2017, as well as monthly rent of $900.00 for each of the 17 months between September 2017 and February 2019. In their Monetary Order Worksheet, the tenants also applied for the recovery of truck rental of $130.56 for the tenants move from the rental unit in March 2019. In the tenants' written evidence, the tenants noted that they could not use one of the bedrooms in this two bedroom rental unit from December 2018 until the end of this tenancy to the intensity of the smell that could not be removed from

that room, which the tenants attributed to the landlord's negligence in attending to the tenants' concerns about the rat infestation.

Although the tenant attempted to add issues at the hearing about their loss of quiet enjoyment stemming from noise from the upstairs tenant's dog and issues regarding laundry facilities, neither of these issues were identified in the tenants' original application. I advised the parties that as the tenants have not included these issues in their application, it would be unfair to include these issues within this hearing as the landlord had not been advised of the tenants' intention to seek a monetary claim for these issues in the context of this hearing. I have not considered these issues as part of my decision on the tenants' application.

Both parties submitted extensive documentation regarding this matter. The tenants maintained that the landlord had taken only the most superficial of actions to address what the tenant claimed was an ongoing and consistent rat infestation problem in this rental unit. The tenant claimed that the landlord limited the work performed to resolve this problem to work on the outside of the building and never took proper steps recommended by pest control specialists to undertake work on the interior of this dwelling or to identify the true source of the odours that the tenants experienced during this tenancy. The tenant asserted that the previous female tenant who had lived in this rental unit had also raised concerns about this rat infestation when she resided there and the landlord had done little to address her concerns as well. The tenant entered into written evidence a statement from their physician, in which that professional noted the health problems that were being experienced by the tenants that may have resulted from conditions within the rental unit, particularly issues of mould.

By contrast, the landlord's counsel and the landlord provided a detailed breakdown, sometimes even cross-referencing that breakdown with the tenants' own evidence, to support the landlord's claim that on every occasion when the tenant asked the landlord to look into the rat infestation problem, the landlord took swift action to retain qualified pest control specialists. The landlord testified that they were only able to rectify the smell lingering in the rental unit, which may very well have originated from the rat infestation, 2 1/2 months after this tenancy ended, and after a trial and error process of removing walls, ceilings and even flooring. The landlord produced a significant list of expenses incurred during the course of this two year tenancy for pest control specialists and other renovation and repair tradespeople who replaced parts of the ceiling in this rental unit and fencing at the rear of this property to reduce vermin from accessing the property.

By mid-December 2018, and after the tenant once more raised additional concerns about a rat infestation, the landlord retained the services of another pest control firm. In their December 17, 2018 report that firm identified a set of measures that could be taken both inside and outside the rental unit to address this problem. At a cost of $995.00, the landlord had this firm undertake the outside work. The landlord did not undertake the inside work, estimated at $695.00 to undertake actions such as removing the ceiling drywall, replacing insulation, sanitizing and disinfecting the premises, and replacing the drywall and preparing it for painting. At the hearing, the landlord explained that the pest control firm was unwilling to undertake this inside work when the tenant started raising additional and simultaneous concerns that black mould was present and also needed to be addressed. The landlord said that subsequent tests and reports, copies of which were entered into written evidence, identified no presence of black mould, and only moisture in one of the bathroom walls. However, the pest control specialist did not wish to get involved in work that extended beyond their area of expertise. The landlord said that by a process of elimination the landlord was able to eradicate the odour in the rental unit after the tenancy ended.

The landlord's witness was the tenant who has lived in the other rental unit above the area where the tenants resided for a little less than six years. That tenant testified that they have never experienced any problems with a rat infestation nor have they experienced any mould issues. They said that the landlord has been very attentive to any concerns raised during the course of their tenancy, attending to issues as they arise very quickly.

The tenant's friend who resided with the tenant during most of this tenancy testified that the landlord's wife and the landlord told them a number of times that if they did not like the rental unit, they should move. The tenant's friend confirmed the tenant's assertion that the landlord had failed to address their concerns about the rat infestation, mould and the odour that was present in this rental unit.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has

been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove on the balance of probabilities that the landlord contravened the *Act* or their tenancy agreement and that the tenants are entitled to compensation for the loss in the value of their tenancy.

Section 32(1) of the *Act* provides the following outline of the landlord's responsibilities in providing and maintaining 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.*

Paragraphs 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

I first note that the Applicants/tenants have not only claimed for a total rebate of all rent paid to the landlord from the third month of this tenancy in May 2017 until February 2019, the last full month of this tenancy, but have also requested the recovery of their rental of a vehicle to vacate the premises at the end of this tenancy. Were the tenants' application to be successful, this would result in a monetary award of more rent than the tenants actually paid in the final 22 months of this claim. The tenants have requested a retroactive reduction in almost all of the rent they paid for this tenancy which lasted over two years, but was originally set as a six-month fixed term tenancy.

The landlord's legal counsel entered written evidence and asked questions at the hearing as to why the tenants decided to stay in this rental unit for more than two years if they were finding the accommodations so unsatisfactory as to warrant the issuance of such a large monetary award. The landlord's legal counsel noted that this tenancy became a month-to-month tenancy on the seventh month after this tenancy commenced. The landlord's legal counsel noted that they were under no obligation to remain there after August 31, 2017, and never made any application for a recovery of any portion of their rent during the course of their tenancy. The tenant responded that both tenants experienced serious health problems during the course of this tenancy, which made it impossible for them to consider moving even though they considered the conditions unsuitable.

I can assure the parties that I understand that situations such as this one, where it is very difficult to ascertain how a pest infestation has developed, present significant difficulties and challenges for both landlords and tenants. While I have little doubt that the tenants found the rat infestation problem and the odours associated with that problem disruptive and troubling, tenants can only hold the landlord responsible for matters within the landlord's control and for which the landlord bears responsibility under the *Act*. With respect to concerns about odours in a building that cannot be eliminated or about a vermin infestation, it is often very difficult to determine with certainty the source of the problem and what can be done to resolve the situation. A tenant cannot hold a landlord fully responsible for any and all costs associated with a pest infestation. What a tenant can expect is that a landlord will take appropriate action to address a specific problem once it is brought to a landlord's attention.

A landlord cannot guarantee that the pest control specialists brought in to address a pest control problem will eradicate the problem; it is often necessary for these specialists to return to treat a rental unit a number of times. On many occasions it becomes necessary for pest control specialists to block off identified access points, return to the site after action has been taken and to make recommendations to the landlord for preventing a recurrence of problems.

In this case, I find that the landlord has provided extensive documentation to demonstrate that the landlord took prompt action each time the tenant notified the landlord that there was a continuing rat infestation problem in the rental unit. The landlord incurred considerable costs in having a series of different pest control specialists attend the rental unit, identify the problem, and take corrective action to address the problems they identified. There were lengthy periods of this tenancy where the tenant was unable to identify any formal complaints to the landlord about rat infestation problems, all of which followed actions taken by the landlord to retain pest control specialists. While the tenant characterized these actions by the landlord as being limited in that they addressed only remedies that could be taken on the outside of the rental home, there is little evidence that the landlord failed to take the actions identified by the pest control specialists prior to the landlord's receipt of the pest control specialist's report of December 17, 2018. Up until that time, the landlord has provided convincing written evidence and sworn testimony that the tenant did not raise any formal complaints regarding the action taken by pest control specialists. Although the tenant has supplied copies of extensive text messages and made reference to frequent communication with the landlord about his dissatisfaction with the measures being taken by the landlord to address his concerns from December 2018 until the tenants

issued their notice to end tenancy in February 2019, the tenant supplied only sworn testimony regarding his previous communications with the landlord following the completion of each round of pest control activity. I also note that the landlord used different pest control companies to try to address this problem in the hope that different specialists would be able to better identify the source of the rat infestation problem and recommend a course of action that would be more successful than had been the situation in the past. For these reasons, I find that the landlord has discharged their responsibility to attend to complaints lodged by the tenants about the rat infestation problem prior to the receipt of the pest control specialist's report of December 17, 2018.

As of December 17, 2018, the landlord had a recommendation from a pest control specialist recommending that action be taken both inside and outside the rental unit to address the rat infestation problem. The landlord took the action recommended on the outside of the rental unit, but did not follow-up on the action recommended for the inside of the rental unit. I accept that the landlord's failure to take all of these recommended actions resulted at least partially from the tenant's allegations that there was a moisture problem causing the development of black mould within the rental unit that might also be contributing to the foul odours present in the rental unit. This does not absolve the landlord from taking action with a suitably qualified company to address the tenants' concerns about the rat infestation problem.

Once the tenancy ended, the landlord took a more comprehensive approach to resolving these problems through a series of actions to remove and replace various parts of the rental unit. The landlord gave undisputed sworn testimony that this trial and error approach eventually led to the correction of the odour problem within the rental unit; however, it took 2 1/2 months to complete this process. Given the landlord's responsibilities pursuant to section 32(1) of the *Act* and the repeated, albeit somewhat intermittent concerns the tenant had raised about problems with rats in this rental unit, I find that the landlord was remiss in not at least commencing the interior work recommended in the December 17, 2018 report until after this tenancy ended. This process of remediation of the premises may have taken longer to address with tenants still living there; however, the landlord was still under an obligation to initiate this process.

Although I find it unlikely that the landlord could have arranged for the commencement of this work during the winter holidays, I find that the eventual process taken by the landlord could have been started by January 2019, when the tenant's next monthly rental payment became due.

I have also considered the sworn testimony and written evidence presented by the parties with respect to the tenant's claim that there was black mould present in the rental unit that presented a health hazard to the tenants. In this regard, I attach very little weight to the statement entered into written evidence by the tenant from a physician. As legal counsel for the lawyer correctly noted at the hearing, this statement relied solely on information reported to the physician by the tenant. The tenant confirmed that the physician had not inspected the rental unit to confirm that there was black mould there. This written evidence was vaguely worded and provides little substantive support for any confirmation that symptoms self-reported by the tenant or tenants had any real correlation with the actual conditions within the rental unit.

Although the tenants have supplied some photographic, written and oral evidence that there were mould problems within the rental unit, the tenants also maintained that the landlord had never shared the contents of reports prepared by the company that conducted the testing for air quality within the rental unit. The landlord entered into written evidence copies of these reports and presented written evidence and sworn testimony to confirm that the only area where there was an elevated moisture level within the rental unit was behind one wall in the bathroom. The landlord also provided undisputed sworn testimony that the subsequent repairs to address the odour problem within the rental unit revealed no presence of black mould within the rental unit. I see little basis for any retroactive reduction in the tenants' rent based on the tenants' claim that the value of their tenancy was reduced by the presence of black mould.

I provide no award for the recovery of any portion of the tenants' moving expenses, as this tenancy ended on the basis of the tenants' issuance of their notice to end tenancy. Under these circumstances, the landlord is under no obligation to reimburse the tenants for any portion of their moving expenses.

The parties agreed that there was a foul smell within the rental unit by the final months of this tenancy, which eventually led to the tenants abandonment of the bedroom they were living in and sealing it off. The landlord acknowledged that this was a problem and accepted the tenants' mid-February notice to end this tenancy by March 15, 2019, instead of the usual notice that would have extended the tenants' obligation to pay rent until the end of March 2019. The landlord also agreed to allow the tenant to apply the security deposit towards the final two weeks of this tenancy, another concession that the landlord would not have been required to make, again as a partial recognition of the unresolved odour problems that had rendered one of the rooms in this rental unit unusable by the tenants.

In their written submissions, legal counsel or the landlord suggested that in the event that the tenant was entitled to any retroactive reduction in the value of their tenancy that an appropriate reduction would be in the order of 10 %. While I have given regard to this estimate, I find that by January 2019, the tenants' loss in the value of their tenancy as a result of the landlord's failure to take all of the actions recommended by the pest control specialist they retained in December 2018 extended beyond the 10 % suggested by the landlord's legal counsel. In addition to the tenants' loss of use of one of the two bedrooms in this rental unit, the landlord had received a report from their pest control specialist that was not acted upon in order to create a permanent resolution of the tenants' complaints about a rat infestation. By that time, the landlord clearly knew that there were measures identified to address the tenants' concerns that the landlord was unwilling or unable to initiate. For these reasons and in accordance with the provisions of section 65(1) of the *Act*, I allow the tenants a retroactive rent reduction in the order of 25% for the period from January 1, 2019 until the end of their tenancy due to the loss in the value of their tenancy over that period. This results in a monetary award of $562.50 {i.e., ($1,800.00 rent for January and February 2019 x 25% x 2 months = $450.00) + ($425.00 from the security deposit for rent that became due on March 1, 2019 to March 15, 2019 x 25% = $112.50) = $562.50).

As the tenants have been successful in this application, I allow the tenants to recover their $100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms, which allows the tenants to recover losses arising out of the loss in value of their tenancy and the filing fee for this application:

Item	**Amount**
Reduction in the Value of this Tenancy	$562.50
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	**$662.50**

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: June 05, 2019

Residential Tenancy Branch