Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNRT FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held, by teleconference, on April 27, 2020. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- A monetary order for compensation for loss or other money owed;
- A monetary order for the cost of emergency repairs that the Tenants made during the tenancy; and,
- Recovery of the cost of the filing fee.

Both Landlords and one of the Tenants (the Tenant) attended the hearing and provided testimony. The Landlord confirmed receipt of the Tenant's application and Notice of Hearing. Both parties confirmed receipt of each others evidence and did not take issue with the service of these documents.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?

- Are the Tenants entitled to a monetary order for the cost of emergency repairs that the Tenants made during the tenancy?

Background and Evidence

Both parties agreed in the hearing that:

- The parties signed a tenancy agreement on July 19, 2017, with a tenancy start date of September 1, 2017
- Monthly rent was set at $1,600.00 and was due on the first of the month.
- The Landlords held a security deposit in the amount of $800.00, but have since returned this amount
- The original tenancy agreement was for a term of one year but the parties signed a mutual agreement to end tenancy on February 19, 2018.
- The Tenants moved out and returned the keys on February 28, 2018.

The Tenants are seeking $3,810.00 for the following items:

1) $3,200.00 – loss of quiet enjoyment
2) $500.00 – moving expenses
3) $110.00 – costs for emergency repairs to the dishwasher

1) $3,700.00 - 3,200.00 for loss of quiet enjoyment and 2) $500.00 for moving expenses

The Tenant focused her testimony on the continued construction around the property while they were living there. The Tenant explained that the house was not completed when she went to view it, and sign the tenancy agreement in July of 2017. Prior to moving in, the Tenant was expecting a fence to be built, a lawn to be planted, and all the interior work to be finished. The Tenant pointed out that the Landlords had not completed the flooring until the end of October 2017. The Tenant also pointed out that the dishwasher broke in early September 2017, and they were without a dishwasher for 3 days.

The Tenant further explained that around September 7, 2017, the fireplace company came to finish installation of the gas fireplace, and following this, there was a bad smell in the house for hours, which made it difficult to breath. The Tenant stated that her father-in-law (96 years of age) lived with them, and he died in November of

2019. The Tenant stated her father-in-law died as a result of the bad smelling fireplace. The Tenant provided a doctor's note stating he had Chronic Obstructive Pulmonary diseas (COPD), and bad air quality could have contributed to his death. The Tenant did not present any other evidence supporting that there was an air quality issue in the rental unit or that it caused her father-in-law's death two years after the fireplace smell issue.

The Tenant stated that she had multiple issues with the rental unit including that there was improper heat in the master bedroom, a faulty smoke detector, no place for her dog to run in the yard, no lawn, no mailbox or house number, poor landscaping, poor access to rear garbage area, loose hallway light. The Tenant stated that the Landlord was constantly making noise next door, while they were renovating the adjacent duplex unit, and the contractor had to enter their unit several times for different reasons. The Tenant did not speak to when this happened, or how it impacted their enjoyment of the unit. The Tenant did not further elaborate on the magnitude or the severity of the noise that was made by construction next door.

The Tenant stated that when she signed the mutual agreement on February 19, 2018, she did it under duress because the Landlord was aggressive and left her with no other option. The Tenants moved out at the end of February due to their dissatisfaction with the yard, the noise, and the unfinished elements of the house. The Tenant stated that the Landlords promised that the house would be completely finished by the time they moved in in September, including the yard, and the fence. The Tenant stated that her dog was balding because he was stressed out from not having a place to roam around, and due to being confined.

The Landlord stated that the Tenants have completely exaggerated the issues. More specifically, the Landlords stated that they went out of their way to accommodate the Tenants both before the tenancy started and after. As an example, the Landlords explained that they even went as far as to allow the Tenants a choice over which shower curtain they got. The Landlords explained that this house was a run-down duplex which consisted of this rental unit, and the one next door. The Landlords stated that they have thoughtfully renovated both this unit, and the one next door. This rental unit was the first to be completed and they continued to work on the second adjacent side while the Tenants were living in the other side. The Landlord acknowledged that there were lots of smaller jobs going on in the adjacent unit, but deny that it was ever excessive, or unreasonable.

The Landlord explained that when the Tenants came to view the unit in July of 2017, it was under construction, and was still being finished, but the Tenants were excited about all the work that was being done. The Landlord stated they made it clear to the Tenants that some work, such as the fence and the lawn would not be finished right away, but the living space would be up and running. The Landlords stated that the house was completely finished except that they ran out of flooring at the last minute, so they had to order more, and wait a month before they installed it. The Landlords stated that the only room that was without flooring, for September and October 2017 was the spare bedroom. The Landlord also stated that they had to finish the fireplace installation a week after the Tenants moved in, but otherwise the unit was totally done.

The Landlords stated that they were never told by the Tenants that they had any issue with noise, with the state of repair, or the air quality. The Landlords stated that they were blindsided by this many months after the Tenants moved out. The Landlords stated that they were never given a chance to mitigate any of the issues the Tenant has now raised. The Tenants stated that most of the issues they raised were verbal, and that they did not have proof to support they formalized these grievances with the Landlords. The Landlords explained that they were never even told, verbally, or otherwise of any issues.

The Landlords stated that they were going to finish the yard and the fence once the weather permitted in the spring of 2018. However, the Tenants moved out before this could happen. The Landlords deny that they put any pressure on the Tenants to move out, or sign the mutual agreement to end tenancy. The Landlords stated that they noticed there was a moving truck on February 18, 2019, and after discussing with the Tenants, it was apparent they wanted to move out. The Landlord attended the rental unit with the mutual agreement on February 19, 2018, which is when both parties signed it and agreed to end the tenancy at the end of February.

The Landlords stated that the text messages that the Tenant presented for this hearing are totally doctored and are missing most of the conversation. The Landlords stated that despite being in communication with the Tenants regularly via text message, and despite being around the adjacent unit frequently, the Tenants never voiced their issues.

2) $110.00 – dishwasher repair costs

The Tenants explained that the dishwasher broke very early on in the tenancy, and they had to repair it themselves at a cost of $110.00. The Landlords stated they are willing to pay for this item, as it was a defect with the dishwasher.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. 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.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

First, I turn to the Tenants' request to reimbursed for the cost of emergency repairs they paid for during the tenancy (repair of the dishwasher). I note the Landlords acknowledged this item, and stated that it was a defective part, which they are willing to pay for. The Landlords did not take issue with reimbursing the Tenants for this item. I award the Tenants $110.00 for the repair of the dishwasher.

Next, I turn to the Tenant's request for compensation due to their loss of quiet enjoyment and for moving expenses, totalling $3,700.00.

Loss of Quiet Enjoyment

Section 28 of the Act, states that a Tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;
(b) freedom from unreasonable disturbance;
(c) exclusive possession of the rental unit subject only to the Landlord's right to enter the rental unit in accordance with section 29;
(d) use of common areas for reasonable and lawful purposes, free from significant interference.

I turn to the following two Residential Tenancy Branch Policy Guidelines:

The Residential Tenancy Branch Policy Guideline #16
(Compensation for Damage or Loss)

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- Loss of access to any part of the residential property provided under a tenancy agreement;
- Loss of a service or facility provided under a tenancy agreement;
- **Loss of quiet enjoyment;**
- Loss of rental income that was to be received under a tenancy agreement and costs associated; and,
- Damage to a person, including both physical and mental

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

The Residential Tenancy Branch Policy Guideline # 6
(Entitlement to Quiet Enjoyment)

A Landlord is obligated to ensure that the Tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.

This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

> *Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.*
>
> *In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.*
>
> *A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.*

With respect to the Tenants' claim for loss of quiet enjoyment and for moving expenses, I find the following:

It is clear from the evidence before me that the Landlord was in the process of renovating both sides of a duplex. This rental unit was completed first, the Tenants moved in, and the Landlord continued to work on the adjacent unit for the coming months. Ultimately, the Tenants have explained that they were unhappy with several things. However, I find their claims are largely unsubstantiated. More specifically, there is no evidence that the Tenant's father-in-law died as a result of air quality in the rental unit. I note he died around 1.5 years after the tenancy ended. There is no evidence to support a presence of mould or other noxious fumes. Further, there is no evidence linking the Landlords' behaviour, or inactions, to the Tenants allegations regarding her dog going bald due to stress.

The Tenant has alleged that they were forced to sign the mutual agreement to end tenancy and they signed it under duress. However, I find there is insufficient evidence that the Tenants were under duress. It is unclear why the were unable to remain in the rental unit, not sign the agreement and file an application for dispute resolution, rather than move out. The Landlord explained that they brought the mutual agreement to end tenancy for the Tenants to sign because they were trying to accommodate the Tenants' desire to end the tenancy before the end of the fixed term.

Furthermore, I find the Tenants have provided insufficient evidence to show they effectively mitigated any issues they were having by informing the Landlord of the problems in a timely manner. The Tenant stated many of the problems were told to the Landlord verbally, but there was no corroborating evidence to support that the Tenants

informed the Landlords of the issues so that they could address them. The Landlords refute that they were made aware of any of the issues or the Tenants' complaints until many months after they moved out. I find there is insufficient evidence that the Tenants sufficiently mitigated the losses they were suffering.

It is very difficult for the Landlords to correct and address issues that they were not made aware of. I find many of the issues could have reasonably been avoided or mitigated had the Tenants sufficiently communicated the problems to the Landlords. I find the Tenants have failed to sufficiently mitigate the issues there were having and I dismiss their application for compensation, without leave to reapply (loss of quiet enjoyment, and moving expenses).

Next, I note the Tenants were without the use of a spare bedroom for the month of September and October 2017, because the Landlords ran out of flooring. I accept that this would have had an impact on the use of that space, but the Tenants did not articulate how much of an impact the lack of flooring had on their tenancy.

An arbitrator may award compensation in situations where establishing the value of the damage or loss is not as straightforward:

> "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Although I am satisfied there was a loss of value of the tenancy for September and October 2017, due to unfinished flooring in one of the bedrooms, the value of the loss in unclear because the Tenants did not elaborate on how it impacted them. I find a nominal award is more appropriate to compensate them for the loss of this one room for around 2 months. I award $100.00 for the loss of use of that room.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since Tenants were partly successful in this claim. I order the Landlord to repay half the $100.00 filing fee that the Tenants paid to make this application for dispute resolution.

In summary, and pursuant to section 67 of the Act, I grant the Tenants a monetary order for **$260.00**, as specified above.

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **$260.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants 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: April 27, 2020

Residential Tenancy Branch