Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MABH Holdings Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: MNR MNSD FF
Tenant: MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on June 1, 2020. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the "*Act*").

One of the Tenants and the Landlord attended the hearing and provided testimony. The Landlord confirmed receipt of the Tenant's application and evidence, and the Tenant confirmed receipt of the Landlord's application and evidence.

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

Tenant

- Are the Tenants entitled to compensation for money owed or damage or loss under the Act?
- Are the Tenants entitled to the return of the security deposit?

Landlord:

- Is the Landlord entitled to compensation for unpaid rent or utilities?
- Is the Landlord entitled to keep the security deposit to offset the unpaid rent?

Background and Evidence

Both parties agree that:

- The Tenants moved in on September 1, 2018, and signed a tenancy agreement with the owner at that time (the "previous owner"), who subsequently sold the unit on October 31, 2019, to the current owner and Landlord.
- The Landlord still holds a security and pet deposit, totalling $2,000.00.
- Monthly rent was set at $2,000.00 and was due on the first of the month.
- The Tenants moved out of the rental unit on December 31, 2019.
- The current Landlord bought the rental unit, which is part of a larger apartment building, and she took possession of the unit on October 31, 2019.

Landlord's application

The Landlord stated that she is seeking $2,000.00 for January 2020 rent, because the Tenants gave short notice. The Tenants stated they sent the current Landlord an email on December 19, 2019, stating that they were going to be vacating the rental unit by January 1, 2020, due to issues with mice. The Tenant also stated they sent written notice to end tenancy on or around December 19, 2020, by mail. However, the Tenants did not have tracking information or a copy of this letter. The Landlord stated she got the Tenants' email on December 19, 2019, and accepted it as written notice to end tenancy, although she was not happy with the short notice.

The Landlord stated that she was unable to re-rent the unit for January 2020. The Landlord stated she reposted the ad in mid-January 2020, and held showings in the latter half of January. The Landlord stated she re-rented the unit as of February 1, 2020. The Landlord stated she did not repost the ad right away because she was out of town, because it was holiday season, and she also had some things she wanted to repair before she re-rented it. The Landlord reiterated that she had only owned the unit for a couple months at this point, and when the Tenants moved out, she saw things she wanted to change and fix up.

The Tenants stated that they left with short notice because of the issue with mice. The Tenant pointed to section 45(3) as grounds to end the tenancy early, in the manner they did. More specifically, the Tenants stated that because of the issue with mice, that had been ongoing for many months, they opted to end the tenancy for the Landlord's breach of a material term of the tenancy agreement because the rental unit was not suitable for occupation.

When asked how the Tenants communicated the issue to the Landlord, they stated that they mostly dealt with the previous owner, who was their Landlord up until October 31, 2019. The Tenants stated they sent a letter to the previous owner on October 26, 2019, stating that they had an issue with the mice and that it was bad enough that they may move out. However, they did not provide a copy of this letter. The current Landlord became aware of the mouse issue before she took possession of the unit, through buyers/sellers agents, and immediately took action to sort out and investigate the mouse problem, even before she took possession. The Landlord did not have any direct interaction with the Tenants until she took possession of the unit at the end of October 2019.

The Tenants stated they did not provide the current Landlord with any written letter detailing that a material term was breached, and what would happen if the issue was not addressed.

Both parties agree that there was a larger issue with mice in the building, where mice had impacted multiple units and were gaining access to the building, generally. The Landlord stated that she wished she had more time to deal with the mice issue because she was only the Landlord for 2 months before the Tenants left without proper notice. The Landlord feels she is being held responsible for the poor relationship and issues she inherited and she feels she did everything she could to address the issue, including consulting multiple contractors, and professionals.

Tenants' Application

The Tenants are seeking compensation for items as follows:

1) $1,000.00 - Loss of quiet enjoyment
2) $3,319.73 – Damaged couch, bed, vacuum, food, baskets

The Tenants are seeking $500.00 per month for November and $500.00 for December, for the loss of enjoyment of the rental unit for the months that this owner (the current Landlord) was in charge. The Tenants are also seeking $3,319.73 in compensation because the mice damaged their couch, bed, vacuum, food, and baskets. The Tenants stated that this is the amount it would cost them to replace the damaged items.

The Tenants stated that there was a significant issue with mice which started in May of 2019. The Tenants stated they would inform the previous owner almost once a month about the issue, and some of these emails were provided into evidence. The Tenants

detailed that there were seeing mice, many droppings, and that some of their belongings were being damaged.

The Tenants stated in the hearing that, around May 2019, they began to see lots of mice droppings and would even see mice running across the floor throughout the day. The Tenants provided photos of some of the items that were damaged (food, baskets, couch, books, bed). There were also multiple photos of numerous mouse droppings. The Tenants did not specify when these photos were taken or when the damage occurred for each of these items.

The Landlord stated that she should not be responsible for any damaged items. The Landlord pointed out that it is not clear when the damage occurred, and she does not feel she should have to pay for damage that didn't happen when she was an owner and Landlord. The Landlord stated that she really did her best to consult professionals in a timely manner, as soon as she took ownership.

More specifically, the Landlord stated that she talked to the Tenants on the day she took possession, in order to understand any issues there may be. The Landlord followed up with the property manager for the building that same day. The Landlord sent an email on November 1, 2019, detailing her plan to tackle the mice issue. The Landlord continued to follow up and liaise with strata to come up with a plan because the issue was beyond this rental unit. Treatments occurred throughout November and December, with limited success.

The Landlord explained that she feels bad about the Tenants having to deal with this situation, but does not feel it is fair for the Tenants to give her written notice on December 19, 2019, that they would be leaving at the end of the month.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, each party has the burden to prove their claim and support the basis for their own application. Each application will be addressed individually below.

For each application, the burden of proof is rests with that applicant 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 respondent. Once that has been established, the applicant must then provide evidence that can verify the value of the

loss or damage. Finally it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Based on all of the above, the evidence and the testimony provided at the hearing, I find as follows:

Landlord's application

I note the following relevant portion of the Act:

> ***Tenant's notice***
>
> *45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that:*
>
> *(a)is not earlier than one month after the date the landlord receives the notice, and*
>
> *(b)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*
>
> *(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*
>
> *(a)is not earlier than one month after the date the landlord receives the notice,*
>
> *(b)is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
>
> *(c)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*
>
> *(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.*

There is no evidence that the Tenants provided written notice that they were ending the tenancy prior to December 19, 2019. The Landlord acknowledges receiving the Tenants' written notice on this day, but takes issue with the fact it only gave about 10 days advance notice.

At the hearing, the Tenants explained that they ended the tenancy in the manner they did because they were entitled to do so under section 45(3) of the Act, for breach of a material term of the tenancy agreement.

I turn to Residential Tenancy Policy Guideline #8 which speaks to "Material Terms":

> *To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:*
>
> - *that there is a problem;*
> - *that they believe the problem is a breach of a material term of the tenancy agreement;*
> - *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
> - *that if the problem is not fixed by the deadline, the party will end the tenancy.*

I note that the Tenants did not provide a copy of the letter they stated they sent to the previous Landlord and owner, who ceased to be the owner on October 30, 2019. I also note there is a lack of evidence clearly detailing what was said in that letter to the previous owner.

It is unclear if the Tenants clearly specified to the Landlord that the mice issue constituted a "material" breach to the tenancy agreement. It is also not sufficiently clear that the Tenants provided a reasonable deadline, along with warning that they would end the tenancy if the issue is not addressed. Without these specifics, I find there is insufficient evidence that the Tenants met the requirements, set out in Policy Guideline #8. As such, I find they were not in a position to end the tenancy under section 45(3) in the manner they did. Without evidence that the Tenants were legally entitled to end the tenancy under section 45(3), they were required to provide at least one month's notice, under section 45(1) of the act. The Tenants failed to do this, and they breached this portion of the Act.

As such, I find the Landlord is entitled to some compensation. However, I have also considered that the Landlord, despite being made aware on December 19, 2019, that the Tenants were leaving at the end of that month, did not repost the ad until mid

January. It appears part of the reason for this was that she was on vacation, and there was some work she wanted to complete prior to re-renting, as this was the first time she had seen the unit vacant. I find these factors lead me to conclude that the Landlord was partly responsible for not being able to re-rent the unit until February 1, 2020, and she may have been able to better mitigate the losses had she posted the ad sooner.

I find the Landlord has not sufficiently demonstrated that she properly mitigated her rental loss for January. As such, I find the Landlord is not entitled to the full amount of her claim. However, given the Tenant did breach section 45 of the Act, I find a nominal amount is more reasonable in the situation. In summary, I find the Landlord is entitled to a nominal award of $750.00.

The Landlord's application to retain the security and pet deposits will be addressed further below.

Tenants' application

The Tenants have applied for multiple items. First, I will address the Tenants' request for the return of their deposit.

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, both parties confirmed that the Tenants moved out of the rental unit on December 31, 2019, which I find reflects the end of the tenancy. The Landlord filed an application against the deposits on January 2, 2020. As such, I find the Landlord did not breach section 38(1) of the act, and the Tenants are not entitled to the return of double the security and pet deposits.

The return of the deposits will be further addressed below.

Next, I will address the Tenant's request for $1,000.00 for Loss of quiet enjoyment. The Tenants are seeking $500.00 per month for November and $500.00 for December, for the loss of enjoyment of the rental unit for the months that this owner (the current Landlord) was in charge.

I note that 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.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

> *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.*
>
> *A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment* ***even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.*** ***[my emphasis]***

The Residential Tenancy Branch Policy Guideline #16 Compensation For Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

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* ***[my emphasis]***

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.

Section 32(1) of the Act states that 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 the tenant.

I accept that there are significant issues with mice in the building, and the issues are not likely caused by the Tenants. Although the pictures of the damage and mice droppings are undated, it is not disputed that there were ongoing issues with these mice into the months of November and December 2019. I accept that the current Landlord, only took ownership of the building on October 31, 2019, and did her best to try and remedy the issue with the mice. However, even with these actions taken, I accept that having to deal with mice droppings on a daily basis, and constant cleaning, would likely have a significant impact on the enjoyment of that space.

I find there is sufficient evidence that the mice created an unreasonable disturbance, which caused a loss of quiet enjoyment. However, I find the Tenant's claim for a 25% rent reduction for a breach of quiet enjoyment for November and December ($500.00 per month) is not reasonable. The Tenants have not substantiated a loss of 25% of the monthly rent over that period. I find an award of 10% for loss of quiet enjoyment to be more reasonable based on a claim of this type. I find the current owner is not responsible for any loss of quiet enjoyment or loss of use that occurred prior to when she took ownership. However, I award 10% of the $4,000.00 paid over November and December 2019, which is the period the Tenants are seeking, and the period the new Landlord owned the unit. I award $400.00 for this item.

Next, I turn to the Tenants' request to be compensated in the amount of $3,319.73 for their damaged couch, bed, vacuum, food, baskets. I have considered the photos, evidence and testimony presented, and I find there is insufficient evidence to establish when the damage occurred. There are no dates on the photos, and the Tenants did not specify when the photos were taken.

As stated above, I do not find the current owner and Landlord is responsible for issues that happened before she was the owner. I note the mice issue started at least 6 months before this Landlord bought the unit. I note the Tenants also provided emails to the previous owner stating their belongings were being damaged. Ultimately, I find there is insufficient evidence that the damage occurred while this Landlord owned and controlled the unit. Furthermore, the Tenants have provided no supporting evidence to show how much each of these items would cost to replace. I find the Tenants have failed to demonstrate that the Landlord is responsible for these items, and they have

also failed to establish the value of their loss. Their application to recover costs for their damaged items is dismissed, without leave.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. However, since both parties were partly successful, I decline to award the filing fee to either party.

In summary, the Landlord is entitled to $750.00 for January rent (nominal award). I find the Tenants are entitled to $400.00 for their application. After offsetting these amounts, I find the Landlord is entitled to $350.00.

I note the Landlord holds security and pet deposits totalling $2,000.00. I hereby allow the Landlord to retain $350.00 from these deposits. I order that the Landlord return the balance of the deposits, $1,650.00. The Tenants are awarded a monetary order for $1,650.00.

Conclusion

The Tenants are granted a monetary order pursuant to 67 in the amount of **$1,650.00**. This order must be served on the Landlords. If the Landlords fail 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: June 2, 2020

Residential Tenancy Branch