Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCT, FFL, FFT

Introduction

In this dispute, the tenants seek compensation against the landlord under section 67 of the *Residential Tenancy Act* (the "Act"). Conversely, the landlord seeks compensation against the tenants, also under section 67 of the Act. Both parties seek recovery of the filing fee under section 72 of the Act.

The tenants applied for dispute resolution on February 21, 2020 and the landlord applied for dispute resolution hearing on April 6, 2020. A hearing was first convened (for the tenants' application) on May 1, 2020, and both parties attended. There were technical issues with the tenants' uploaded and submitted photographic evidence – that is, I was unable to view the images for some mysterious reason – so, I adjourned the tenants' matter to May 28, 2020 at 9:30 AM, which is when the landlord's application was scheduled to be heard. Thus, both parties' applications were heard on this date, and this Decision shall address both parties' applications.

I note that there were no issues of service or evidence raised by either party at this hearing, and the tenants' uploaded photographic evidence was viewable.

For both applications, however, I have only considered oral and documentary evidence that was submitted in compliance with the *Rules of Procedure,* to which I was referred, and which was relevant to the issues of these applications.

Issues

1. Are the tenants entitled to compensation as claimed?
2. Is the landlord entitled to compensation as claimed?
3. Is either party entitled to recovery of the filing fee?

Background and Evidence

On or about January 12, 2020, the then-prospective tenants had their first viewing of the rental unit. The rental unit is a three-bedroom one-bathroom house. The viewing was rather cursory, and the tenants did not see anything that caused them concern. About a week later, on January 18, 2020, the tenants met the landlord at a Tim Horton's (instead of at the rental unit "because of heavy snow") and signed the Residential Tenancy Agreement (the "tenancy agreement"). They also paid the rent for February on this date and the landlord handed over the keys.

A copy of the tenancy agreement was submitted into evidence, and which indicated that the tenancy started on February 1, 2020. The tenancy was a periodic, or month-to-month tenancy, and monthly rent was $1,900.00 due on the first of the month. The tenants paid a security deposit of $850.00 that was later returned to them.

Arriving at the house a second time on January 27, 2020 to do a thorough cleaning before moving in, the tenants found a large amount of rat feces and mold. They also discovered that a 220-volt copper wire (behind the stove) had been chewed through, presumably by the rats. These discoveries alarmed the tenants, as they have a 3-year-old son and the female tenant was pregnant with the couple's second child.

The tenants sent an email to the landlord later that day, notifying him of the issues. The landlord attended to the issues almost immediately. A few days later, on January 31, an exterminator attended to the residence; he mentioned that they had seen reoccurring issues with rats in the house.

February 1 arrives, and the "repairs were still not done," the male tenant testified. The mold was still there, and the stove remained inoperable (that is, unsafe to use given the exposed wire). The mold was in one of the three bedrooms, and it ran along the bottom of the walls. Photographs of the mold were submitted into evidence.

By February 9 the repairs were still in progress, and the tenants testified that they "were not able to move into the house" because of the various issues. That same day, the tenants "tried to give a handwritten note" to the landlord to end the tenancy; the landlord refused to accept the note. A few days later, on February 11, the landlord refunded the tenants their security deposit.

The tenants returned to the house, however, on February 14 only to find a live rat, which the tenant had to “chase out of the house.” On March 3 the tenants returned the keys to the landlord, having never moved into the house.

In their application, the tenants seek what is essentially the return of February’s rent on the basis that the rental unit was not habitable due to the mold, the rats, and, the exposed oven wire. In his final submission the tenant reiterated that health and safety standards were simply not met. The tenant’s wife added, “we had nowhere to cook, nowhere to live.” They suffered added stress due to the cleaning of the rat feces, the mold, and that all they wanted was a house “that’s fit to live in.”

In his testimony, the landlord remarked that the tenants’ timeline was “mostly correct.” He confirmed that rent for February was paid on January 18, 2020. Regarding the various issues, he testified that he called the exterminator immediately, and that the exterminator came on January 31; an invoice was submitted reflecting this date. He also argued that he took immediate action with respect to trying to obtain a new replacement oven wire. He also “contacted a contractor immediately” in order to get the mold removed and new drywall installed, and, he testified that this “shows action was taken within a reasonable time.” The drywall work was, according to the landlord, completed on February 9. During his testimony the landlord emphasized that “I didn’t hesitate” and that he “responded right away” to the various problems.

The parties were somewhat divergent on the issue of how the tenancy was brought to an end. The tenants testified that they attempted to hand the landlord a handwritten note which would have been their notice to end the tenancy. A text message exchange that occurred on March 3, 2020 refers to a meeting that took place on February 10 (whether this was the February 11 date to which the tenant referred earlier, I do not know, but it most likely is). The exchange reads as follows:

Landlord: Good morning [tenants],
As per the Tenancy board
guidelines, you have NOT
technically given me 30 days notice
yet.

IF you’re not living there, please
return the key and we can do an
inspection and if there’s no damage
We can settle the $950 damage

deposit you gave IMMEDIATELY.

The February rent $1900, we can figure out at the RTB hearing on May 1
Thanks
[Landlord's name]

Tenant: Good morning [Landlord]

When we met on feb 10th I was very clear we were not going to be living there and have not lived there.

[. . .]

The parties also referred to an email, submitted into evidence, dated February 9, 2020, from tenant K. to the landlord. The email reads as follows (paragraph breaks added):

To [landlord],

While we appreciate the effort to fix the problems at the house, we cannot wait any longer. There is still problems with mold, there is no working stove, a rat problem and the house is not cleaned.

[D] was there today and a large rat ran from the stove through the house. We have a 3 year and an unborn infant to consider. These conditions are not livable with children that young.

I understand you are willing to get the exterminator out there again, but the basic exterminator is not working. He has been to the house a few times and there is still rats inside.

We were never able to do a proper walk through with you due to the snow.

[D] has had to take time away from his family and time off work to meet the contractors on a few occasions. We not afford to miss work like that.
At this time I am going to ask you let us out of the lease and refund the total $2700. As the house is not in a livable safe condition. It is almost the middle of

> the month and we paid rent over a month ago. We need to find a house to move into that is mold and rat free ASAP.
>
> If possible could you meet at the house tomorrow, (Monday February 10th), around 630pm. We can discuss this then and we can return the original key and the keys we've made copies of.
>
> I am sure you understand our reasons as I am sure you would not want your pregnant wife and unborn child living in those conditions.
>
> This is all causing way too much stress on [K] who is 4.5 months pregnant.
>
> Thank you for your understanding and I hope we can end this on good terms.
>
> Warm regards,
> [K]

From his perspective, the landlord argues that this email did not constitute proper notice as required under the Act. I asked the landlord whether the sentence "at this time I am going to ask you let us out of the lease" was not interpreted as the tenants giving him notice to end the tenancy. He answered that he did not interpret it as such.

In any event, the landlord seeks compensation in the amount of $1,900.00 for rent for March 2020. As the tenants did not, he argued, provide proper notice to end the tenancy, he assumed that they would pay rent for March, which they did not. He did not have a new tenant lined up for March 2020, because as far as he was concerned, the tenants would be residing in the house (or, paying the rent).

In his final submission the landlord argued that he responded promptly and reasonably to all of the tenants' requests. And, he argued that while the house is a three-bedroom and one-bathroom property, the mold was only in one of the bedrooms.

(There was some dispute between the parties as to whether there was mold in the bathroom; neither party said too much about this, however.)

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. For the purposes of this Decision, I shall address each parties' claim separately.

A. Tenants' Claim

The tenants want $1,900.00 in compensation for a rental unit that they never inhabited. They submit that the house was uninhabitable because of rats and mold, and, for an essentially inoperable stove with an exposed 220-volt copper wire. These issues are, they argue, incompatible with a property being suitable for accommodation, and even more so given that they have a young child and a pregnancy underway.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

> 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.
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> . . .

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.

Criteria 1: Did the landlord fail to comply with the Act?

Section 31(1) of the Act refers to health and safety matters, and reads as follows:

> A landlord must provide and maintain residential property in a state of decoration and repair that
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> (a) complies with the health, safety and housing standards required by law, and
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> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Further, section 32(5) of the Act states that

> 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.

The tenants argued that the presence of rats and mold did not meet health and safety standards. Nor does an exposed, high voltage copper wire at the back of the oven. These three problems made it unsuitable for occupation. I am persuaded by the tenants' argument in this regard. And, while the landlord correctly noted that only one of the three rooms had mold, it does not follow that the house as a whole is therefore necessarily safe or liveable. Moreover, rats running throughout the house poses a significant safety risk to the tenants and their young boy. Certainly, while a more thorough walk-through by the tenants may have revealed the mold, the presence of the rats and the exposed wire are essentially latent defects for which the landlord is responsible under section 32(5) of the Act.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have established that the landlord failed to comply with section 31(1) of the Act.

Criteria 2: Did the tenants' loss result from the landlord's non-compliance?

Having found that the landlord breached the Act, I must next determine whether the tenants' loss resulted from that breach. This is known as *cause-in-fact,* and which focusses on the factual issue of the sufficiency of the connection between the respondent's wrongful act and the applicant's loss. It is this connection that justifies the imposition of responsibility on the negligent respondent.

The conventional test to determine cause-in-fact is the "but for" test: would the applicant's loss or damage have occurred *but for* the respondent's negligence or breach? If the answer is "no," the respondent's breach of the Act is a cause-in-fact of the loss or damage. If the answer is "yes," indicating that the loss would have occurred whether or not the respondent was negligent, their negligence is not a cause-in-fact.

In this case, the tenants would not have suffered a loss – the loss of the use of the rental unit for the month and therefore the rent – but for the landlord's breach of the Act. Certainly, I recognize that the landlord made efforts at fixing the issues, and he is to be commended for those efforts. Yet, rats continued to be a problem almost halfway into the month.

Criteria 3: Have the tenants proven the amount or value of their loss?

The amount claimed is equal to what the tenants paid in rent for the month, in the amount of $1,900.00. This is the monetary value lost in not being able to occupy a rental unit meeting health and safety standards suitable for occupation.

Criteria 4: Did the tenants do whatever was reasonable in minimizing their loss?

The tenants were prompt and diligent in contacting the landlord regarding the issues. There was, I thus conclude, little else that they could have reasonably done to minimize their loss.

Given that the tenants have proven all four of the above-noted criteria, I find that they are entitled to compensation in the amount claimed in the amount of $1,900.00.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the tenants were successful, I grant recovery of the filing fee, for a total award of $2,000.00.

B. Landlord's Claim

The landlord wants $1,900.00 in compensation for loss of rent for March 2020. He argued that the tenants never gave proper notice, and, that as a result of not having received such notice he did not take steps to find new tenants. As far as he was concerned, the tenants would be paying rent for March.

In order to be successful in his claim, the landlord must also establish all four criteria.

Criteria 1: Did the tenants fail to comply with the Act?

Regarding the notice to end tenancy matter, I first refer to the part of the Act dealing with notice to end tenancy obligations for tenants. Section 45(1) of the Act states that

> A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (a) is not earlier than one month after the date the landlord receives the notice, and
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> (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.

Further, section 45(4) states that "A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*." Section 52 requires that

> In order to be effective, a notice to end a tenancy must be in writing and must
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> (a) be signed and dated by the landlord or tenant giving the notice,
> (b) give the address of the rental unit,
> (c) state the effective date of the notice,
> (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
> (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
> (e) when given by a landlord, be in the approved form.

Even if the tenants' notice to end tenancy was valid, which I find that it was not, the tenants provided "notice" on February 9, 2020 to presumably end the tenancy effective February 2020. This is clear contravenes section 45(1)(a) of the Act. Further, as to the validity of the notice itself, the notice (which I will accept as the email of February 9, 2020, rather than the non-accepted handwritten note) does not contain the address of the rental unit nor the effective date of the notice. Certainly, while one may assume the effective date of the notice was the end of that month, the legislation is explicit on what must be included. As for the signature, I find that this requirement was met by the inclusion of the tenant's full name at the bottom of the email; the *Electronic Transactions Act,* [SBC 2001] ch. 10, section 11, permits this type of signature.

In summary, I find that the tenants failed to comply with the Act in terms of both the required notice, and form and content, provisions.

Criteria 2: Did the landlord's loss result from the tenants' non-compliance?

Applying the same causation test previously outlined, I find that the landlord would not have suffered a loss – the loss of rent for March 2020 – but for the tenants' breach of the Act. The loss of rent can be attributable to no other factor than the breach.

Criteria 3: Has the landlord proven the amount of his loss?

The amount claimed is equal to what the tenants would have paid in rent had they continued to rent for March 2020, which is what the landlord is permitted to have believed, based on an invalid notice to end the tenancy.

Criteria 4: Did the landlord do whatever was reasonable in minimizing his loss?

The landlord was under no obligation to start finding a new tenant until the existing tenants provided him with proper notice. As far as he was concerned, the tenants were to continue renting, thus, there is little that is to be expected of him in minimizing the loss of rent for March. Certainly, he attempted to find new tenants after the tenants handed over the keys, but this did not occur until March 3, 2020.

As an aside, I do find it rather odd that the landlord did not assume (or believe) that the tenants intended to continue renting when the landlord refunded the tenants their security deposit on February 11, 2020. Yet, coupled with this oddity is the tenant's return to the property on February 14, at which time the tenant encountered the live rat.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving his claim of $1,900.00 for a loss of rent for March.

Finally, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. As the landlord was successful in his application, I grant recovery of the filing fee, for a total award of $2,000.00.

Conclusion

Both parties are successful in their applications. However, given that the monetary award amounts are identical, they offset each other and no monetary order is issued.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: June 1, 2020

Residential Tenancy Branch