

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNR, MNDC, OLC, ERP, RP, RR, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order, an order permitting the tenants to reduce their rent and orders that the landlord comply with the Act and perform repairs. Both parties participated in the conference call hearing and had opportunity to be heard.

The tenants submitted photographs to the Residential Tenancy Office that the landlord's agent did not receive. Those photographs have not been considered in my deliberations.

Issue(s) to be Decided

Should the landlord be ordered to repair the rental unit?

Are the tenants entitled to compensation?

Should the tenants be permitted to reduce their rent until repairs are completed?

Background and Evidence

The parties agreed that the tenancy began on May 2, 2009. The tenancy agreement provides that the tenancy will end on August 31, 2009 and sets the rental rate at \$3,500.00 per month.

There are a number of tenants living in the rental unit, but just one tenant, A.A.K., viewed the rental unit before signing the tenancy agreement. A.A.K. testified that when he viewed the rental unit he did not see significant damage. The tenants testified that since moving into the rental unit they discovered that it was in exceedingly poor condition, including windows and doors that would not shut, mould throughout the home, exposed live electrical wires, holes in the walls and peeling paint, a crumbling shower wall, graffiti on walls and rotting window frames and stairs. The tenants testified

that they rented the unit with the understanding that it could function as a 7 bedroom house. The tenants testified that two of the bedrooms were formed by the landlord's agent having placed a piece of plywood down the centre of the dining room to make one room into two. The tenants argued that the two rooms in the basement described as bedrooms were actually storage rooms and were unfit to be used as bedrooms. The tenants testified that they have not had heat in the rental unit since the beginning of the tenancy and that at one point the landlord had cut off the gas and locked the valve because the tenants had not paid the security deposit.

The tenants seek \$1,000.00 in compensation for the period up until the hearing in which they have had to live in a house which required extensive repairs. The tenants seek \$1,500.00 in compensation for the bedrooms which they say are not proper bedrooms. The tenants seek to reduce their rent for the months of June – August inclusive by \$1,500.00 per month until repairs are completed.

F.L. testified that he is an electrician with experience building houses and that the rental unit was at one time an abandoned house. F.L. testified that he was given a list of required repairs by the tenants but he did not perform the repairs because the tenants had not paid the security deposit. F.L. acknowledged having turned off the gas out of frustration but stated that it was turned on again within a few days. F.L. did not dispute the tenants' description of the condition of the rental unit. No condition inspection report was completed at the outset of the tenancy.

Analysis

Section 32(1) and 32(5) of the Act provide as follows:

- 32(1) A landlord must provide and maintain residential property in a state of decoration and repair that
- 32(1)(a) complies with the health, safety and housing standards required by law, and
 - 32(1)(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- 32(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.

The landlord's agent did not dispute the tenants' description of the condition of the rental unit and I therefore accept that their description is accurate. I find that the landlord has failed to provide and maintain the residential property in a manner that makes it suitable for occupation. **I therefore order the landlord to perform the following repairs:**

- **Repair all doors and windows to an extent that they are secure and may be opened and closed;**
- **Clean the rental unit to remove all visible traces of mould;**
- **Repair all areas in which electrical wiring is exposed;**
- **Replace the shower wall in the bathroom in which the wall is crumbling and covered by plastic; and**
- **Repair or replace all rotting window frames and stairs.**

For the months of July and August, I find that the tenants may deduct \$1,500.00 from their rent for each month in which the landlord has not completed all of the above repairs.

I find that the tenants are entitled to compensation for the two months in which they have lived in a rental unit that has not been properly maintained. Because the tenants sought only \$1,000.00 for the month of May in their application, they are limited to that amount. However, because they sought to reduce their June rent by \$1,500.00, I am able to award that amount for June. **The tenants may deduct \$2,500.00 from rent owing to the landlord in July and August.**

I order the landlord to comply with the Act and provide the tenants with a working heating system. I further order the landlord to continue providing all the services to which the tenants are entitled, including but not limited to natural gas, water and hydro.

The tenants' claim for \$1,500.00 for improper bedrooms is dismissed. The tenants had an opportunity to view the rental unit prior to signing the tenancy agreement and viewed the bedrooms at that time. If they did not wish to use the storage rooms and divided

dining room as bedrooms, they could have chosen not to sign the tenancy agreement.

Conclusion

The landlord has been ordered to perform repairs and comply with the Act. The tenants are entitled to reduce rent by \$1,500.00 in each of the months of July and August if the required repairs are not completed. The tenants are entitled to deduct \$2,500.00 in compensation for May and June from future rent owed to the landlord.

Dated June 25, 2009.