

## **DECISION**

**Dispute Codes:** MNDC, OLC, RR, FF

This hearing dealt with an application by the tenants for a monetary order for compensation for loss under the *Act* and the tenancy agreement and to allow the tenants to reduce rent for services and facilities agreed upon but not provided.

The tenancy began on November 1, 2007. A monthly rent of \$1800.00 was payable in advance on the first day of each month. Both parties agreed on the following facts. On December 27, 2008, water started leaking into the tenant's unit from the exterior wall into the tenants' living room area. On February 24, 2009, another leak from the exterior wall developed in the kitchen area. The landlord promptly began repairing these leaks but such repair was not completed until early May. Meanwhile, the tenants were unable to use and enjoy their living room, dining room and kitchen. As well, tradesmen were attending the unit almost on a daily basis. On March 20, both parties agreed for the tenants to move into a hotel. On March 28, both parties agreed for the tenants to move into the landlord's furnished apartment located nearby the unit while the repair was ongoing. On April 18, the tenants gave verbal notice to the landlord that they would be moving out of the landlord's apartment as they had found another unit to rent. On April 21, the tenants moved out of the landlord's apartment.

The tenants are seeking compensation as follows.

### **Rent Reduction**

The tenants said that they were unable to use and enjoy their living room, dining and kitchen for the period from December 27 to March 28. To support their claim, they submitted photos showing the carpet and underlay pulled out, ongoing repair of the outside patio, sections of dry wall and ceiling cut out,

baseboard heater removed, puddles of water near the kitchen, kitchen dismantled and mould in the kitchen area. The tenants also said that as the second leak developed, the living condition of the unit worsened. As well, since the leaks started, tradesmen were inside their unit on a daily basis. The tenants are seeking rent reduction of 25% for each of the months of January and February and 50% for the month of March for a total of \$1800.00. The landlord did not dispute the conditions of the unit as shown in the photos. He contended that the tenants could still live in the unit despite the ongoing repairs. I have considered the photos and find the tenants to have proven that there was a loss of quiet enjoyment of the unit for January, February and March and that such loss became greater as the second leak developed in the later part of February. I also find that for most of March, the tenant had lost the use of their kitchen. Accordingly, I find the tenants' claim to be reasonable and I allow a claim for \$1800.00.

#### One Month Free Rent

The tenants said that the landlord had failed to give them notice to end tenancy for landlord's use of property when they moved out of the unit due to the ongoing repair. Evidence adduced indicates that both parties had agreed for the tenants to move from the unit into the landlord's apartment. Based on the above, I find that the parties have mutually agreed to end tenancy on March 28. Accordingly, I also find that the tenants are not entitled to one month's free rent as compensation for the landlord ending tenancy for the landlord's use of property. I therefore dismiss the tenants' claim in this regard.

#### Moving Expenses

The tenants said that their insurance company have paid for all of their moving expenses with exception of the \$500.00 deductible. They are therefore seeking recovery of this amount. No documentation was submitted in support of the

tenants' claim. Therefore, I find the tenants not to have proven their claim for the \$500.00 as moving expenses and I dismiss their claim in this regard.

### Conclusion

Based on the above, I find that the tenants have established a claim for \$1800.00 as compensation for loss under the *Act* and the tenancy agreement. The tenants are also entitled to recovery of the \$50.00 filing fee. I grant the tenants an order under section 67 for the balance due of \$1850.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated August 13, 2009.