



Dispute Resolution Services

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

Decision

Dispute Codes: MNDC OLC FF O

Introduction

This hearing dealt with an application by the tenants for monetary compensation for loss or damage under the Act, regulation or tenancy agreement and an order that the landlord comply with the Act. As the tenancy ended prior to the hearing, I accordingly dismissed the portion of the tenants' application regarding the order that the landlord comply. Both of the tenants, the landlord and a witness for the landlord participated in the teleconference hearing.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on May 1, 2005. At the end of the tenancy, the monthly rent was \$1075. On August 1, 2009 the tenants gave the landlord notice that they intended to vacate the rental unit by August 31, 2009. The tenants vacated the rental unit on August 28, 2009.

The evidence of the tenants was as follows. After the tenants gave the landlord their notice to vacate, the landlord began showing up on the property nearly every day and carrying out extensive landscaping projects. The landlord spread compost dirt across the back yard and the tenants' children were not able to play in that area; the landlord used chainsaws and other power tools all day long and caused excessive noise; and

the landlord did not give the tenants any notice of the times he was planning to come to the property to carry out this work.

On August 17, 2009 the tenants gave the landlord a letter asking him to cease work on the property until the tenants moved out at the end of the month. Later that day, the landlord returned to the property and put down topsoil that had an “overpowering stench” of manure. The tenants verbally complained to the landlord that day about the stench, but the landlord did nothing to address the problem. The tenants had to keep the windows closed, and the stench did not dissipate significantly until near the time that the tenants vacated the rental unit on August 28, 2009. The tenants believed that the landlord’s actions were retaliatory because of previous disagreements between the landlord and tenants regarding lawn maintenance.

The tenants have applied for monetary compensation of \$1075, equivalent to one month’s rent, for their loss of quiet enjoyment and devaluation of their tenancy during August 2009.

The response of the landlord was as follows. The whole dispute started when the tenants did not maintain the lawn and refused to cut the dandelions. The landlord retained possession of the garage on the rental property, and for two of the days in August, the landlord worked inside the garage, and he used electric tools that did not make any noise. The landlord acknowledged that he was on the rental property carrying out landscaping work, but not all day every day, only from 10:00 am to noon and 1:00 pm to 3:00 pm. The landlord did spread some compost in the yard. It was the landlord’s responsibility to do the pruning and he did not need the tenants’ permission or give 24 hours’ notice to do so.

In regard to the topsoil, the landlord stated that he purchased topsoil to top up the flowerbeds, and there was no appreciable smell coming from the topsoil when he picked it up. The landlord gave testimony that if there was a problem with the smell, he thought the tenants would say something, and then he would have covered it with something different the next day. Later in the hearing the landlord stated that he did not know that

the topsoil smelled bad because he “can’t smell,” and he did not return the next day because the tenants told him to stay off the property.

Analysis

Tenants are entitled to quiet enjoyment, and it is the responsibility of the landlord to protect the tenant’s right to quiet enjoyment. A landlord may not enter a rental unit without either the tenant’s permission or after having given at least 24 hours’ written notice. However, a landlord does have the right to enter the property to carry out maintenance such as landscaping, and may not be required to give notice or receive the tenants’ permission to do so. The landlord would not be required to give notice or receive permission to access a building on the property for which the landlord has exclusive use. It is therefore necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises. Additionally, a tenant may be entitled to monetary compensation for devaluation of the tenancy even where there has not been negligence or intentional interference by the landlord.

When a landlord deprives the tenant of use of a portion of the property, the tenant may be reimbursed for that loss of use. The tenant may be entitled to that reimbursement even if the landlord has made every effort to minimize disruption to the tenant.

In this case, the landlord likely would have had periodic access to the property to carry out landscaping or use the garage without giving notice to the tenants. However, the landlord did deprive the tenants of use of the back yard during the month of August. I accept the evidence of the tenants that there was some noise interference while some of the landscaping work was carried out in the first two weeks of the month, and the topsoil caused a bad odour that devalued the tenancy for the last two weeks of August.

I further find that the landlord did to some extent intentionally interfere and deprive the tenants of quiet enjoyment and loss of the use of the backyard for the last month of the tenancy. The landlord felt that this entire dispute resulted from previous disputes between the landlord and tenants regarding lawn maintenance. The landlord

acknowledged that he attended on the property nearly every day in the first two weeks of August. In regard to the odour caused by the topsoil, I found the landlord's testimony on this point to be contradictory. The landlord claimed that the tenants did not tell him that there was a problem with the smell of the topsoil, but he then later stated that he did not return to the property and deal with the topsoil because the tenants told him not to enter the property.

I therefore find that the tenants are entitled to reimbursement of a portion of their rent for loss of use of the back yard during August, as well as compensation for loss of quiet enjoyment due to the landlord's repeated attendances at the property for the first two weeks of the month and for the interfering odour of the topsoil during the latter half of the month. However, I do not find that the tenants' claim for \$1075, representing the full amount of rent for that month, is reasonable compensation for their loss. I find that compensation of \$268.75, representing 25 percent of that month's rent, is reasonable.

As the tenants were successful in their application, they are entitled to recovery of the \$50 filing fee for the cost of their application.

Conclusion

I grant the tenants an order under section 67 for the balance due of \$318.75. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated October 21, 2009.