

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking monetary compensation under the Act or tenancy agreement, an order that the Landlord comply with the Act or tenancy agreement, and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues(s) to be Decided

Are the Tenants entitled to the relief sought?

Background and Evidence

This tenancy began some five years ago. During the relevant time of this dispute the rent was \$855.00 per month. The rental unit is an older single family dwelling, built in the 1950's and has four bedrooms.

On December 27, 2008, the Tenants noticed a leak in a basement bedroom caused by water entry through a crack in the basement foundation. They advised the previous landlord at that time of the leak. A discussion took place with the previous landlord about the Tenants doing the repairs themselves. The previous landlord and the Tenants agreed they could begin repairs themselves in May of 2009.

At the end of March or beginning of April, 2009, the previous landlord sold the residential property including the rental unit to one or more of his children, the current Landlord.

Towards the end of May 2009, the current Landlord inspected the property as the new owner. The drywall was cut approximately two feet up from the floor and removed in one of the basement bedrooms to see the extent of the infiltration of water and if mould had begun to spread.

The new Landlord determined they would do the outside work on the building. The Tenants would have the opportunity to do the drywall themselves when the exterior work was completed. The male Tenant is a drywall finisher.

Following this there were two minor disputes involving the Tenants having a pet, which the previous landlord had orally agreed to, and an illegal rent increase the new Landlord tried to establish, which was eventually withdrawn.

In the interim, two months passed without any further work being done on the building. On July 31, 2009, the Tenants wrote to the Landlord to see when the work which had begun would be completed. They advised the Landlord that if work was not completed by August 14, 2009, the Tenants would seek an order compelling the Landlord to complete the repairs or reduce the rent. In early August the parties met again and on or about August 7, 2009, a plumber came to fix a drainage problem with the sinks.

The exterior excavation work around the foundation began on or about September 8, 2009. The work was completed on or about September 28, 2009.

After the exterior work had begun the Tenants phoned the Landlord to discuss compensation for the loss of use of two bedrooms in the rental unit. According to the testimony of the Tenants they were asking for \$200.00 per month for compensation. According to the Landlord they discussed a payment of one half of one month of rent. The Tenants testified that they decided to talk it over with the Landlord when the drywall work was done.

On September 27, 2009, the Landlord issued the Tenants a two month Notice to End Tenancy. The reason indicated for ending the tenancy in the Notice was that the Landlord was going to renovate the building and required it to be vacant. The Notice to End Tenancy was dated September 27, 2009, with an effective date of December 1, 2009.

On September 30, 2009, an Agent for the Landlord dropped off a cheque to the Tenants for one half of one month rent in the amount of \$427.50. The Tenants took the cheque but informed the Agent that he was not agreeing to accept it in final satisfaction, as he felt the arrangement had not been completed.

The Landlord then contacted the Tenants on October 1, 2009, to arrange for workers to come in on October 3, 2009, to start the renovations. The Tenants told the Landlord they did not think she should do this, as the Notice was not to be in effect until December 1, 2009. On October 2, 2009, the Tenants filed this claim, and initially sought to cancel the Notice to End Tenancy. The Tenants refused entry to the Landlord's workers, although the Landlord then issued two different Notice to enter the rental unit.

On November 2, 2009, the Tenants amended the claim, as they were upset with the noise from the renovations the Landlord was doing to an adjacent property they determined they would move out.

The Landlord's evidence and testimony was that the Tenants have failed to prove any losses. The Landlord claims the Tenants did not inform them that two bedrooms in the basement were affected by the leak or the remediation work.

The Landlord alleges that the workers wanted to gain access to the rental unit in October, so they could make the bedroom liveable until the end of the tenancy. The

Landlord claims that the denial of entry shows the Tenants were not mitigating their losses. The Landlord also submits that the Tenants had already agreed to the losses as given in the cheque of \$427.50.

Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find the Landlord breached the Act by failing to maintain the property in good repair, pursuant to section 32 of the Act. Once the Landlord began the work on the rental unit in May of 2009, the Landlord should have had the work completed in a reasonable amount of time. I find the Landlord failed to do this.

As to the losses suffered by the Tenants, I accept there was an agreement between the parties that the work would begin in May of 2009. The Tenants' own evidence supports this. I further find that the repairs were not completed during the tenancy. I accept the Tenants had the right to refuse entry to the Landlord in this particular case, since the Landlord wanted to continue with renovations during the period of the Notice to End Tenancy given for renovations. The Landlord could not have it both ways. I also find the Tenants did not make it clear to the Landlord that two rooms were affected, as the evidence is consistent that the Tenants addressed only their daughter's bedroom in many of their communications with the Landlord.

Therefore, I find the Tenants' losses began June 1, 2009, and continued until the end of the tenancy, November 30, 2009, or a period of six months. I allow the Tenants **\$900.00**, or \$150.00 per month, for loss of use of the rental unit. I also allow them their **\$50.00** filing fee.

I find the Tenants have established a total claim of **\$950.00**. They may cash the \$427.50 cheque the Landlord issued them in partial satisfaction of the claim, and the Landlord must pay the balance, or they may return the cheque to the Landlord and claim for the entire amount. They are given a formal order which may be enforced in Provincial 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: December 08, 2009.

Dispute Resolution Officer