Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OLC, RP, PSF, RR, FF, O

Introduction

This hearing was scheduled to hear the tenants' application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; Orders for the landlord to comply with the Act, regulations or tenancy agreement, make repairs, and provide services or facilities required by law. The tenants were also seeking a rent reduction and recovery of the filing fee. The landlord did not appear at the hearing. Rather, the landlord provided a written submission to the Residential Tenancy Branch requesting an adjournment until after April 17, 2010 because he was out of the country. The landlord's written submission also responded to most of the issues raised by the tenants in their application. I was satisfied that the tenants had notified the landlord of their application. I denied the landlord's request for an adjournment as the landlord was at liberty to have an agent appear on his behalf; however, I accepted the landlord's written submission in his absence. As the tenants stated they had not been served with the landlord's written submission I read the submission to the tenants during the hearing and provided them an opportunity to respond to the landlord's position.

Issues(s) to be Decided

1. Have the tenants established an entitlement to monetary compensation from the landlord for damage or loss under the Act, regulations or tenancy agreement?
2. Are Orders for compliance, repairs and services or facilities required?
3. Are the tenants entitled to reduce their rent for repairs, services or facilities agreed upon but not provided?
4. Award of the filing fee.

Background and Evidence

The tenants testified as follows. The parties signed a written tenancy agreement on October 15, 2009. The month-to-month tenancy commenced on October 15, 2009 and the tenants are required to pay rent of $1,150.00 on the 1st day of every month in accordance with the tenancy agreement. During October 2009 the tenants spent time cleaning and painting the rental unit as the tenants still had possession of their previous living unit until the end of October 2009. The landlord did not offer the tenants the opportunity to conduct a move-in inspection or prepare an inspection report before they took possession of the rental unit. Rather, the landlord offered to do one with them approximately six weeks after their tenancy commenced and they had moved in. The tenants also alleged that the landlord added or changed terms in the written tenancy agreement after they signed it.

I was provided evidence by the tenants that on October 19, 2009 the tenant prepared a document entitled “Conditions Report” and handed it to the landlord requesting certain repairs be made. In that report the tenant requested the landlord complete the repairs within a week and the tenants offer to make the repairs themselves and give receipts to the landlord. The tenants confirmed that they were reimbursed for the cost of supplies but not their time. The tenant also notes in the report that the tenants had been painting the rental unit and they had been cleaning bugs and mould from the windows.

On November 23, 2009 the tenant prepared an itemized list of the repairs that were needed in the rental unit and handed it to the landlord. The tenant requested the repairs be completed by December 5, 2009. The tenants made this application on December 22, 2009. The tenants confirmed that repairs have since been made; however, many of the repairs were made by the tenants for which the tenants seek compensation.

In making a claim for compensation, the tenants are seeking the following amounts:

Item	Reason	Amount
Parking space	1 covered parking space not provided, filled with landlords property	150.00
Painting and cleaning labour	Rental unit unclean and needed painting at beginning of tenancy	300.00
Clean mould and spatter from windows	Not sufficiently cleaned before tenancy commenced.	200.00
Clean blinds	Not sufficiently cleaned before tenancy commenced.	100.00
Time spent looking for replacement blinds	Provided by tenants.	25.00
Installation, labour and gas costs for replacement blinds	Provided by tenants.	50.00
Smoke detector installation	Installed by tenant.	25.00
Loss of quiet enjoyment	Repeated noise and disturbance from occupant in adjacent unit	200.00
TOTAL CLAIM		$ 1,150.00

The tenants assert that when they viewed the rental property, the landlord promised that it would be clean and repairs made. The tenants also assert that two covered parking spaces were promised to them, one of which they planned to use as a covered patio area, and that they have use of only one parking space currently. The landlord has permitted other vehicles to park in the yard.

In the landlord's written submissions, the landlord provided the following responses to the tenants' application:

- The tenancy agreement was not changed after the tenants signed it;
- The tenants can use the backyard for additional parking but that the one covered space currently used by the landlord has always been used by the landlord for storage;
- The landlord had a repairman try to repair the dishwasher and after the repairs were not successful the dishwasher was replaced;
- The tenants offered to purchase the blinds and smoke detector and the landlord has reimbursed them for these costs but there was not agreement for labour costs payable to the tenants;
- The tenants said they would paint the unit and the landlord offered them paint but there was no mention of charges to the landlord for labour;
- The leak and other repairs were made after the tenants told the landlord about the issues; and,
- The spatter on the blinds was from the tenants painting the rental unit.

The landlord also submitted that the tenants were trying to avoid paying their share of utilities. The landlord made no mention of the any disruptions from the neighbouring tenant or occupant in his written submission.

Upon further enquiry, the tenants testified that the tenants did install the blinds and smoke alarm themselves as the landlord was been slow to respond to previous repair issues and they needed these items installed immediately. The tenants also testified that they had complained to the landlord, or persons occupying the landlord's unit when the landlord was away, on three occasions about the disruptive behaviour coming from the occupant in the adjourning living area. The tenants confirmed that disruptions have subsided recently.

The tenants also raised the issue of having to pay 2/3 of the utilities when they were told that only the landlord would be occupying the residential property and now there are more people living in the rental unit. As this specific claim was not part of the tenant's application, I refused to hear that matter. The parties are encouraged to resolve this dispute between themselves; however, if they cannot, either party is at liberty to make a subsequent application for dispute resolution for this matter.

As evidence for the hearing, the tenants provided copies of the tenancy agreement, letters written to the landlord, photographs of the rental unit, and receipts for the purchase of blinds and the smoke alarm.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the tenants identified several verbal promises made to them before the tenancy commenced. Where verbal terms are clear and in situations where both the

landlord and tenant agree, there is no reason why such terms can be enforced. That being said, it is evident that, in relying on memory alone, the parties may end up interpreting verbal terms in drastically different ways. Where certain issues and expectations are verbally established between the parties, these terms are always at risk of being perceived in a subjective way by each individual. Obviously, by their nature, verbal terms are virtually impossible for a third party to interpret in order to resolve disputes as they arise. Accordingly, a Dispute Resolution Officer will have no choice but to base deliberations on provisions contained in the written agreement, the Act or regulations by default and not on the purported verbal agreement.

The Act requires that at the beginning of every tenancy a landlord and tenant must participate in a move-in inspection of the rental unit together and the landlord must prepare a written move-in inspection report. The landlord must offer the opportunity for inspection to the tenants at least two times. The Residential Tenancy Regulations provide that a rental unit must be empty of the tenant's possession when the inspection is conducted and that the inspection report must contain certain information including a statement identifying any damage or items in need of maintenance or repair.

I am satisfied that the landlord failed to comply with the move-in inspection report requirements. I find the landlord did not offer a move-in inspection opportunity to the tenants until well after the rental unit ceased to be empty. Since the landlord failed this requirement I find the landlord did not establish the maintenance or repairs required at the commencement of the tenancy.

A landlord is required to provide a rental unit that meets health, safety and building code laws and is suitable for occupation by a tenant. Based on the photographs, I am satisfied that the rental unit was in need of cleaning at the commencement of the tenancy. I find the landlords' position that the spatter on the blinds was paint to be unlikely upon review of the photographs of the blinds and walls. I find an unclean and mouldy rental unit to be unsuitable living accommodation and I award the tenants the equivalent of one-half of a month's rent, or $575.00 as compensation for loss of use and

enjoyment of the rental unit due to its unclean and mouldy condition that the tenants had to spend time cleaning before they could enjoy the unit.

Upon review of the evidence I find the tenants first complained about the dishwasher in writing on November 23, 2009. I do not find the tenants established that they had complained of the dishwasher not working prior to this date. Providing a written notice to a landlord about repairs required is part of the applicant's obligation to do whatever is reasonable to minimize their loss. When a landlord is informed of an item that needs repair, the landlord is afforded a reasonable amount of time to remedy the situation. If the remedy is unsuccessful the tenant is expected to notify the landlord again and the landlord should make another attempt to remedy the situation within a reasonable amount of time. As the tenants confirmed the landlord attempted repairs before the dishwasher and plumbing were replaced, I do not find the landlord failed to take sufficient action with respect to repairing the dishwasher. Therefore, I do not award the tenant's compensation for a lack of a working dishwasher from October to December 2009.

Upon review of the tenancy agreement, I do not find it sufficiently clear that the tenants are entitled to two covered parking spaces. However, it is clear that are entitled to two parking spaces. Should the tenants wish to use the covered space in front of their sliding glass door for patio space there is nothing precluding the tenants from doing so. I find the tenants are at liberty to park their vehicle elsewhere on the property as the tenancy agreement affords them two parking spaces. I understand that the landlord has permitted another vehicle to be parked in the yard and I am uncertain as to whether there is another parking space for the tenants to use. Therefore, I ORDER the landlord to identify the second parking space available for the tenants' use. If a second parking space if not provided to the tenants on the rental property, then the tenants are permitted to reduce their rent by $50.00 per month for every month they are not provided a second parking space starting March 1, 2010.

Upon review of the October 19, 2009 “conditions report” prepared by the tenant, I do not find the tenants had complained about the need for painting or requested compensation for painting. Rather, they merely mention that they are painting. If the rental unit was in need of painting after it was cleaned, the tenants’ remedy would have been to request the rental unit be painted by the landlord and if the landlord refused to have the rental unit painted, the tenants could have made an application for dispute resolution to request painting be performed. Had the parties agreed that the tenants would paint the rental unit in exchange for reduced rent I would have the authority to enforce that agreement; however, I do not have evidence of such a mutual agreement. Had the landlord agreed to pay the tenants for painting the rental unit, such an agreement would constitute a services contract which I do not have the authority to enforce under this Act. The only repair expenses recoverable by a tenant under the Act pertain to “emergency repairs” which are urgent repairs that meet very restrictive criteria under the Act. Painting does not constitute an emergency repair. Therefore, I do not find the tenants entitled to compensation for the painting labour under the Act.

Upon review of the written communication from the tenants and the written submission of the landlord I accept that the tenants offered to purchase certain supplies for reimbursement and that no agreement was reached with respect to compensation for labour provided. I find it reasonable that a person who performs labour for another would seek an agreement with that party prior to engaging in the activity. Further, even if the parties had agreed upon a labour charge for services, such a contract would not be enforceable under the *Act* unless the parties had agreed that the labour would be accepted in lieu of rent. I do not have sufficient evidence that the parties agreed the tenants would be compensated for their labour and that the compensation would affect the rent payable. Therefore, I do not award the tenants compensation for labour, installation or gas with respect to the blinds or smoke detector.

As the tenants have been sufficiently compensated previously in this decision to reflect the landlord’s failure to provide a rental unit suitable for occupation at the

commencement of the tenancy, I do not provide any additional compensation for labour to clean the rental unit.

With respect to the disturbances involving another occupant at the residential property, I do not find sufficient evidence that the landlord was precluded from having other occupants or tenants at the property. However, the tenants are entitled to have quiet enjoyment of their rental unit. As the tenants are seeking monetary compensation from the landlord for disturbances caused by another occupant or tenant, the tenants must show that the landlord knew or ought to have known that the disturbances were likely to occur and the landlord sat idly by and let the disturbing behaviour continue. I accept that the tenants have made three verbal complaints to the landlord or persons acting for the landlord with respect to disturbances from the other occupant or tenant. I also accept that the disturbing behaviour has subsided. Thus, I am satisfied that the landlord, or the landlord's agents, have taken action in response to the complaints. The question arises as to whether sufficient action has been taken. Accordingly, I put the landlord on notice that continued disturbances by the other occupant or tenant may be grounds for the tenants to seek compensation for loss of quiet enjoyment against the landlord.

I award the tenant's one-half of the filing fee paid for this application. Other than the Order for the landlord to identify the second parking space to the tenants, I do not find it necessary to issue any other Order to the landlord at this time.

In summary, the tenants have been awarded compensation of $575.00 for the landlord's failure to provide suitable living accommodation at the beginning of the tenancy and $25.00 towards the filing fee paid for this application. The tenants are authorized to deduct $600.00 from a subsequent month's rent in satisfaction of these awards. In the event the tenancy ends before rent can be reduced by $600.00 the tenants are also provided a Monetary Order in the amount of $600.00 that may be served upon the landlord and enforced in Provincial Court (Small Claims).

Conclusion

The tenants were partially successful in this application and were awarded compensation of $600.00 which may be deducted from a subsequent month's rent. The tenants have also been provided a Monetary Order in the amount of $600.00 in the event the tenancy ends before this amount is recovered.

The landlord has been ORDERED to identify the second parking space available for the tenants' use and if one is not identified, the tenants may reduce $50.00 from their monthly rent starting March 1, 2010.

By way of this decision, the landlord has been notified that continued disturbances from the other occupant or tenant residing in the adjacent living area at the residential property may be grounds for the tenants to make a subsequent claim against the landlord for loss of quiet enjoyment.

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: February 26, 2010.

Dispute Resolution Officer