

DECISION

Dispute Codes MNDC, OLC, ERP, RP, RR. FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement, an Order to allow the tenants to reduce their rent for repairs, services or facilities agreed upon but not provided and a Monetary Order to recover the filing fee. At the outset of the hearing the tenants stated that they have moved from the property and therefore the remainder of their application is no longer required and is withdrawn.

The tenants served the landlord by registered mail with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared and the landlords' agent appeared with an advocate to assist him during the hearing. All Parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. A substantial amount of documentary evidence and written arguments has been submitted by the Parties prior to the hearing. I have thoroughly reviewed all submissions. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to receive an Order for a rent reduction?

Background and Evidence

This tenancy started on September 01, 2009. This was a fixed term tenancy with an expiry date of August 31, 2010. Rent for this property was \$2,125.00 per month and was due on the first of each month. The tenants paid a security deposit of \$1,062.50 which has been returned to them by the landlord.

The tenants testify that they were forced to move from the rental property and terminate their lease before the end of the fixed term because the property was rendered uninhabitable due to an infestation by rodents. The tenants gave the landlord one months notice to end the tenancy with a written request to be released from the agreement due to the house being uninhabitable. This letter also documented the tenants concerns and gave the reasons why it was necessary to break the lease. This letter was sent to the landlord by registered mail on February 10, 2010.

The tenants have provided documentary evidence of the rodent infestation throughout the property. The tenants claim they lost amounts of food which had to be discarded due to the mice problems. Their photographic evidence shows evidence of rodents in the property and a large amount of mice droppings throughout the property. The tenants claim the landlord was aware of the rodent problem before their tenancy started as he had laid poison out for the mice. However he did not inform the tenants of this problem before they moved in.

The tenants claim the landlord did not take the necessary steps to control or eradicate the rodent problem within a reasonable time frame when notified by the tenants. The siding on the exterior of the house was rotten which created holes in the cement and siding allowing rodents to get into the property.

The tenants claim the landlord did not deal with other issues brought to his attention in a timely manner for generally house maintenance of the property and for health and safety purposes. The tenants claim there was a gas leak on the stove which they told the landlords agent about and he told them to get a carbon monoxide detector. Eventually it was determined that the burners on the stove were leaking gas and the landlord did replace the stove within two weeks. The tenants claim that it was noted on the move in inspection that there was a missing cat door which left a hole in a window next to their door. This took the landlord two month to replace and the tenants were fearful over security issues with someone being able to reach in and open the deadbolts on the door.

The tenants claim that when cleaning the bathroom two tiles came off the wall which exposed a rotten wall and extensive black mould. The landlords' agent was notified on December 06, 2009 and repairs were not made until January 06, 2010. The shower could not be used for this time and as the landlord did not remedy the problems with the black mould the tenants refused to use the shower due to health risks.

The tenants claim that there were issues with the electrical wiring in the house. An estimate was carried out by an electrician who identified various faults.

The tenants claim that due to the poison the landlord had put out to kill the rodents, they were experiencing intense smells behind the walls which they believed to be dead rodents. This caused a terrible problem with large black flies infesting a room by flying out of the vents. The tenant in this room could not use her heating due to these flies as she had to keep the vents closed.

The tenants describe the mice droppings and strong mouse urine smells found throughout the house; in the kitchen drawers, cupboards, pots and pans, dishes, food shelves, wardrobes, storage areas, clothes and shoes. The mice droppings were blue in colour which indicated that it was also laced with the poison put out to kill them. The tenants purchased plastic storage containers for their food but had to throw many food items away. The tenants claim they continually sanitized everything before they could use it and during the month of February, 2010 the situation became much worse. The tenants have included a report from a pest control company detailing the infestation.

The tenants seek a monetary amount for the loss of food at \$50.00 per person to a sum of \$200.00 and the purchase of the plastic containers to a sum of \$30.00. The tenants seek a rent reduction of 50% for the months from September, 2009 to January 2010 and all the rent back for February, 2010 to a total of \$7,437.50.

The tenants seek a monetary award for the cost of the mouse traps of \$19.47 and the cost of insulation bought for the windows due to high costs of utility bills because of poor insulation in the property of \$30.47. (Receipts included)

The tenants also seek a monetary award for the costs incurred for this application; the \$100.00 filing fee and \$66.22 for photograph printing. (Receipts included).

The tenants claim that they asked for the return of their post-dated cheques but the landlords' agent refused to return these and told the tenants he would cash the cheques as they had broken their lease. The tenants seek a monetary award of \$10.00 paid to stop the cheque and \$40.00 because they had to change their bank account and reorder new cheque books.

The landlords' agent and his advocate dispute the tenants claim. The landlord agent claims that he attempted to get the siding replaced on the house and obtained some estimates from contractors for this work; however, due to the Christmas period, the approaching Olympics and government tax incentives he could not get anyone to complete the work until the New Year. The landlord argues that he did attempt to maintain the property and dealt with the tenants concerns promptly. He also argues that he did take steps to eradicate the rodent issues by seeking contractors to replace the siding on the house making it more difficult for rodents to gain entry to the house; however, this was difficult due to contractors work issues and one estimate being higher than the landlord could pay.

The landlord claims that a professional building inspection was carried out in 2006, also an air quality and mould analysis. From these reports there was no mould identified harmful to humans and no electrical code deficiencies since only new construction are mandatory to present codes.

The landlords' agent claims that after the tenants notified him about the rodent problems he got more poison and put that down but it was the tenants who removed the poison. The landlord claims he was never notified by the tenants about the issues with the flies and he arranged an appointment with the pest control company to come to the property to deal with the rodent issue but they told him they would prefer to come after the tenants had moved out.

The landlord claims he responded quickly to each of the tenants e-mails voicing their concerns. When the tenants complained about a gas smell it took the landlord one week to organise the repairs as the tenants confused him because they first told him it was a propane issue and the property did not have propane.

The landlords' agent claims that the problem with the shower was delayed due to the tenants as they told him they would get an estimate for the work. It took the tenants nine days to get back to him. The shower was repaired on January 05, 2010.

The landlord claims he did not delay trying to replace the cat door. He was waiting for the tenants to give him the measurements so he could find one the same size. The landlord claims that he did attempt to deal with replacing the hole in the window to ensure the tenants safety.

The landlord states that only three of the four tenants have taken part in this claim. The fourth tenant did not want to take part yet the tenants are claiming a rent reduction for all four tenants.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. In this instance the burden of proof is on the tenant that the landlord was negligent in dealing with the rodent problems which made the property uninhabitable for the tenants. I find from the tenant's evidence and the e-mails between both parties that the landlord was aware of the rodent problem but did not take all the required steps necessary during the length of the tenancy to eradicate the problem.

I find I prefer the tenant's arguments that the landlord did receive estimates from at least two contractors who were both available to start the work in the fall. The landlord only made temporary repairs to the siding which did not eradicate the rodent issues.

I find in this matter that the landlord did deal with the tenant's issues with the gas leak within a reasonable time frame once notified by the tenants. However, I find the landlord did not deal with the rodent problem, the security problem with the missing cat door or the issues with the shower and black mould or electrical deficiencies in a timely or adequate manner. Section 32 of the Act states:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Consequently, I find that the tenant's health and safety were at risk due to the rodent issues since the start of their tenancy. I also find the landlord did not repair the shower in a manner that made it fit for the tenants to use in a reasonable time frame and put the security of the tenants and the property at risk by not either replacing the window or cat door in a reasonable time frame. I find the air quality and mould analysis report is dated 2006 and indicates that some mould is present which is not harmful to humans. However, no recent report or inspection has been carried out by the landlord to determine if the mould problems in 2006 have escalated and the tenants photographs show mould present in the wall in the bathroom.

The tenants have applied for a rent reduction for half of the monthly rent from September, 2009 to January, 2010 and all of the rent for February, 2010. However, I find the amount the tenants are claiming to be excessive. Therefore, I have reduced the tenants claim to take account of the fact that only three of the tenants have filed for this application. I also find the tenants have not provided sufficient evidence that the problem escalated during the month of February, 2010. I find therefore, the tenants are entitled to recover the sum of \$796.87 for the months from September, 2009 to February, 2010 to a total amount of **\$4,781.25** pursuant to section 67.

I find the tenants have incurred additional costs relating to their tenancy which they are entitled to be reimbursed for. The tenants are claiming a loss of food at a cost of \$50.00 per person to a sum of \$200.00. However as only three of the tenants have filed this application I find they are entitled to recover **\$150.00** for the loss of food pursuant to section 67. I find the tenants had to purchase plastic containers to store their food and find they are entitled to recover **\$30.00** for this cost pursuant to section 67.

I further find the tenants are entitled to recover **\$19.47** for mouse traps, **\$30.47** for insulation materials, **\$66.22** for the cost of the photographs, and **\$10.00** for the fee to cancel the rent cheque. I find there is no evidence to support the tenant's claim that one of them had to set up a new bank and pay for cheques as a result of the landlords' discussions that he would cash the rent cheque. Therefore, this section of the tenants claim for \$40.00 is dismissed.

As the tenants have been largely successful with their claim I find they are entitled to recover the **\$100.00** filing fee from the landlord pursuant to section 72(1). A Monetary Order has been issued for the following amount:

Rent reduction from September, 2009 to February, 2010	\$4,781.25
Cost of plastic containers	\$30.00
Mouse traps	\$19.47
Insulation	\$30.47
Photographs	\$66.22
Fee to stop cheque	\$10.00
Total amount due to the tenants	\$5,087.41

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$5,087.41**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that 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: March 17, 2010.

Dispute Resolution Officer