

DECISION

Dispute Codes MT DRI MNR MNDC RR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain an Order to allow time to cancel a verbal notice to end tenancy, for a Monetary Order for the cost of emergency repairs and money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, allow the Tenants to reduce their rent for repairs, services or facilities agreed upon but not provided, and to recover the cost of the filing fee from the Landlords for this application.

Service of the hearing documents, by the Tenants to the Landlords, was done in accordance with section 89 of the *Act*, served personally by the male Tenant to the Landlord. The Landlord's Agent confirmed receipt of the hearing package.

The Landlord, his Agent, and both Tenants appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Are the Tenants entitled to an Order to cancel a verbal notice to end tenancy pursuant to section 46 of the *Residential Tenancy Act*?

Are the Tenants entitled to an Order to cancel an additional rent increase pursuant to section 41 of the *Residential Tenancy Act*?

Are the Tenants entitled to a Monetary Order a) for the cost of emergency repairs, and b) money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, pursuant to section 67 of the *Residential Tenancy Act*?

Are the Tenants entitled to an Order to allow a reduction in rent for repairs, services or facilities agreed upon but not provided pursuant to section 65 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony included the month to month verbal tenancy agreement commenced on March 1, 2008 and rent is payable on the first of each month in the amount of \$1,300.00 which is comprised of \$1,200.00 for rent plus \$100.00 for utilities. The Tenants paid a security deposit of \$600.00 on approximately March 1, 2008. The tenancy agreement is for the use of the cabin and the full barn and the concrete slab

which surrounds the barn which are located on a 20+ acre farm. The property was sold and title was transferred to the Landlord and his three partners in October 2009. From approximately November 1, 2009 the Tenants were required to relinquish 2/3 of the barn to the Landlords leaving 1/3 of the barn for the Tenants usage.

The male Tenant testified that he has requested a tenancy agreement in writing and the new Landlords refuse to provide him anything in writing. The Landlord and Tenant did sign a document on October 16, 2009 which lists the monthly rent for the home and shop at \$1,300.00 and the security deposit of \$600.00 which is supported by a copy of the document provided in the Tenant's evidence.

The male Tenant argued that he had a meeting with the new Landlord near the beginning of December 2009 when he provided the Landlord with a list of items which required repair. The male Tenant argued that the previous land owner agreed to have the repairs completed before the sale was completed however the previous land owner did a midnight move and did not uphold his agreement to repair the rental unit. The male Tenant referred to his documentary evidence which included, among other things, a copy of the list of required repairs. The Tenant testified that he entered into a verbal agreement with the Landlord for his rent to be reduced to \$600.00 per month effective October 1, 2009 and continuing until all the required repairs had been completed. As of today's date the Tenant stated the following items have not been repaired:

- Windows were not winterized
- Fridge seal is still broken and the fridge still leaks
- Bathtub faucet is broken, shower panelling cracked and leaking, caulking needs to be redone, mice are gaining access from this room
- Wood stove won't pass inspection, needs new landing, possibly new flashing and all woodstove pipes leak water
- Roof leaks in the den and the kitchen
- Bathroom does not close, the frame is broken

The male Tenant argued the Landlord and his three partners attended the rental unit on March 14, 2010, unannounced, and confronted him in his driveway to advise the Tenant that his rent was going to be increased from \$1,300.00 per month to \$1,500.00 per month effective April 1, 2010, and if the Tenant didn't like the increase he could move. The Tenants stated they were disputing the verbal rent increase and the verbal notice to move out. The Tenants are seeking to continue the reduction in their rent until the above mentioned items are completed plus a reduction for the loss of use of the full barn.

The Tenant is seeking \$740.00 for repairs and compensation for his labour in completing the repairs which is comprised of 17 hours labour at \$30.00 per hour plus compensation for materials provided by the Tenant. The Tenant referred to a plumbing invoice in his evidence which is for an amount the Tenants were required to pay for the repair of the toilet.

The Landlord's Agent testified that the new Landlords, the Tenants, and the previous land owner met at the end of September 2009 to walk through the rental unit and it was during this meeting that the previous land owner gave the \$600.00 security deposit to the Landlord and the parties confirmed the rent would be \$1,300.00 per month. The Agent stated that it was near the beginning of December 2009 when the Landlord requested the Agent contact the Tenants to discuss their requests for repairs, at which time the Agent asked the Tenants to fax her a list of repair items.

The Landlord testified that he contacted the previous land owner who stated the Tenants never informed the previous land owner of the repairs. The Landlord initially argued that he does not have a tenancy agreement with the Tenants and that he never entered into a verbal agreement with the Tenants regarding repairs or reduced rent and then later testified that he agreed with the Tenants that they could pay \$600.00 per month until the repairs were completed but that the Tenants would be required to pay the balance of the rent (\$700.00 per month) once the repairs were finished.

The Agent argued that many of the requested repairs were simply observations of the Tenants and there was nothing to substantiate their requests. The Agent spoke specifically to the items the Tenants state are unrepaired as follows:

- The Landlord does not provide plastic for Tenants to winterize their windows
- The fridge has not been worked on and as the Agent pointed out the Tenants have noted that this has been an issue since January 2009 and yet did not advise the Landlord until December 2009
- The Landlord has sent a plumber to repair the bathroom sink faucet and argues the bathtub faucet is not broken. The Agent argued the rest of the shower works fine and does not need to be repaired. As for the mice gaining entry into the cabin the cabin is located on a farm which has mice so the Landlord cannot rid the entire farm of mice
- The Agent argued there is nothing wrong with the woodstove and that this is simply the Tenants' observations
- The Landlord confirmed that he previously made arrangements with the male Tenant to have a roofer attend the rental unit, on two occasions, and that both times the male Tenant told the Landlord the female Tenant would be home. The Landlord stated that both times the roofer attended there was no one home so he could not gain access to check for the alleged leaks.
- The Agent argued they did not see a problem with the bathroom door or the frame.

The Agent testified that the Tenants deducted the \$353.29 plumbing cost from their April 2010 rent without permission from the Landlord. The Agent argued the plumbing cost resulted from the Tenants allowing an object to be flushed down the toilet as noted on the plumbing invoice.

The Landlord confirmed that he attended the rental unit with his partners on March 14, 2010 at which time one of the partners informed the male Tenant that the rent would be increased to \$1,500.00 per month effective April 1, 2010. The Landlord confirmed that the male Tenant was told "if you don't want to pay the new rent you can move" and argued that they needed to charge a higher rent to cover the costs of the renovations and repairs they put into the rental unit. The Landlord stated a notice to end tenancy was later issued to the Tenants for not paying the lump sum balance of rent.

The male Tenant disputed the Landlord's testimony regarding their agreement for reduced rent stating that while they had the agreement for rent to be reduced to \$600.00 until the completion of the repairs, there was never any discussion about paying the remaining \$700.00 per month, in one lump sum, upon completion of the repairs.

Analysis

All of the testimony and documentary evidence was carefully considered.

A "**tenancy agreement**" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. That being said I must point out that by refusing to provide the Tenants with a written tenancy agreement the Landlord is contravening section 13 (1) of the Act which provides that all tenancy agreements entered into on or after January 1, 2004, must be in writing. Based on the aforementioned I hereby order the Landlord to provide the Tenants with a written tenancy agreement.

Section 93 of the Act provides that tenancy obligations pass with the transfer or assignment of land therefore I do not accept the Landlord's argument that he does not have a tenancy agreement with the Tenants because their agreement was entered into with the previous land owner.

The evidence supports the Landlords have attempted to verbally increase the Tenants' rent by \$200.00 per month without proper written notice and for an amount that is in contravention of sections 41, 42, and 43 of the Act. The legislated allowable increase for 2010 is 3.2% which would allow the Landlords to increase the rent from \$1,300.00 to \$1,341.60 after serving the Tenants written notice of the increase three months prior to the effective date. Based on the above I hereby approve the Tenants request to cancel the additional verbal rent increase.

There is no provision in the Act which allows a Landlord to end a tenancy by verbal notification; therefore I approve the Tenants request to cancel the March 14, 2010 verbal notice that they can move if they don't pay the increased rent.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The Tenants are seeking a monetary claim of \$740.00 for their labour costs and costs of materials to perform repairs on the rental unit resulting from a verbal agreement with the Landlord. The Landlord provided opposing testimony with respect to the Tenants' claim.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise. Based on the aforementioned I find the Tenants have failed to prove the test for damage or loss, as listed above and I dismiss their claim for \$740.00.

Section 27 of the Act provides that a landlord may terminate or restrict a service or facility if the landlord gives 30 days written notice of the termination or restriction and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. The evidence supports that the Tenants' use of the barn has been reduced by 2/3 which I find to be a devaluation of \$173.00 of their tenancy. The \$173.00 is based on the barn being a value of 20% of the overall tenancy or \$260.00 of the \$1,300.00 rent and \$173.00 is approximately 2/3 of the \$260.00. Based on the above I find the Tenants have proven the test for damage or loss, as listed above, and I approve their request for reduced rent for the reduction in services or facilities. Effective April 1, 2010 the Tenants monthly rent is \$1,127.00 (\$1,300.00 - \$173.00).

The Tenants are seeking to continue the reduced rent of \$600.00 until "all" the items listed on their repair lists are completed. The evidence supports that the December 2,

2009 is the first time the Tenants informed the Landlord of the requested repairs. After review of the evidence I find the Tenants have failed to prove the Landlords have not complied with the Act and therefore I dismiss the Tenants request to continue with the rent being \$600.00 per month.

With respect to the amounts paid for rent for the period from October 1, 2009 to March 1, 2010 the evidence supports there was a verbal agreement between the Landlord and Tenants for the Tenants to pay a reduced rent of \$600.00 until the Landlord finished the repairs. I find that based on the testimony the Landlords have reviewed and attempted to complete the required repairs and therefore the rent reduction stops as of March 2010.

I find there to be one repair item outstanding, as a result of the Tenants not being home when the roofer attended, and I hereby order the Tenants to work with the Landlord to accommodate the roofing contractor to access to the rental unit to complete the investigation and or repair of the alleged leaks.

In the presence of opposing testimony I do not accept the Landlord's argument that the Tenants agreed to pay the Landlord a lump sum payment when the repairs were completed, consisting of the \$700.00 per month rent for every month the repairs were being conducted. Based on the aforementioned I do not accept the Landlord's argument that rent has not been paid in full.

The Tenants have been partially successful with their claim therefore I award recovery of the \$50.00 filing fee.

Conclusion

The Landlord is hereby ordered to provide the Tenants with a written tenancy agreement.

The verbal rent increase and verbal notice to end tenancy are hereby cancelled and are of no force or effect.

Effective April 1, 2010 the Tenants monthly rent is **\$1,127.00** (\$1,300.00 - \$173.00).

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: April 22, 2010.

Dispute Resolution Officer