

DECISION

Dispute Codes MNDC, RR, FF

Introduction

This hearing was convened in response to an application filed by the tenants seeking:

1. A monetary order for compensation for loss or damage;
2. An order to be allowed to reduce the rent for repairs, services or facilities agreed upon but not provided;
3. Recovery of the filing fee paid to file this application.

Total Monetary Order Sought by the Tenants: \$15,100.00.

Issues(s) to be Decided

Whether the tenant is entitled to the orders sought.

Outline of Background and Evidence

The tenant testified that his daughter occupied the rental unit. The tenant says that he began renting the split level home with a fully fenced yard in February of 2006. The tenant says that he did not actually occupy the rental unit himself and it is occupied by his daughter and her caregivers. The tenant says his daughter is a challenged adult with a mental age of 3 to 5 years and that she suffers from schizophrenia, bi-polar disorder and she wanders.

The tenant testified that a flood occurred in the rental unit on December 24, 2008. The tenant says that as a result of that flood the entire lower level of the home was unsafe for use by his daughter. The landlord testified that the landlord's agent advised that the landlord would complete repairs in about one month. The landlord testified that the repairs were not completed as promised and were constantly delayed by the owner over

a 10 month period. The tenant says that his daughter lost the use of the basement of the home where the flood occurred as well as portions of the upstairs of the home. This occurred because her furnishings had to be moved upstairs for storage while repairs were done in the basement. The tenant says the rent was \$1,850.00 per month and the landlord reduced the rent by \$200.00 for the 10 month period as "partial compensation". The landlord says his daughter's right to quiet enjoyment was prevented by the landlord. Further, that because of the duration of the repairs the tenant should be awarded aggravated damages. The tenant submits that his daughter lost 80% of the use of the home for 10 months due to the repairs not being completed. The tenant calculates the loss as follows: $\$1,850.00 \text{ per month} \times 80\% \times 10 \text{ months} = \$14,800$ ($-\$200.00 \text{ per month} \times 10 \text{ months} = \$2,400.00$) = $\$12,400.00$.

The tenant also says the fence fell down 2 years prior to the filing of this application and it was never replaced. Because his daughter wanders the tenant says she was unable to enjoy and use the backyard for the 2 year period. For this loss the landlord claims 27 months $\$100.00 \text{ per month} = \$2,700.00$.

The tenant testified that he did look for new accommodation for his daughter but was not successful.

The landlord testified that the flood was caused by a blockage that had to be cleared 120 feet away from the home. The landlord learned that the flood was caused by sewage backing up from the City's system and this backup flooded the basement bathroom through the toilet and spread to the storage room and part of the basement.

The landlord testified that the basement was cleaned immediately following the December 24th flood and it was ready for use as of December 27, 2009. The landlord produced a witness from the restoration company who confirmed that he was called in to restore the basement to make it habitable as a result of the flood and this clean-up project as complete and the basement habitable by December 27, 2009.

The landlord testified that there were no furnishings in the basement area of the home and no one resided in the basement. The landlord says the tenant's caregiver advised the landlord's plumber that she felt bad for not noticing the flood earlier but it went unnoticed because they hardly ever went downstairs. The plumber testified to this effect at the hearing.

The landlord testified that further renovations were undertaken by the owner's insurance company over the course of the 10 month period and for this reason the landlord reduced the tenant's rent by \$200.00. The landlord says this rental reduction was accepted by the tenant in compensation for any loss suffered and it was never meant to be "partial" compensation. These renovations included lifting a plywood floor to ensure the concrete beneath was dry and renovating the basement bathroom to installed new toilet and floor tiles. Further, at the tenant's request, the landlord installed a new tub in the basement bathroom. The landlord says that while the floor tile work took some time to complete, the bathroom fixtures could have been used throughout.

With respect to the fencing in the backyard the landlord says the fence had been in disrepair since the start of the tenancy with lattice that had fallen over. The landlord says the fence belonged to the house on the other side of the yard. Even so, the landlord says the owner did obtain quotes for repairs and offered to replace the fence with a chain link fence but this was refused by the tenant.

Analysis

With respect to the tenant's claim for compensation for loss of quiet enjoyment and aggravated damages as a result of the loss of use of the basement, the evidence is that the landlord reduced the rent by \$200.00 per month for 10 months to compensate the tenant for this loss. While the tenant says this was only "partial" compensation he has supplied insufficient evidence to show that this was the agreement between the parties.

Further, the landlord denies that the compensation was “partial” compensation. I find that based on a balance of probabilities the reduction of \$200.00 per month was intended to compensate the tenant fully for any losses the tenant may have suffered during the tenancy as a result of the flood. Having agreed to accept a \$200.00 monthly rental reduction as compensation, the tenant is not now entitled to claim further compensation.

With respect to the tenant’s claim for the loss of use of the backyard due to the damaged fence, the evidence of the tenant is that this fence “...fell down over two years ago”. The tenant has submitted no evidence that he made an application for repairs. I find that the doctrine of laches should be applied to bar this claim. This is a legal doctrine based on the maxim that equity aids the vigilant and not those who slumber on their rights. I find that the tenants’ inordinate delay in asserting this claim and the manifest prejudice to the landlord that has resulted from their failure to make a timely objection warrants the denial of this claim.

Given the length of time the fence was in a state of disrepair I find the legal doctrine of laches applies. That is that when one takes too long to assert a legal right, they lose their entitlement to compensation.

With respect to the tenant’s claim to be allowed to reduce the rent for repairs, services or facilities agreed upon but not provided, the evidence at the hearing is that this tenancy has ended. I am unable to award a rental reduction for a tenancy that no longer exists.

As the tenant has been unsuccessful in this application, I will not award recovery of the filing fee.

Conclusion

The tenant’s applications are dismissed.