

DECISION

Dispute Codes MNDC

Introduction

This matter dealt with an application by the Tenants for a monetary order for compensation for damage or loss under the Act or tenancy agreement.

At the beginning of the hearing one of the Landlords named on the Tenants' application argued that she and the other named Landlord (J.B.) were not properly named as parties in this proceeding. For the reasons set out in the Analysis portion of this Decision, I find that J.B. should not have been named as a Party, however I find that the other named Landlord, T.B., is properly named as a Party and the style of cause is amended accordingly.

At the beginning of the hearing the Tenants admitted that they had not served the Landlord with 23 photographs. As the Landlord has no opportunity to respond to this evidence and as the Tenants have had a reasonable opportunity (2 months) to serve them, I find pursuant to RTB Rule of Procedure 11.5(b) that the evidence should be excluded. Furthermore, although the photographs are relevant, I find that they likely would not have been of much assistance to the Tenants in any event.

Issues(s) to be Decided

1. Are the Tenants entitled to compensation and if so, how much?

Background and Evidence

This tenancy started in February or March of 2006 and ended on or about February 15, 2009 when the Tenants moved out. Rent was approximately \$675.00 at the beginning of the tenancy and was increased to \$700.00 by the end of the tenancy.

The Tenants claim that there were a number of issues that they brought to the Landlord's attention during the tenancy but that she refused to do anything about them. In particular, the Tenants said they did not have hot water for approximately 7 months in 2007. The Landlord denied that this was the case and said that the rental property has 2 properly functioning hot water tanks. The Landlord also provided signed statements from 4 tenants of the rental property who claim they have lived in the rental property for more than 2 years and have not been without hot water.

The Tenants also claimed that 2 of the burners on the stove in the rental unit did not work and the oven only worked some of the time. The Tenants said that they complained to the maintenance person repeatedly about the stove from approximately 2007 but that it was not replaced until February of 2010 (just before they moved out).

The Landlord claimed that the Tenants did not say anything about the stove until late January 2010 and that it was replaced a week later.

The Tenants said there was mould in the rental unit which the Landlord failed to deal with. In particular, the Tenants claimed that from the Spring of 2007 until they moved out, there was mould around the patio door, on a bedroom wall and in the bathroom. The Tenants said they cleaned these areas with a mould treatment but the mould came back. The Tenants also claimed that one of them developed respiratory problems as a result of the mould but they provided no medical or other evidence of that. They also claimed that this Tenant's respiratory problems stopped approximately 3 months after they moved out.

The Landlord admitted that the Tenants approached her after she took over the building in March of 2007 about mould. The Landlord said the maintenance person looked at the unit but could not find any mould, however she agreed to compensate the Tenants for the mould treatment. The Landlord said she also viewed the rental unit after the Tenants moved out and did not see any mould. The Landlord said she was never advised by the Tenants that one of them had respiratory problems and argued that they could have been caused by the other Tenant's smoking inside the rental unit which had turned the ceiling and walls yellow.

The Tenants said the Landlord also failed to make other repairs to the rental unit and that due to faulty seals around the windows it took a long time to heat the rental unit when it was cold outside. The Landlord claimed that when the Tenants moved into the rental unit, it needed to be painted and to have the carpet replaced but that the Tenants agreed to take the unit in that condition.

The Tenants said that for approximately a year, they had to deal with an unreasonable amount of noise from the tenants who lived in the suite above them. The Tenants said the Landlord refused to do anything about it and eventually threatened to evict them if they continued to "harass" the other tenants. The Landlord admitted that when she took over the management of the rental property that there were a number of "partiers" residing there and that it took some time to remove them. The Landlord claimed, however, that the occupants in the suite above the Tenants did not make an unreasonable amount of noise. The Landlord said she knew this because she resided at the other end of the corridor on the same floor as the tenants who were alleged to be making the noise. The Landlord admitted that she told the Tenants they should stop harassing the tenants above them because 4 different tenants had moved out of that suite due to the actions of the Tenants.

The Tenants admitted that they did not give the Landlords written complaints about any of these matters nor did they ever apply for a repair or other order from the Residential Tenancy Branch. The Tenants said they made verbal complaints mostly to the maintenance person who said he did not want to hear their complaints any longer and that he would prefer it if the Tenants would move. The Tenants said a week later they

advised the maintenance person that they would be moving at the end of February 2010 because they couldn't stay in the rental unit with the mould.

Consequently, the Tenants said they incurred expenses to move on an "emergency" basis. In particular, the Tenants said they had to pay \$400.00 for a moving truck and movers and gas, \$280.00 for a Hydro deposit and \$175.00 for 2 months of hydro as well as \$181.75 to reconnect cable and for 6 months of cable service. The Tenants admitted that they would have had to pay for hydro and cable even if they hadn't moved. The Landlord argued that the Tenants were not told to move and there was no emergency. The Landlord said the Tenants told her at the beginning of February that they were moving at the end of the month but did not say why. The Landlord said one of the Tenants then approached her at the end of the month and advised her that they had moved.

Analysis

Section 1 of the Act defines a Landlord (in part) as "the owner of a rental unit, the owner's agent or another person who, on behalf of the landlord exercises powers and performs duties under the Act or tenancy agreement." The Landlord argued that the other person named as a landlord, J.B., was simply the maintenance person and did not have authority to exercise powers on behalf of the owner. The Landlord admitted, however, that as the resident manager of the owner, she collects rents and issues notices when tenants fail to pay rent. In the circumstances, I find that T.B. is properly named as a Landlord in these proceedings, but that J.B. is not properly named as a party and as a result, the style of cause was amended by removing him as a Landlord.

Section 32 of the Act says (in part) that a Landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and that makes it suitable for occupation by a tenant. Section 28 of the Act says (in part) that a tenant is entitled to quiet enjoyment including but not limited to the right to freedom from unreasonable disturbance.

In this matter, the Tenants have the burden of proof and must show (on a balance of probabilities) that the Landlord breached her duty to make repairs which were required to make the suite fit for occupation or failed to provide a service or facility that was included in their rent. The Tenants must also show that their right to quiet enjoyment was breached by the Landlord's failure to deal with noise complaints. The Tenants must further show that they suffered damages as a result of the Landlord's breach of these duties. If the Tenants' evidence is contradicted by the Landlord, the Tenants will need to provide additional, corroborating evidence to satisfy the burden of proof (or to make out their claims).

The Tenants claimed that they did not have hot water for approximately 7 ½ months which was denied by the Landlord. I do not give a lot of weight to the written statement provided by the Landlord as the statement is undated and the deponents only claim

they have lived in the rental property longer than 2 years. Consequently, it is not clear if the individuals in question lived in the rental property during the summer and fall of 2007. However, the Tenants did not provide any other evidence to support this claim.

The Tenants also claimed that the stove in the rental unit was not working properly but despite their complaints to have it repaired it was not replaced until the end of the tenancy. The Landlord said that the Tenants did not bring this to her attention until the end of January 2010. The Tenants did not provide any other evidence to support this claim.

The Tenants further claimed that the rental unit had mould and that they repeatedly brought this to the Landlord's attention. The Landlord denied that there was mould in the rental unit and claimed instead that the marks on the walls and carpet referred to by the Tenants were water damage, rust marks or dirt. The Tenants said they showed photographs of the mould to Interior Health who was supposed to investigate but for various reasons declined to do so. The Tenants also claimed that one of them developed health issues due to the mould. The Tenants provided no medical or other evidence in support of their claim that there was mould in the rental unit that made it unfit for occupation.

The Tenants said they had to endure unreasonable amounts of noise from the occupants of the suite above them for approximately a year. The Landlord denied that there was excessive noise as the Tenants alleged and claimed instead that she lost 4 tenants from that suite due to the Tenants harassing them. I do not give a lot of weight to the Landlord's evidence that the other occupants were not making excessive noise because she could not hear them as her evidence indicated that she was sufficiently far removed from that suite that she would not likely have heard the same noises as the Tenants in the suite below. However, the Tenants provided no other evidence to support this claim.

Given the contradictory evidence of the Landlord in response to each of the Tenants' claims and in the absence of any corroborating or supporting evidence from the Tenants (such as written complaints), I find that there is insufficient evidence to conclude that the Landlord breached her duty under s. 32 of the Act to make repairs or that the Tenants' right to quiet enjoyment under s. 28 of the Act was breached.

The Tenants also said that because of the mould, they had to move out on an emergency basis. The Tenants admitted that they gave verbal notice to the maintenance person a month before they moved out and to the Landlord approximately 2 weeks before they moved out. In the circumstances, I find that there is insufficient evidence that the Tenants had to move due to an emergency. In particular, there was no evidence that the rental unit was unfit for occupation. Furthermore, the Tenants would have incurred moving and utility re-connection expenses whenever they moved out and there was no evidence that they incurred additional expenses for these things because they moved out approximately a month after they gave their verbal notice.

For all of the above reasons, I find that the Tenants have not provided sufficient evidence to make out their claims and as a result, their application is dismissed without leave to reapply.

Conclusion

The Tenants' application is dismissed without leave to reapply. 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 29, 2010.

Dispute Resolution Officer