



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND ORDERS

Dispute Codes MNDC, OLC, LRE, LAT, FF

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking monetary compensation under the Act or tenancy agreement, an order for the Landlord to comply with the Act and tenancy agreement, to suspend or set conditions on the Landlord's right to access the rental unit, to authorize the Tenants to change the locks to the rental unit and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Are the Tenants entitled to the relief sought?

Background and Evidence

The parties entered into a written, one year term tenancy agreement on March 1, 2010, for the rental of half of a duplex residential property. The monthly rent was agreed to be \$1,200.00, payable on the first of the month.

The Tenants are claiming financial losses for loss of use of the driveway to perform mechanical work on their vehicle. At the outset of the tenancy the Landlord had a camper unit parked in the driveway. According to the evidence of the Tenants, the Landlord had initially promised to remove the camper in a few days after the start of the tenancy. The Landlord did not remove the camper until April 23, 2010.

The Tenant had wanted to use the portion of the driveway where the camper was to replace the motor in his vehicle. He claims that he could have done the work himself, however, he now has to pay someone else to do this work in the amount of \$1,668.00.

The Tenant testified he asked the Landlord repeatedly to remove the camper. He further testified that while it was there the Landlord and her boyfriend were trying to sell the camper, and would meet prospective purchasers at the rental unit. The Tenant also testified that the daughter of the Landlord parked her vehicle on the driveway of the rental unit for a week while she went to Calgary.

The Tenant also testified that the Landlord or her boyfriend often came to the rental unit without giving any notice. The Tenant testified they have entered the rental unit without notice on several occasions. The Tenants claim the Landlord and her boyfriend had the attitude they could do anything they wanted at the rental unit.

The Landlord had also listed the property for sale and a realtor attended the rental unit to show a prospective purchaser, without written notice in accordance with the Act.

The Landlord testified that she and her boyfriend had lived at the rental unit with the Tenants prior to the start of the tenancy. Both parties agreed they had got along well when they were roommates sharing the rental unit.

The Landlord testified there had been no agreement at the outset of the tenancy that she would move the camper unit in a few days. She understood she and the Tenants had an agreement to move the camper, "... in due course." The Landlord further testified that there was parking for four vehicles at the rental unit.

The Landlord admitted that she and her boyfriend had attended the rental unit to locate personal property they had left there. They also attended in order to take measurements for windows that needed to be replaced. She testified that she had verbal permission to do this and felt the tenancy had been done on a friendly basis, as they had been friends with the Tenants.

The Landlord testified that at the outset of the tenancy she thought her and the Tenants were good friends, which is why they did not charge the Tenants a security deposit or pet damage deposit. She testified that the realtor just showed up at the rental unit because he had lost the phone number.

The realtor submitted evidence that he had been accommodating with the Tenants in rescheduling showings. The house was apparently shown two times.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord has breached section 29 of the Act by failing to provide the Tenants quiet enjoyment.

When making a claim for financial damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

While I find the Tenants have proven they experienced a loss of quiet enjoyment of the rental unit, I do not find they should be compensated for the inability to do mechanical work on their vehicle in the driveway. If the Tenants had felt this was such an important term of the tenancy agreement, it should have been included in the agreement. Furthermore, I find the Tenants did not mitigate their losses by informing the Landlord in writing that she had to move the camper or face the financial claim of the Tenants for loss of opportunity to work on the vehicle.

I do find the Tenants experienced a loss of quiet enjoyment, due to the Landlord not providing the Tenants with a written notice to access the rental unit in accordance with section 29 of the Act.

Therefore, I find the Tenants are entitled to the sum of \$450.00, for the loss of quiet enjoyment for two months and for the cost of the filing fee for the Application, and grant them a monetary order for **\$450.00**. This amount may be deducted from the rent for one month.

At the time of the hearing, the Landlord appeared to have become well aware of the formality of the tenancy and was no longer attending the rental unit without notice. Therefore, I do not order that the locks may be changed by the Tenants.

However, the Landlord is ordered to adhere to the terms of the Act and the tenancy agreement, when seeking access to the unit and for other dealings with the tenancy. I have included a guidebook to the Act for the Landlord to use as a reference.

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: July 05, 2010.

Dispute Resolution Officer