Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, MNDC, MNSD, OLC, RP, OPR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy, a monetary order, an order that the landlord comply with the Act and an order that the landlord perform repairs. The landlords made a cross-application requesting an order of possession and a monetary order. Both parties participated in the conference call hearing.

At the hearing the parties agreed that the tenants had vacated the rental unit and that the only issues remaining which needed to be addressed were the monetary claims. I consider the remaining claims to have been withdrawn.

Issues to be Decided

Are the tenants entitled to a monetary order as claimed?
Are the landlords entitled to a monetary order as claimed?

Background, Evidence and Analysis

The parties agreed that the tenancy began in August 2009 and ended in August 2010. The parties further agreed that $1,900.00 in rent was payable each month and that the tenants paid a $950.00 security deposit at the outset of the tenancy.

The landlords seek to recover $1,900.00 in unpaid rent for August 2010. The tenants acknowledged that they did not pay rent in that month. I find that the tenants were obligated to pay $1,900.00 in rent for August and that they failed to do so. I award the

landlords $1,900.00. I find that the landlords should recover the $50.00 filing fee paid to bring their application and I award them $50.00. I address the tenants' claims and my findings around each below.

1. **Garage.** The tenants seek to recover $1,925.00 in rent paid for the half of the garage that they were unable to use during the tenancy. The rental unit is one of two rental units on the residential property. The tenants testified that when they rented the unit, they were under the impression that they would have exclusive use of the entire garage. A few weeks into the tenancy the landlords advised the tenants that a wall would be constructed in the garage to separate the landlords' half from the tenants' half. The tenants objected and were offered the opportunity to rent the landlords' half for an additional $175.00 per month which they declined. The tenants now seek to recover $175.00 for each month in which they were denied exclusive use of the garage. The landlords presented a copy of the rental advertisement to which the tenants responded which showed that there were three parking spaces available, one in the garage and two in the driveway. The landlords testified that at no time did they indicate that the tenants would have exclusive use of the garage and that the occupants of the second suite stored items in the garage during the tenancy. The tenants bear the burden of proving their claim on the balance of probabilities. While the tenants may have had an expectation that they would have exclusive garage, I find that there is insufficient evidence to prove that this expectation was reasonably held. I find the advertisement to be persuasive as well as the fact that other items were stored in the garage from the outset of the tenancy. Further, the garage has a separate overhead door for each side and I find that the layout lends itself to a shared garage. As other persons were residing on the residential property, I find that it was unreasonable to expect that the entire garage would be reserved for the tenants. For these reasons I dismiss the claim.
2. **Hydro.** The tenants seek to recover $738.00 for hydro bills which they claim were excessively high because the fan over a fireplace did not work properly. The tenants testified that the wood burning fireplace had a built-in fan which squealed loudly when it was used. The tenants complained to the landlords but the fan could not be

repaired. The occupant of the basement suite complained to the tenants that the noise was disturbing him, so the tenants did not use the fireplace. The tenants testified that they had expected that they would be able to use the fireplace to heat the rental unit and that because they could not do so, they incurred excessively high hydro bills. The tenants gave evidence that their hydro bill for the period from November to February totalled $1,138.00 and they estimate that it should have only cost $400.00 for that 4 month period. The landlords testified that the fan worked, but that it worked noisily and further testified that they have not yet been able to find someone who is able to perform repairs. Even if I were to accept the tenant's argument that the inability to use the fireplace fan prevented the fireplace from effectively heating the rental unit, the tenants would have to prove the quantum of their claim by showing the amount by which their hydro bill would have been reduced had the fireplace fan functioned effectively. The tenants have provided no support for their contention that their hydro bill would have been reduced by $700.00 during the relevant period. I find that the tenants have not proven the quantum of their claim and accordingly the claim is dismissed.

3. **Light.** The tenants seek to recover $120.00 as the cost of continuously operating a light outside the rental unit. The tenants testified that an exterior light which was used for the benefit of the second unit was operated by a switch in their unit. In order to make the light available for the other occupant, the tenants left the light on all the time, expecting the other occupant to unscrew the bulb when the light was not required. Eventually the tenants complained to the landlord and a motion sensor was installed. The tenants claim that the motion sensor activated even when neighbours walked by. The tenants estimate that they paid an additional $10.00 per month in hydro to operate the light. The landlord testified that BC Hydro publishes a fact sheet which indicates that a 60 watt bulb running continuously for one full year would consume approximately $36.00 in hydro. The landlords maintained that the light benefited both the tenants and the other occupant, as the light illuminated both a stairwell and the path to the back yard. The tenants testified that they did not use the path on the side of the house. I am unable to find that the tenants derived no benefit from the light. The legal principle of *de minimis non curat lex* provides that

the law will not concern itself with matters of trivial value. While the other occupant may have enjoyed the most benefit and the tenants were paying for the hydro consumption of the light, I find that the amount of hydro consumed was so minimal it cannot be compensable. The claim is dismissed.

4. **Bed.** The tenants seek to recover $500.00 as the value of a bed which was damaged by mould. In order to prove their claim, the tenants must prove that the mould developed as a result of the landlord's actions or failure to act. Mould is a factor with which all households in a humid climate must address. I accept that the mattress was damaged by mould and had to be discarded, but I find insufficient evidence to show that the landlords' actions or negligence caused the mould. The claim is dismissed.
5. **Filing fee.** The tenants seek to recover the $50.00 filing fee paid to bring their application. As the tenants have been wholly unsuccessful, I find that they must bear the cost of their filing fee and accordingly I dismiss the claim.

Conclusion

The landlords have been awarded a total of $1,950.00. I order the landlords to retain the $950.00 security deposit in partial satisfaction of the claim and I grant them a monetary order under section 67 for the balance of $1,000.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: October 07, 2010

Dispute Resolution Officer