



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, ERP, RR, FF

Introduction

This matter dealt with an application by the tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, an Order for the landlord to make emergency repairs and an Order to allow the tenant's to reduce their rent for repairs, services or facilities agreed upon but not provided. The tenants also seek to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent by registered mail to the landlord on November 03, 2010.

The landlord and the female tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are the tenants entitled to a monetary order for money owed or compensation for damage or loss?
- Are the tenants entitled to an Order for the landlord to carry out emergency repairs?
- Are the tenants entitled to reduce their rent for repairs, services or facilities agreed upon but not provided?



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

Background and Evidence

Both Parties agree that this tenancy started on September 15, 2009. This was a fixed term tenancy ending on September 14, 2010. The monthly rent is \$2,600.00 which is due on the 15th day of each month. The tenancy ended on the day of the hearing after the landlord enforced a previous Order of Possession that the tenants did not comply with. The tenant attending the hearing states that the bailiffs were in the process of evicting them.

The tenant seeks to recover the sum of \$5,000.00 from the landlord in compensation in the form of a rent rebate for repairs not completed which the tenant attending states violated their health and safety. The tenant states on April 13, 2010 she gave the landlord written Notice to repair the ceiling in the family room as it was leaking. She claims they have not been able to use this room since the beginning of their tenancy due to the leaks and the damage it has caused to their property.

The tenant testifies that they had a gas leak from the hot water tank. She claims they phoned Terasan Gas on October 13, 2009. A gas man came to look at the tank and the tenant claims he called the landlord and told him the tank should be replaced. She claims the landlord only replaced a value but this did not stop the gas or water leak from the tank. The tenant states she called Terasan Gas again on October 18, 2010. She claims the gas man said he could not smell gas because she had vented the room. The tenant claims the gas man wanted to shut the house down but she claims she could not find alternative accommodation so asked him not to do that. The tenant claims that on November 01, 2010 the gas man came again and put a caution sticker on the hot water tank. The tenant states she did not notify the landlord because he was verbally abusive towards her. The tenant has provided a copy of the caution sticker dated November 01, 2010 which states: "defects found boiler, short cycle needs service will cause high bill and replace hot water tank, leak was repaired. Hot water tank leaking water and sometimes splashes on burner possible causing gas smell at times".



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

The tenant testifies that she first noticed a problem with the sewage when her toilet, drain and washing machine backed up last year. She states she told the landlord about this and he said it would be alright as he had just had the septic tank pumped out. The tenant states that she contacted Fraser Health at the end of October, 2010 and an inspector came to the property. The inspector found a malfunction with the system and sewage was surfacing into the backyard. The tenant states the inspector wrote to the landlord and the landlord was ordered to fix this. The tenant states Fraser Health wanted to shut the house down but she told him they could not move out until December 01, 2010. The tenant has provided a copy of the Order from Fraser Health regarding the malfunctioning sewage system in which it states after the tenants have moved out a No Occupancy order will be placed on the house until the sewage disposal is remedied. This Order is dated November 05, 2010.

The tenant testifies that the front door handle does not work correctly and the house has not been secure. She claims she notified the landlord of this verbally on September 01, 2010 but he has failed to make the necessary repairs.

The tenant testifies that at the start of their tenancy they notified the landlord verbally about required repairs to a sliding door, leaking pipes under the kitchen sink, malfunctioning dishwasher and all 24 windows in the property. The tenant states the landlord would always either say he would fix these things, send someone to fix them or would say there was nothing wrong with them. The tenant states the landlord did replace three windows and another sliding door.

The tenant testifies that the pool lost water every day and she had to continually fill it. She states this cost her two months worth of chemicals in one month to maintain the pool. The tenant had a pool man look at the pool and he discovered that the pool filter was leaking and had to be shut down. The tenant states they lost the use of the pool and she notified the landlord about this but he did not repair it.

Residential Tenancy Branch
Ministry of Housing and Social Development

The tenant testifies when they rented the house there were two wood burning fireplaces. However, they were unable to use them as she claims the landlord told them the city does not allow it. She states she phoned the city and was told they could use them. The tenant states she notified the landlord but he would not look at them or make any repairs. The tenant states she is unsure what was wrong with them. The tenant testifies that they have notified the landlord in writing about most of these repairs and issues but did not provide a copy of the letters.

The landlord states at a previous hearing the tenant raised these issues concerning repairs and gave them as the reason why they had withheld their rent. The landlord states the tenant is just rearguing these issues again. The landlord testifies that he has never been notified in writing of any required repairs until the tenant notified him verbally about the water tank and the landlord instructed a plumber to replace the value in October 2009. He claims he was not notified again of any problems with the tank until the gas man came again on November 01, 2010. The landlord states to his knowledge there was not a gas leak or if there was why did the tenants remain living in the house and why did the gas company not turn off the gas supply.

He states the tenants did not notify him of any problems in writing and he only heard about problems with the sewage at the previous hearing and again when he received the letter and order from Fraser Health on November 05, 2010. The landlord states the tenant only contacted Fraser health after the previous hearing and after the tenant had been served with an Order of Possession. The landlord claims when he spoke to the Fraser Health Inspector he said he could deal with the problem after the tenants had moved out.

The landlord states that when the tenants moved in he told them they could only use one fireplace as it was wood burning and the other one was a gas fireplace which was not hooked up. The landlord states they tenant did mention things verbally to him such as the problems with the door handle in September, 2010 but some of these repairs were only

mentioned to him in September, 2010 after he had given the tenants Notice to End Tenancy because they had not paid their rent.

Analysis

I have reviewed the documentary evidence and the submissions made by the tenant attending and the landlord. First of all as the tenants have been evicted from the rental unit on today's date I will not be considering their application for an Order for the landlord to make emergency repairs or issuing an Order for the tenants to reduce their rent for repairs as the tenancy has ended.

With regard to the tenants claim for \$5,000.00 in compensation; I find that in this matter the burden of proof falls to the tenants and they must show that these repairs existed during their tenancy and that they notified the landlord in writing of the repairs required to ensure their rental unit complied with health and safety regulations. The tenants must also show that the landlord acted negligently by not making the required repairs within a reasonable time frame after written notice to do so. When a tenant's evidence is contradicted by the landlord, the tenant will generally need to provide additional corroborating evidence to satisfy the burden of proof.

With regard to the tenants claim there was a gas leak on the hot water tank. While there does appear to be a water leak there does not appear to be a gas leak that would cause the tenant to live in a dangerous or unsafe manner as the gas repair man did not immediately get them to vacate the rental unit and has not indicated on his caution sticker that a gas leak is present, only that a water leak could cause a gas like smell. I also find in regard to the sewage system that this only came to light on November 01, 2010 from the tenants own evidence presented after the system was inspected by Fraser Health. As the tenants should have vacated the rental unit on October 29, 2010 then I am not prepared to find in their favor in this matter. I find the tenants have not provided any compelling evidence to support



Dispute Resolution Services

Page: 6

Residential Tenancy Branch
Ministry of Housing and Social Development

their claim that there were emergency repairs required on the rental unit during their tenancy and if other repairs were required they have provided no evidence to show that they notified the landlord in writing about the repairs or that they gave him a reasonable amount of time to make the repairs. Consequently, I find the tenants have not met the burden of proof in this matter and their application for a Monetary Order for \$5,000.00 is dismissed.

Conclusion

The tenant's application is dismissed in its entirety 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: November 29, 2010.

Dispute Resolution Officer