



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, O, OLC, & FF

Introduction

This hearing dealt with an application by the tenants seeking compensation due to loss or damage caused by breaches of the tenancy agreement, *Act*, and regulations by the landlords.

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.

At the start of the proceeding I clarified questions relating to items 3 and 4 of the tenants' application for Dispute Resolution. Although the tenants raised these points in their application, it was discussed during the hearing that the remedies sought by the tenants were not consistent with the *Act*. For example, although the tenants argue that the landlord filled out the move in condition inspection prior to their arrival; the tenants had the option of either accepting the condition report as written or rejecting it. The tenants are not entitled to the return of their security and pet deposits except as provided for by section 38 of the *Act*. In addition, regarding their concerns about irregularities between the *Act* and the tenancy agreement, I declined to replace the tenancy agreement as requested by the tenants. I confirmed that if aspects of the tenancy agreement are inconsistent with the *Act* then they would not be enforceable. The tenants confirmed that these items of their application would be withdrawn.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation due to the landlord's failure to provide the rental unit as agreed to when the tenancy agreement was entered into?

Background and Evidence

This tenancy began effective June 1, 2010 for the monthly rent of \$1,225.00 due on the 1st of the month; however, the tenants were granted permission to occupy the rental unit as of May 19, 2010.

At the time the parties were contemplating the tenancy agreement, they were both aware that the rental unit required some remediation work to address a moisture issue in the home. Both parties understood that the repairs would be complete prior to the tenants occupying the unit.

The parties agreed to a fixed term lease for 8 months. The tenants paid a \$612.50 security deposit on May 4, 2010 and as a result of the events that transpired did not pay the pet security deposit until July 22, 2010.

The landlords' agent (the agent) testified that she believed that the work was going to be completed before the tenancy began. The agent stated that after entering into the tenancy agreement with the tenants she went away on holidays. During her absence the contractors were to provide an estimate to the agent and permission to commence work was to be given. However, the estimate from the contractors was never received and the agent only returned to the situation on May 19, 2010 realizing that the tenants would be moving into the unit the same day without the work having been completed.

Both parties expressed the difficulty and frustration of that day. The agent was not sure what could be done or offered to the tenants but she did ask if the tenants had any alternative accommodations. However, the tenants had just moved with their two pets and had no other place to go. Neither party at this point had any idea how long the work would take to complete.

The parties reached a mutual agreement that the tenants would occupy the rental unit; having no other options and they would move their possessions around to different rooms as necessary for the work to be completed. Both the tenants and the agent believed at this time that the repairs would only take approximately 10 days to complete.

The tenants were emphatic that there was a verbal agreement reached at this point of the discussions that they would not have to pay any rent until the remediation work had been completed on the rental unit. The agent does recall that the tenants discussed no rent but it was her understanding that the tenants would hold off paying rent until an agreement could be reached on what the rent reduction would be.

The essence of this dispute is encompassed in the parties differing views of this discussion. The situation was complicated by the fact that the tenants were dealing with the agent who had to confer with the owners of the property. Over the next two months the work on the rental unit continued and the issue of the rent remained at large.

The agent provided copies of e-mails between herself and the owners which demonstrate that the matter of rent reductions was to be determined and settled with the tenants. In an e-mail to the owners on June 4, 2010 the agent wrote:

"As far as a rent reduction for the Tenants, what do you think is a fair amount to offer?"

The owners were of the position that the agent, and the management company, should be responsible for providing the tenants with a rent reduction. I note this was a matter to be settled between the owners and the agent and it is only raised in the background as part of the time line before an offer was presented to the tenants.

In an e-mail dated June 16, 2010 the agent wrote the following to the owners:

"We have not heard back from you regarding the rent reduction for your Tenants of [removed]. I have asked them what they feel is a fair amount, but they stated they would have to discuss it, but would prefer for an offer to come in for them to consider."

The agent stated that she requested the tenants to provide a rent reduction amount they believed was fair however the tenants indicated that they wanted an offer from the owners to consider.

On July 8, 2010 the agent stated that an offer was sent to the tenants by e-mail and on July 9, 2010 the tenants came to the office to discuss. The agent stated that the tenants indicated in this meeting that the amount was not agreeable but that they would present a counter offer. The agent stated that the tenants did not state that they believed that there was already an agreement for a total rent reduction. The tenants provided evidence that the proposed rent reduction was provided to them on July 14, 2010.

On July 22, 2010 the tenants paid the sum of \$1,225.00 comprised of the outstanding pet deposit of \$612.50 and half a month's rent for July 2010. At this point there remained outstanding rent from May 19 to July 14, 2010 related to the failure of the parties to reach an agreement on the rent reduction.

On August 19, 2010 the agent wrote the tenants requesting that the outstanding rent of \$2,450.00 be paid in full and then the parties could continue with negotiations on a rent reduction. The agent stated in this letter that if a mutual agreement could not be reached by August 26, 2010 then the landlord would have to take the matter to Dispute Resolution.

On August 23, 2010 the tenants responded in writing. In this letter the tenants make the first formal communication of their understanding that they would not be required to pay rent for the period of May 19 to July 14, 2010, as this was the period when the work on the unit was being done.

The owners also presented evidence at the hearing. They confirmed discussions occurred between themselves and the tenants but stated that an agreement was never reached. The owners confirmed that they had requested that the property management company pay for any loss experienced by the tenants but subsequently approved the rent reduction which was sent to the tenants in July 2010.

The owners stated they would like to reach an agreement that is reflective of the difficulties experienced by all parties. The owners identified that they have been without funds for many months which the tenants have had use, to greater or less degrees, of the rental unit throughout the dispute. The owners stated that they believe the tenants are entitled to a rent reduction of 50 percent.

Counsel for the owners argued that there was no binding agreement reached between the tenants and the agent. Counsel submitted that there was no meeting of the minds and that the negotiations continued as demonstrated by the evidence. With respect to the tenants' claim to a full rent reduction, counsel argued that the *Act* provides for rent reductions but does not provide for no rent.

The tenants acknowledged that the agent may not have been of the same understanding as them when no rent was discussed; however, the tenants stated that the landlords failed to provide an offer until the work was almost completed. Regardless, the tenants submit that they felt they had made it clear that they felt they should not have to pay any rent and this was implicitly accepted by the landlords who failed to pursue the rent.

The tenants stated that they expected to arrive to a new home where the work had been completed as agreed too. The tenants stated that because of their two dogs they had little choice but to move into the rental unit and endure the remediation work. For

approximately 56 days the tenants had limited or no access to bedrooms and could not fully unpack their belongings. The tenants would gain one room, only to have the other room taken over by the remediation. In addition, there was the HEPA filter which ran for a total of approximately 200 hours and the outside perimeter of the rental unit was dug up for replacement of the perimeter drain.

The tenants submit that due to their loss of use and loss of quiet enjoyment they should not be required to pay the rent for the 56 day period that the remediation work was completed for an equivalent value of \$2,450.00.

Analysis

Based on the testimony and evidence provided, and on a balance of probabilities, I find as follows:

The tenants were of the position that the landlord's agent had accepted an agreement for a total rent reduction during the period that the renovations would be completed. The tenants conceded that they and the landlord's agent believed at that time that the repairs would only take 10 days. The tenants also conceded during the hearing that the landlord's agent may have had a different understanding of the oral agreement.

Alternatively, the landlord's agent disputes the tenants' position and stated that she understood that rent would be withheld until a mutual agreed upon rent reduction could be determined. The landlords' agent also believed that the repairs would only take 10 days at this point of time.

As the evidence demonstrates, the repairs took approximately 56 days to complete. I accept that the tenants experienced some significant inconvenience as a result of the work being completed at the rental unit during this time and I also accept that all the parties agree there should be some level of rent reduction.

The situation was complicated by the fact that the tenants, the landlords' agent and the owners could not reach a consensus. However, the e-mail evidence provided by the agent demonstrates that discussions were occurring in June 2010 with the owners to offer a fair rent reduction to the tenants. Unfortunately, the offer does not appear to have been presented to the tenants in writing until July 14, 2010. I accept that the agent and the tenants had some earlier discussions about outstanding rent and the possible rent reductions on approximately July 9, 2010; however, the actual documentary evidence provided is dated July 14, 2010.

There was no direct evidence at that time that the tenants expressed their belief or position that they should not be required to pay rent during the period of the repair work at the rental unit. The tenants never put their position into writing until August 23, 2010. At this point, I accept that the parties were in negotiation and still entertaining counter offers.

I find that I can only accept the tenants' argument to a certain degree. I accept that the tenants did make the statement on May 19, 2010 that they would not pay rent until the repairs were completed; however, I find that this statement is too vague to be enforced. It is clear from the evidence before me that the agent did not interpret the tenants' statement in the same way because in the e-mail of June 4, 2010 the agent is clearly discussing only a partial rent reduction with the owners. I find that this e-mail accurately reflects the agents understanding that the tenants were entitled to a rent reduction and that the amount of the rent reduction needed to be negotiated. I accept that the agent accommodated the tenants by not requiring them to pay any rent until an agreement had been reached.

In this respect I do not accept the tenants' claim. I do not find that there was an agreement, expressed or implied, allowing them a total rent reduction during the period of the repair work at the rental unit.

It is not disputed that the tenants are entitled to a rent reduction during this period. It was clearly a frustrating and difficult time for all the parties involved; however, I find it was especially difficult for the tenants who had to live in the rental unit with unexpected and invasive repairs.

The *Act* provides that tenants may be compensated, even when there is no neglect or fault by the landlord, for loss of use of the rental unit under the covenant of quiet enjoyment. I find that the owners' offer of a 50 percent rent reduction is a fair and generous reflection of the loss experienced by the tenants. This rent reduction represents the tenants' loss of both quiet enjoyment of the rental unit and loss of use of portions of the rental unit during the repairs.

Therefore, I find that the tenants should be compensated in the amount of \$1,184.15 which represents half the rent owed for the period of May 19, 2010 to July 15, 2010. I accept that the renovations were completed as of July 15, 2010 as this is the date documented in the landlords' evidence. This sum is comprised of 50 percent of the total number days in the rental unit at the per diem rate of \$40.83 per day for \$2,368.29.

There is an outstanding balance owed to the landlords by the tenants for the sum of **\$1,134.14** which reflects the deduction of the \$50.00 the tenants' paid for this application. The tenants are required to pay this sum at the earliest time possible. If the tenants fail to pay this sum the landlords may issue a notice to end tenancy due to unpaid rent.

Conclusion

The tenants' application is granted in part. I did not accept the tenants' position that they were entitled to a full rent reduction during the period that the rental unit was under repairs but I did find that the tenants were entitled to a 50 percent rent reduction for this period and I found that the landlord was to reimburse the tenants for the cost of filing this application for Dispute Resolution.

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: December 06, 2010.

Dispute Resolution Officer