



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, FF, MNDC

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for a monetary order totaling \$3850.00. The applicant is also requesting recovery of her \$50.00 filing fee.

Background and Evidence

The applicants testified that:

- At the beginning of the tenancy it was noted on the move in inspection report that the landlord would repair the deck outside the living room and replaced the kitchen sink tap.
- These repairs were not done in a timely manner and as a result they had a significant loss of use of the rental property.
- The deck, which is a huge part of the house, had a soft spot in front of the door which was a safety concern and therefore made the use of the deck unsafe.

- Repair of the deck was discussed on at least three occasions with the landlord, however the landlord did not take steps to repair the deck until August 30, 2010, well into the tenancy.
- The landlord also failed to repair the kitchen tap in a timely manner, and therefore they had the inconvenience of using a wired together kitchen tap, that on one occasion even cut her son's finger.
- They also had a significant loss of quiet enjoyment of the property, because when the landlord finally did start repairing the deck, he did so without giving proper notice, coming and going at will, causing a major disruption of their lives.
- The landlords other tenants next door also caused them a significant loss of quiet enjoyment as they constantly had loud parties, left skid marks in the driveway, and trash all over the driveway. On one occasion they even tried to kick open the side door to the house. The landlord did nothing to stop this loss of quiet enjoyment.

As a result of the loss of quiet enjoyment and loss of use of the deck and tap their requesting the following compensation:

Return of 25% of the rent for six months	\$2850.00
Filing fee	\$50.00
Total	\$2950.00

The respondent testified that:

- At the beginning of the tenancy it was noted on the move in inspection report that the landlord would repair the deck outside the living room and replaced the kitchen sink tap; however the tenant failed to return the move in inspection report, and as a result he did not have a reminder in front of him of the work that needed to be done.
- He did not repair the deck right away, however he does not believe that the tenant suffered any significant loss of use because the soft spot was only approximately 1 foot wide and could easily be manoeuvred around or stepped over.
- The tenants never informed him that they felt it was a safety hazard and were unable to use the deck because of the soft spot, and had they done so he would have repaired it sooner, or at least put a piece of plywood over the spot to alleviate their fears.

- The tenants informed him that they had taken care of the taps, and in fact they were given a \$50.00 credit in a previous dispute resolution hearing that he brought against the tenants.
- He did not give the tenants any written notice that he would be coming to repair the deck, however they had indicated that they wanted this repair done and therefore he started the work on August 30, 2010 and completed it in what he believes to be a timely manner. At no time did the tenants inform him that I was disturbing their quiet enjoyment by repairing the deck.
- The tenants also never informed him of disturbances by his other tenants, and had they done so he certainly would have spoken to them as it was part of the agreement that the tenants were respectful of the others rights.

The respondent therefore believes that the tenant's full claim is unjustified and asks that it be dismissed.

Analysis

It is my decision that the applicants have not established a claim against the landlord.

Although it's true that the landlord has the obligation to repair and maintain the rental property, and it was agreed that the landlord would repair the deck and the kitchen taps, it is my finding that the applicants have not shown that there was any significant loss of use as a result of the failure to repair and maintain.

The applicants testified that the soft spot in the deck was approximately 1 foot across and in front of the doorway. I find it hard to believe that a 1 foot soft spot would cause significant restriction of use of the deck; as such a small spot would be easy to manoeuvre around. Further even if the landlord fails to comply with their obligations the tenants have an obligation to mitigate any loss, and it would have been very simple for the tenant to cover the soft spot with the piece of plywood or board, thereby alleviating any safety concern.

It is also my finding that the tenants have not shown that they suffered an unreasonable loss of quiet enjoyment due to the repair work being done by the landlord. True the landlord did not give the tenants written notice that he would be attending to repair the deck,

however he did do the work during reasonable working hours and the work was completed within a reasonable timeframe. I am also not convinced that the tenants ever informed the landlord that the work on the deck was disrupting their quiet enjoyment.

It is also my finding that since the tenants never informed the landlords that their quiet enjoyment was being disrupted by the other tenants of the rental property; they have no claim against landlords for loss of use and enjoyment. The tenants stated that the landlords should have known a that their quiet enjoyment was being disturbed by the other parties, however it is my finding that without any notification from the applicants, the landlords could not be expected to have known that the applicants were being disturbed.

Conclusion

This application is dismissed in full 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: February 23, 2011.

Residential Tenancy Branch