



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MT, CNR, MNDC, OLC, RP, RR, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* for Orders as follows:

1. Allow the tenant more time to make an application to cancel a Notice to End Tenancy- Section 66;
2. Cancel a Notice to End Tenancy for unpaid rent – Section 46;
3. Money owed or compensation for damage or loss – Section 67;
4. Comply with the Act, regulation or tenancy agreement – Section 62;
5. Make repairs to the unit, site or property – Section 33;
6. Allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided – Section 65; and
7. Recover filing fees from the Landlord for the cost of the application – Section 72.

Both the Tenants and the Landlords appeared for the Hearing and were given full opportunity to be heard, make arguments and ask questions of the other party.

Preliminary Matter

On February 11, 2011, the Landlord served the Tenants in person with a 10 day Notice to End Tenancy for Unpaid Rent. The Tenants responded to this notice by filing the above noted application on February 15, 2011 with service by registered mail. The Tenants then moved out of the rental unit on February 27, 2011. There are no issues

with service of documents. As the application in relation to grounds #1, 2, 4, 5 and 6, set out above, relate to a continuing tenancy, those claims are hereby dismissed.

Issue(s) to be Decided

Whether the Tenant has established a claim for compensation or loss under the Act, regulation or tenancy agreement.

Background and Evidence

The tenancy started on October 15, 2009 on a month to month basis. Monthly rent in the amount of \$2,700.00 was due and payable in advance of each month.

In the middle of August 2010, the Tenants experienced a sewer back-up into their residence and notified the Landlord. The Landlord agrees that the sewer system was a problem that needed to be fixed and the issue was repaired at that time. In order to ensure that a back-up from the septic tank would not again reoccur, the Landlord also dug a drain for the system located near the back of the yard. The Tenants state that this drain seeped and caused a bad odour from the middle of August 2010 until sometime in January 2011 when the landlord covered the drain. The Tenants stated that for this period of time, they could not use the backyard due to the smell and that despite informing the Landlord, nothing was done to remedy the problem. The Landlord denies that the Tenants ever complained about the smell and states that he saw a children's pool and a used fire pit in the back yard on several occasions during that period. The Landlord does confirm that in mid December, upon attending to the residence on another matter, he did notice the smell of sewer and within the month, covered the drain.

Analysis

The Act establishes rights of Tenants to quiet enjoyment of their rental unit. Tenancy agreements also contain an implied covenant of quiet enjoyment. Where the action or inaction of a landlord permits or allows substantial interference by an outside force,

which is within the landlord's power to control, the Tenant may make a claim for damages for that breach.

In the present case, both the Landlords and the Tenants acknowledge that there was a problem with the septic tank and sewer in August 2010. The Tenants have established that the sewer smell from the seepage stopped them from enjoying their backyard and that it was a substantial interference. The dispute however is over the length of time that an odour was coming from the overflow seepage.

The Tenants have not established that they contacted the Landlord about the smell in order to have the problem fixed. The Landlord agreed that he became aware of the smell in December when he attended the rental unit. He also agreed that after he covered the open area, approximately a month later, the smell no longer existed. Given the date that the landlord became aware of the problem and given the simplicity and length of time it took for the landlord to repair the problem, I find that the Tenants have established a claim for damages for a period of one (1) month at an amount of 10% of the full month's rent or \$270.00. The Tenant is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$320.00**.

Conclusion

I grant the Tenant a monetary order in the amount of \$270.00. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: March 07, 2011.

Residential Tenancy Branch