

DECISION

Dispute Codes:

Tenants' application (771820) filed April 6, 2011: CNR; MNDC; OLC; RR; FF

Landlords' application (771784) filed April 20, 2011: OPR; MNR; MNSD; MNDC; FF

Introduction

This Hearing was convened to consider cross applications. The Tenants seek to cancel a Notice to End Tenancy issued April 2, 2011; compensation for damage or loss under the Act, regulation or tenancy agreement; an Order that the Landlord comply with the Act, regulation or tenancy agreement; for a reduction in past or future rent for repairs, services or facilities not provided; and to recover the cost of the filing fee from the Landlords.

The Landlords seek an Order of Possession based on a Notice to End Tenancy issued April 7, 2011; a Monetary Order for unpaid rent and loss of revenue; to retain the security deposit in partial satisfaction of the Landlords' monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

It was established that the Landlords received the Tenants' Notice of Hearing documents and copies of their documentary evidence on April 6, 2011. It was established that the Tenants received the Landlords' Notice of Hearing documents and copies of their documentary evidence on April 27, 2011.

On May 3, 2011, an Interim Decision was issued, dismissing the Tenants' application to cancel the Notice to End Tenancy and granting the Landlords an Order of Possession. This Decision will address the remainder of the parties' applications

Issues to be Decided

- Are the Landlords entitled to a Monetary Order for unpaid rent for the month of April and loss of revenue for the month of May, 2011?
- Are the Tenants entitled to compensation for loss of laundry facilities; loss of use of the bathrooms at the rental unit; the cost of a mould inspection; and the cost of medication?

Background and Evidence

This tenancy began on January 3, 2011. Monthly rent is \$850.00, due the first day of each month. The Tenants acknowledged that they owe \$775.00 in rent for the month of April, 2011. They testified that they moved their belongings out of the rental unit on April 27, 2011, but that they still had cleaning to do and have not yet returned the keys to the Landlord.

The Tenants testified that the laundry was included in the rent. They stated that the Landlord refused to allow them use of the laundry facilities on March 1, 2011. The Tenants have four young children. The Tenants do laundry twice a week, doing an additional load every second trip (sheets and blankets) totalling 7 to 8 loads of laundry a week. The Tenants used coin laundry facilities approximately 5 kms away from the rental unit. The Tenants seek compensation for the loss of laundry facilities, as follows:

Date	Cost of doing laundry	Gas
Week of March 12, 2011	\$40.00	\$5.00
Week of March 19, 2011	\$55.00	\$5.00
Week of March 26, 2011	\$40.00	\$5.00
Week of April 2, 2011	\$55.00	\$5.00
Week of April 9, 2011	\$40.00	\$5.00
Week of April 16, 2011	\$55.00	\$5.00
Week of April 23, 2011	\$40.00	\$5.00

Week of April 30, 2011	<u>\$55.00</u>	<u>\$5.00</u>
TOTAL CLAIMED	\$435.00	\$45.00

The Landlord acknowledged locking the Tenants out of the laundry area. He stated that they were not paying their rent and therefore were not entitled to do laundry.

The Tenants testified that they noticed mould on the window sills and on the floor of one of the bathrooms shortly after moving into the rental unit and advised the Landlord. Two weeks later, in mid January, 2011, the Landlord replaced the tile around the bathtub; replaced some framework and drywall; put in a different toilet; replaced the sink, counter and light fixture; and spray painted the cabinets. The floor was left as it was. The bathroom is still not finished. The door frame and trim were not properly finished. The light fixture was not properly placed. The mirror was removed when the countertop was replaced and put back afterwards. In order to make it fit properly, the Landlord cut it, but it has a sharp edge and is dangerous.

The Landlord testified that he had professionals come in to do the renovations in the bathroom and that it was completed properly. He stated the mirror was safe.

The Tenants testified that they didn't have use of the bathroom for 2 ½ weeks while the renovations were taking place. They testified that there is another bathroom in the rental unit, but it only has a toilet and a sink. The Landlord allowed the Tenants to use the shower in another vacant rental unit, but only allowed access twice a week. One week, the Tenants and their children went 5 days without being permitted use of the shower. The Landlord would not allow the Tenants to move into the vacant rental unit while the renovations were taking place. The Landlord would not give the Tenants a key to the vacant rental unit in order to use the shower facilities as needed.

The Tenants testified that they lost the use of the ½ bath during the second week of March, 2011. The sink started to leak and the toilet would not flush because the flushing device was broken. They advised the Landlord, but he did not fix it.

During the renovations to the main bathroom, there was a lot of dust and the room was not contained. The Tenants noticed mould in a bedroom and on the window sills after the renovations were completed. They were also concerned about the spread of mould spores because the bathroom was not sealed during the removal of mouldy walls. The Tenants asked the Landlord to have a professional inspect the rental unit for mould. Two of the Tenants' children became ill with breathing problems. One of the boys was diagnosed with pneumonia in both lungs. The Landlord refused to have an inspection done, so the Tenants paid to have it done on March 18, 2011. The report indicates that there were 6 different types of mould spores found in the rental unit, and indicates a concentration of 1,502.9 mould spores per cubic metre.

The Tenants seek additional compensation, as follows:

Compensation for loss of use of both bathrooms and failure of the Landlord to address mould issues	\$1,700.00
Recovery of cost of mould inspection	\$336.00
Recovery of cost of son's prescription medication	<u>\$113.00</u>
Total	\$2,349.00

The Landlord disputed that there was any mould in the rental unit and testified that he is 100% sure that all mould was eradicated when he renovated the bathroom.

Analysis

Regarding Landlord's monetary claim:

Based on the testimony of both parties, the Landlord has established his claim for unpaid rent for April in the amount of \$775.00. It was established in my Interim Decision of May 3, 2011, that the tenancy ended on April 17, 2011. The Tenants had not returned the keys to the rental unit at the time of the Hearing. Therefore, the Tenants are over-holding and the Landlord is entitled to loss of rent for the month of May, 2011,

in the amount of \$850.00. The Landlord has established a monetary award of \$1,625.00.

Regarding the Tenants' monetary claim:

The tenancy agreement stipulates that free laundry is included in rent. Section 27 of the Act states:

Terminating or restricting services or facilities

27 (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

The Landlord did not provide the Tenants with 30 days' written notice that he was terminating use of the laundry facilities, nor did he reduce rent in an amount equivalent to the reduction in the value of the tenancy agreement as a result of that termination.

The Tenants sought a monetary award based on the cost of doing laundry at a Laundromat, but did not provide sufficient evidence of the actual cost of doing the laundry. However, I find that the termination of the Tenants' ability to do laundry resulted in a reduction in the value of the tenancy in the amount of \$35.00 per week, from March 1, 2011 to April 17, 2011 (the end of tenancy date), and award the Tenants \$210.00 for this portion of their claim.

It is important to note that the photographs provided in evidence by the Tenant are black and white photocopies, and are very unclear as to what they are actually depicting.

However, I am satisfied based on the testimony of both parties and on the copy of the mould inspector's report and statement of account provided in evidence that:

- The Tenants were without use of their main bathroom for a period of 2 ½ weeks (mid January to beginning of February, 2011); and
- The rental unit was inspected on March 18, 2011, by a professional mould inspector who confirmed the presence of mould in the rental unit.

Section 32 of the Act states:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The Tenants alerted the Landlord to the continuing problem with mould. The Tenants requested an inspection and the Landlord declined. The Tenants paid for an inspection. I find that the mould inspection report was necessary in order to affect emergency repairs to the rental unit. Emergency repairs include repairs that are necessary for the health or safety of persons.

The inspector's report includes the following statements:

"The front corner bedroom in the house had visible mold on the carpet and at the base of the drywall on an outside wall. The moisture was elevated at the base of the wall. Moisture is likely seeping in the area from outside."

"The bedroom has an active moisture and mold problem at the outside wall. The moisture problem should be addressed to prevent water ingress into the building."

I accept the professional inspector's observations that there was visible mould on the carpet and drywall in one of the bedrooms which, in the professional's opinion, was caused by moisture seeping from outside the building. Had the Landlord investigated the Tenants' complaints, he would have discovered this problem.

I find that the Landlord failed to comply with Section 32(1) of the Act and that the Tenants' incurred damage or loss as a result of this failure to comply. I allow the Tenants' claim for recovery of the cost of medication to treat their son's pneumonia and the cost of the mould inspection report.

Based on the testimony of the parties, I find that the Tenants were without use of their main bathroom for a period of 2 ½ weeks. I find that the Landlord did not provide the Tenants with reasonable access to showers for that 2 ½ week period. I find that the Tenants were without the use of their ½ bathroom from March 1, 2011 to the end of the tenancy (April 17, 2011) and that their tenancy was therefore devalued. I find that, as a result of the health issues, the Tenants were not provided with quiet enjoyment of the rental unit. The Tenants seek compensation in the equivalent of 2 month's rent, which I find to be excessive. I award the Tenants compensation in the amount of \$50.00 per week from mid-January, when they lost the use of their bathroom, to the end of the tenancy in mid-April, for a total of \$650.00.

The Tenants have established a monetary award, calculated as follows:

Compensation for loss of quiet enjoyment	\$650.00
Recovery of cost of mould inspection	\$336.00
Recovery of cost of son's prescription medication	<u>\$113.00</u>
Total	\$1,309.00

Setting off parties' monetary awards:

The Landlord has established a monetary award of \$1,625.00. The Tenants have established a monetary award of \$1,309.00. After setting off the Tenants' award against the Landlord's, the balance for the Landlord is \$316.00.

I order that the parties each bear the cost of their own filing fee.

Pursuant to the provisions of Section 72(1) of the Act, I order that the Landlord may deduct \$316.00 from the security deposit. The remaining \$184.00 must be administered in accordance with provisions of the Act.

Conclusion

The Landlord has established a monetary award of \$1,625.00. The Tenants have established a monetary award of \$1,309.00. After setting off the Tenants' award against the Landlord's, the balance for the Landlord is \$316.00.

The Landlord may deduct \$316.00 from the security deposit. The remaining \$184.00 must be administered in accordance with provisions of the Act.

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: May 06, 2011.

Residential Tenancy Branch

