



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RP, RR, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenant claims for money owed or compensation under the Act or tenancy agreement, an order for the Landlords to comply with the Act or tenancy agreement, an order for the Landlords to make repairs to the rental unit, to allow the Tenant to reduce rent for repairs or service agreed upon but not provided, and to recover the filing fee for the Application.

The Landlords claim for damage or cleaning of the rental unit, for unpaid rent or utilities, for compensation under the Act or tenancy agreement, to retain all or part of the security deposit, and to recover the filing fee for the Application.

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.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

How and when did the tenancy end?

Is the Tenant entitled to monetary compensation? Is the Tenant entitled to the other relief sought in her Application?

Are the Landlords entitled to monetary compensation?

Background and Evidence

The parties entered into a standard form, written tenancy agreement on November 14, 2010. The tenancy began on November 15, 2010, with the monthly rent set at \$950.00, payable on the first day of the month. The initial term of the agreement was for one year. The parties agree that the Tenant paid a security deposit and a pet damage deposit totalling \$950.00, although there was a typographical error in the tenancy agreement recording the amount.

The parties agreed that at the outset of the tenancy the Landlords did not perform an incoming condition inspection report.

On December 8, 2010, the Tenant emailed the Landlord with a list of items to be fixed or looked at in the rental unit. The list includes the following,

“... a rodent is leaving me his droppings under the kitchen sink;
Vent in dining rm ceiling needs to be put in;
Some plugs are missing covers;
The kitchen light is in the way of the cupboard door;
The fridge is missing a shelf drawer and one of the door shelves are broken as well;
The toilet is very wobbly;
The back bdrm door need weather stripping;
Is there a chance of getting a closet style door put on the linen shelf area... [?]”
[Reproduced as written.]

On December 17, 2010, the Landlords replied and apologized for the late response. The Landlords responded by saying,

“... please pick up 2 mouse traps and some poison (you will be reimbursed);
... [third party] has agreed to come down and fix this cover;
Please count how many [plug covers] are missing, I will go and buy some and drop them off to you;
Whoever replaced the [light bulb] bought the wrong kind. You just need to take it into Walmart and buy a smaller version...;
... [Landlord] will organize a time to come and crazy glue the shelf; however, he says that a self cannot be replaced;
[Third party] was talking to [Landlord] and said he would fix the toilet;
... Can you please measure the length of the door and let me know, I will see if I can pick some [weather stripping] up;

I don't think it would look any good to put a closet door in the hall.... the answer is kindly no."

[Reproduced as written.]

In regard to the first of these items, the Tenant purchased a rodent trap and used this.

In late February of 2011, there was a flood above the kitchen ceiling in the rental unit. The Tenant testified and submitted evidence that the ceiling was repaired and patched but not finished or repainted as of July 2011.

The Tenant testified her son was not able to use his room for four to six weeks due to another flood in the rental unit.

The Landlords testified they paid the Tenant \$500.00 at the time for her inconvenience.

Over the next few months, the parties exchanged some emails regarding hydro bills and the tenancy agreement. Following a request from the Tenant, the Landlords sent the Tenant a copy of the tenancy agreement on March 1, 2011.

On July 4, 2011, the Tenant wrote the Landlords to explain she still had some issues with the rental unit. The Tenant requested that the Landlords address the issues by July 18, 2011, or the Tenant would file an Application with the Branch.

The issues set out in the July 4 document were the continuing problems with rats, kitchen ceiling was still to be finished, the wobbly toilet, and the ceiling vent in dining room had still not been replaced.

The Tenant also brought forward new issues regarding the outside front light not working, and poor draining sink and tub, poor caulking around the tub, the base of a wall beside the tub was damaged and mouldy due to water leaking, the renter in another unit is constantly using the Tenant's second allotted parking stall, the backyard had a lot of wood and rubbish in it, renter in other unit not picking up her dog's feces, disparity in hydro bill due to more occupants allowed into the upper rental unit and a complaint about ongoing barking from the neighbour's dog.

The Landlords' replied on July 5, 2011, that poison and traps would be bought, an electrician would replace the outside light, that nothing was known about the flood in February or the ceiling by one of the Landlords, the toilet would be looked at, as would the bathtub, sink and caulking, the Tenant was to clean up the mould, the renter upstairs would be reminded about the second parking stall, to clean up the backyard,

and pick up after the dog, and that the Tenant was required to keep paying the hydro bill as agreed upon. The Landlords also suggest they would agree to a mutual end of tenancy, where no party is at fault and, "... only the months that you remain living in the suite are what you would be obligated to pay for (including utilities)."

The parties then exchanged more emails regarding the situation and on July 8, 2011, the Landlords and the Tenant signed a mutual agreement to end tenancy effective August 31, 2011.

On July 11, the Tenant asked the Landlords for other options, including a mutual end to the tenancy on July 31, 2011. The Landlords refused this, stating the Tenant had already agreed to an end of tenancy on August 31, 2011.

The Landlords claim the Tenant caused the water damage to the wall in the bathroom, by not drying off the wall after a shower or bath.

The Landlords also testified that they had their two sons previously living in the suite and heard no complaints about rodents. The Landlords testified they had trapped one rat and had caught no others during this tenancy.

The Landlords brought a contractor in on July 8, 2011, to look at the work the Tenant was requesting.

The Tenant vacated the rental unit on or about July 31, 2011. There was no outgoing condition inspection report performed by the parties.

The Tenant is claiming monetary compensation of \$950.00, to recover the filing fee of \$50.00 for the Application, and to be released from the lease as of July 31, 2011.

The Landlords are claiming \$950.00 for August rent, \$97.00 for hydro for August, \$20.00 to re-hang a closet door, \$20.00 to paint the front door due to scratches allegedly made by the Tenant's dog, \$120.00 for finishing and puttying of damaged walls and the \$50.00 fee for the Application.

Analysis

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

While the Tenant wrote to the Landlords in early July regarding deficiencies in the rental unit, I do not find the Tenant made it sufficiently clear to the Landlords in this correspondence that she was considering the deficiencies to be a breach of a material term of the tenancy agreement serious enough to cause her to end the tenancy. This is what is required under section 45(3) of the Act, and I do not find the Tenant acted in accordance with this section to end the tenancy sooner.

Therefore, I find the tenancy ended on August 31, 2011, as a result of the mutual agreement to end tenancy. I find the Tenant was responsible for the rent and the hydro for this month.

I find the Landlords provided insufficient evidence to prove their other claims and these are dismissed. For example, the Landlords should have performed an incoming condition inspection report for comparative purposes when the Tenant moved out.

As a result, I allow the Landlords' claim for the month of rent in August and for hydro, in the total amount of \$1,047.00. Pursuant to section 72 of the Act, I allow the Landlords to retain the deposits of \$950.00 and award them the balance of **\$97.00**, subject to the set off described below.

I find the Landlords breached the Act by failing to provide a rental unit which complied with section 32 of the Act.

The ongoing problem with rodents in the rental unit, and the other problems the Tenant complained to them about, such as the wobbly toilet, are indicators that the Landlords failed to maintain the rental unit properly and were very slow to react to the Tenant's concerns. For example, a complaint about rodents should have caused the Landlords to hire a pest control company to investigate and remediate immediately. Instead, this problem appears to have escalated over the tenancy. The Tenant is not responsible to provide this type of maintenance during the tenancy, just as she is not required to repair the wobbly toilet, or ceiling kitchen, etc. This leads me to find the Landlords failed to respond in a timely and appropriate manner to the requests of the Tenant for repairs to the rental unit.

I acknowledge the Landlords did compensate the Tenant \$500.00 for loss of use of the rental unit due to the flood, however, the Landlords should have addressed the other problems the Tenant complained about much sooner and with greater diligence. These problems largely lasted the nine months of the tenancy.

I find the loss of use and the loss of quiet enjoyment of the rental unit caused the Tenant to suffer a loss.

Under section 67 of the Act, I find that the loss should be compensated in the form of reduced rent. I order that the rent be reduced in the amount of \$125.00 for the nine months of the tenancy, or for a total of **\$1,125.00**, subject to the set off described below.

As both parties here have breached the Act, I decline to award either the filing fee for the Applications.

I have awarded the Tenant \$1,125.00 and the Landlords are due a balance of \$97.00. I offset these amounts [$\$1,125.00 - \$97.00 = \$1,028.00$] and award the Tenant the sum of **\$1,028.00** payable by the Landlords. The Tenant is granted a monetary order in this amount, which may be enforced in the Provincial Court.

This decision is final and binding on the parties, except as otherwise provided for in the Act, and 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: August 15, 2011.

Residential Tenancy Branch