



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC LRE OPT LAT RR FF

Introduction

This hearing dealt with an application by the tenants for monetary compensation and an order that the landlord comply with the Act, an order suspending or setting conditions on the landlord's right to enter the rental property, an order of possession for the tenants and authorization to change the locks to the rental unit. The landlord, both tenants and a translator for the tenants participated in the teleconference hearing.

The hearing convened on two dates. On the first of these dates, July 29, 2011, I heard evidence regarding the tenants' claim for monetary compensation for the cost of renting a carpet cleaning machine, damaged personal items, recovery of money paid to the landlord for replacement of flooring and compensation for parking that was not provided. By the time the hearing reconvened on September 6, 2011, the tenants had moved out of the rental unit. I therefore dismissed the portions of the tenants' application regarding an order that the landlord comply with the Act, an order suspending or setting conditions on the landlord's right to enter the rental property, an order of possession for the tenants and authorization to change the locks to the rental unit, and only heard evidence regarding the tenants' claim for compensation for loss of quiet enjoyment.

I have reviewed all 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

Are the tenants entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on July 1, 2009. The rental unit is a self-contained suite on the ground floor of a house. The landlord resides in the upper portion of the house. The monthly rent was \$780. The tenancy agreement indicated that parking for one vehicle

was included in the rent. An addendum to the tenancy agreement indicated that the back yard was “mainly” for the tenants’ use.

The evidence of the tenants was as follows.

1) Carpet cleaning

At the outset of the tenancy, the carpets in the rental unit were not clean. The tenants rented a carpet cleaning machine to clean the carpets in the rental unit, and the landlord also used the machine in her unit. The tenants have claimed \$200 for reimbursement of the rental costs for the carpet cleaning machine. The tenants did not provide a copy of a receipt for this expense.

2) Laminate flooring

In 2010, the landlord and the tenants agreed that the carpets in the rental unit would be replaced with laminate flooring. The parties agreed that the overall cost would be approximately \$2000 for materials and labour, and the tenants would pay for one-third of the cost. The tenants paid the landlord \$666. The landlord did not give the tenants any receipts for the laminate flooring, and the tenants therefore seek recovery of the \$666 they paid the landlord.

3) Damaged personal items

The tenants stored several pairs of shoes, some drying cloths and a baby stroller under the landlord’s balcony. The landlord washed her balcony three times in two weeks, and water came down on the tenants’ possessions and damaged them. The tenants have claimed \$880 for replacement of these items.

4) Parking

The tenants believed that the one parking space indicated on the tenancy agreement was for use of the garage. Instead, the landlord told the tenants to use a space on the street in front of the house for parking. The tenants have claimed compensation of \$50 per month for 24 months, for the landlord’s failure to provide parking as set out in the tenancy agreement.

5) Loss of quiet enjoyment

On June 30, 2011 the landlord came to the tenants' door without prior notice and notified the tenants that she wanted to use their rental unit to store her book shelves. After this incident, the landlord started to interfere with the tenants' quiet enjoyment by playing loud music, vacuuming or doing laundry at different times of the night, sometimes at 2 a.m. or 3 a.m. The police attended four times as a result of the tenants' noise complaints. The landlord also started entering the backyard, which was for the tenants' use, several times. The rental suite has glass doors facing out onto the back yard, so there was no privacy for the tenants when the landlord was in the back yard. The landlord came to the tenants' door without notice sometimes twice a day, up to four times a week, to give the tenants a notice or bill. She would bang on the windows or knock on the door and disturb the tenants' baby all the time. The situation became worse after the first hearing date on July 29, 2011. The tenants ultimately decided to move out of the rental unit, on August 21, 2011. The tenants have claimed recovery of prorated rent from August 1 to 21, 2011, in the amount of \$528.39.

The landlord's response was as follows.

1) Carpet cleaning

The rental unit was very clean at the outset of the tenancy. Seven months later, the tenants borrowed a carpet cleaning machine from friends to clean their unit, and the tenants let the landlord borrow the machine to use on her carpets.

2) Laminate flooring

The tenants' dog was damaging the carpets in the rental unit. The landlord and tenants made an agreement whereby the landlord would replace the carpets with laminate flooring, and the tenants would pay one third of the costs. The landlord got quotes from three different contractors, and together the landlord and tenants chose the least expensive one, for \$2000. As they agreed, the tenants paid \$666 toward the materials and labour to install the laminate flooring.

3) Damaged personal items

The landlord told the tenants that the back yard was for their use, and the landlord would only use the balcony. The landlord told the tenants to take care of their own items, and it was the tenants' choice to store their items below the balcony.

4) Parking

The landlord always left one parking space open for the tenants to park on the street in front of the house. The landlord and tenants never discussed \$50 as the value for the parking.

5) Loss of quiet enjoyment

The landlord and her daughter play the piano all the time, and they can't adjust the sound. On one occasion during the day, the landlord's daughter and her friends were listening to music. The landlord does laundry and vacuuming as part of her daily housekeeping, but she always does it during the daytime, and only does light laundry and vacuuming in the summer. The landlord did deliver notices to the tenants by posting them on the door, which the landlord is allowed to do. The landlord also did gardening in the backyard. She tried to stay out as much as possible but had to clean up leaves in the fall and water plants in the summer.

Analysis

After considering the evidence, I find as follows.

1) Carpet cleaning

The tenants did not provide evidence that they had an agreement with the landlord to rent a carpet cleaning machine and then receive reimbursement for the rental costs. Furthermore, the tenants had no receipt to support this portion of their claim. I therefore dismiss this portion of the application.

2) Laminate flooring

I find that the landlord and tenants made an agreement regarding the laminate flooring which is separate from the tenancy agreement. Moreover, I do not find that the tenants are entitled to recovery of the amount they paid the landlord, simply on the basis that the tenants suspect that the landlord spent less than \$2000 on the materials and costs to replace the flooring.

3) Damaged personal items

The tenants did not provide sufficient evidence either to establish the value of the damaged items or to establish that the items were damaged by the landlord's actions rather than the tenants' careless storage of these items. I therefore dismiss this portion of the tenants' application.

4) Parking

The tenancy agreement indicates that rent includes one parking space. I do not find that the landlord provided a parking space simply by indicating that the tenants could park on the street in front of the house. I therefore find that the tenants are entitled to compensation for parking, which the landlord was to provide but did not. However, I find no evidence that the agreed-upon value of a parking space was \$50. I find it the rate of \$15 per month to be reasonable. The tenants are therefore entitled to compensation of \$360 for lack of parking for 24 months.

5) Loss of quiet enjoyment

I found the evidence of the tenants to be more credible than that of the landlord regarding loss of quiet enjoyment. The landlord on one hand stated that the back yard was for the tenants' use, but then acknowledged that she went into the back yard to do yard work throughout the year. The landlord stated that she and her daughter played the piano all the time and could not adjust the volume. The landlord also gave contradictory evidence regarding vacuuming and laundry, first stating that she did it on a daily basis and then stating that she only did light laundry and vacuuming in the summer months. The landlord believed that she was entitled to disrupt the tenants any time she chose to serve them with a bill or a notice. I accept the evidence of the tenants that the landlord deprived the tenants of their quiet enjoyment, and I grant them the full amount claimed of \$528.39.

As the tenants were partly successful in their application, I find they are entitled to partial recovery of their filing fee, in the amount of \$25.

Conclusion

I grant the tenants an order under section 67 for the balance due of \$913.39. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The remainder of the tenants' application is dismissed.

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: September 20, 2011.

Residential Tenancy Branch