Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, RP, RR, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was originally convened as a teleconference hearing on August 9, 2011 and was adjourned to be reconvened as a face to face hearing at the participants request.

At the outset of the hearing the parties confirmed the tenants were no longer living at the dispute address and the tenancy has ended. As a result the tenants acknowledged there was no longer a need for an order to have the landlord make repairs or to allow the tenants to reduce the rent for repairs not provided. As such I amend the tenant's application to exclude these matters.

The tenants also noted they wished to reduce the amount of their monetary claim to include only loss of income, as the tenants worked from home, and the costs associated with repairing a window for a total claim amount of $1,700.00.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for loss of income and for emergency repairs and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 33, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The tenants submitted a copy of a tenancy agreement signed by the parties by January 1, 2011 for a 1 year fixed term tenancy beginning on January 1, 2011 for a monthly rent of $1,500.00 due on the 1st of each month with a security deposit of $750.00 paid on January 1, 2011.

The parties agree the tenants moved into the rental unit prior to the start of the tenancy and the tenants testified that they painted and cleaned the rental unit. The tenants submitted a copy of an undated move in Condition Inspection Report, although there are notations showing January 8, 2011. The tenants testified the condition inspection was completed on January 8, 2011, the landlord did not dispute this testimony.

The tenants testified that on February 18, 2011 they first noticed a rate problem in the rental unit and that within 2 days they phoned the landlord who provided rat poison. The tenants put out the poison but that there continued to be evidence of an active rat infestation. The tenants testified that they tried many things on their own to discourage the rats from entering the house.

The tenants' written submission indicates the tenants raised several items for repair during the tenancy such as the water heater, washing machine and toilet and that the landlord made these repairs.

The tenants then noted in May 2011 that in one of the rooms the tenants were killing from 6 to 40 flies a day and when they duct taped all holes in the room the flies stopped. They note also that carpenter ants had infested their bedroom. The tenants submit the landlord came over the day after it was reported and treated the area with ant poison but that the landlord did not complete any structural repairs.

The tenants submitted into evidence a copy of a letter from the tenants to the landlord dated May 25, 2011 that the tenants acknowledge was the first written request for the landlord to deal with the rat, fly, ant issues. The letter includes a request to repair a closet light; provide fire alarms; repairs to the screen door; and to clean up the yard to prepare for the tenants to maintain. The tenants applied for dispute resolution on May 30, 2011.

The tenants also provided copies of correspondence from the tenants to the landlord and from the landlord to the tenants from May 31, 2011 to July 27, 2011. In the correspondence from the tenants new repairs are requested throughout the month of June 2011 including in a letter dated June 19, 2011. In that letter the tenants specifically identify the front window as being a security issue and they ask that the landlord repair it.

In a letter from the landlord to the tenants dated June 28, 2011 the landlord states that on June 21, 2011 they spoke to glass installers who were replacing the front window. The tenants then withheld the amount paid to the installers as an emergency repair and on July 7, 2011 paid the landlord the full amount and advised the landlord that they had amended their Application for Dispute Resolution to include this cost.

Additional correspondence between the parties included discussions of ending the tenancy early and the potential to assign the tenancy to new tenants, and ongoing scheduling for repairs.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32 of the *Act* requires that a landlord provide and maintain residential property in a state of repair that complies with health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 33 defines Emergency Repairs as those repairs that are urgent; necessary for the health or safety of anyone or for the preservation or use of residential property; and are made for the purpose of repairing major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; the primary heating system; damaged or defective locks that give access to a rental unit; or electrical systems.

Section 33 goes on to say that a tenant may have emergency repairs completed only if emergency repairs are needed; the tenant has made at least 2 attempts to contact the landlord to complete the repairs; and following those attempts the tenant has given the landlord reasonable time to make repairs.

Based on the evidence before me I accept the rental unit has had a need for several repairs over the course of the tenancy. I also accept the tenants accepted the condition of the rental unit at the start of the tenancy by signing the Condition Inspection Report. This does not relinquish the landlord from his obligations under the *Act*, but merely confirms the tenants were aware of the condition at the start of the tenancy.

From the written submissions and testimony of the tenants, I find that until the written request dated May 25, 2011 the tenants did not provide a clear expectation to the landlord of the extent of the required repairs.

Once, the written request was provided to the landlord, I find the landlord did respond in a reasonable timeframe. I note, however, that with each new letter from the tenant additional concerns and items were added to the list of repairs the tenants were seeking. I accept the landlord's position that he responded to all requests in a reasonable timeframe.

I note also that the tenants provided the written request on May 25, 2011and filed their Application for Dispute Resolution 5 days later and that most of the repairs the tenants were originally seeking were identified after they submitted this Application.

From the tenants' own submission in other matters prior to May 25, 2011 such as the water heater, washing machine, and toilet the landlord responded within a reasonable time frame. In addition, from the tenants' submission, they identify that the day they

reported the first rat sighting the landlord provided poison and instructions for its use, after the tenants' request.

I find the tenants have failed to provide sufficient evidence to establish that they requested specific repairs from the landlord prior to May 25, 2011. From all of the evidence before me, I find the landlord responded within a reasonable time for all requests made for repairs, including the ones requested both in the May 25, 2011 letter and to subsequent requests from the tenants. I find it unreasonable for the tenants to expect immediate response to all items on their list.

In relation to the tenants' claim for the costs of replacing the front window, I find the replacement of a front window does not fall within the definition of an emergency repair. Even if this repair was considered an emergency repair, I find the tenants failed to provide evidence to show that they attempted to contact the landlord twice and after those attempts provide a reasonable time to make the repairs. I note the glass installers were on site 2 days after the written request to the landlord was dated.

Conclusion

For the reasons noted above, I find the tenants have failed to establish they suffered a loss or damage and that the landlord breached any obligations under the *Act*, regulation or tenancy agreement and I, therefore, dismiss the tenants' Application, in its entirety.

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 27, 2011.

Residential Tenancy Branch