Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order and a cross-application by the landlords for a monetary order. Both parties participated in the conference call hearing.

Issues to be Decided

Are the tenants entitled to a monetary order as claimed?
Are the landlords entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in July 2010 and ended in June 2011 and that the tenants paid $1,400.00 per month in rent.

The tenants seek to recover the rent paid for 3 months of their tenancy, claiming that for one month they were unable to live in the unit due to a rat infestation and in two other months they lost quiet enjoyment of the home and had to limit their use of water. The tenants further seek to recover the cost of replacing area rugs which they claim were damaged by rat feces and urine and replacing a vacuum which was contaminated by rat feces.

The tenants testified that early in their tenancy, they saw rat droppings in the garage and called the landlord who advised that they had seen rats in the garage previously. The tenant laid traps and in late July or early August detected an odour which they now believe was a decomposing rat.

The tenants stated that in October they noticed chewed toilet paper under the bathroom sink. They laid sticky traps in the area. On November 23 the tenants observed a rat on the stove. The tenants pulled the stove away from the wall and noticed a hole in the corner of the cabinet. They laid sticky traps and were awakened later to the sound of a rat “screaming.” They were able to trace the trail of the rat to a toilet, where it had

apparently drowned. The following morning the female tenant and the tenants' 2 young children left to stay with a relative. The tenants found feces throughout the rental unit and area rugs were stained by feces and urine. On November 26 the tenants contacted the landlord to advise her of the situation. The landlords arranged for a pest control company to attend at the unit on November 27. The tenants stated that because the house was not being lived in, the company placed traps throughout the residence and advised that they'd return in one week to check the traps. The company advised the tenants that carpet and underlay in the crawlspace under the house should be removed as it offered a potential breeding ground. The company told the tenants that they would advise the landlord of this recommended course of action.

The tenants stated that on December 6 they contacted the landlord to ask whether the pest control company had suggested the removal of carpet and underlay. The tenants also asked the landlord to pay for a cleaner to completely clean the unit. The landlord agreed to pay to have the floor cleaned and told the tenants that they would reimburse them for such cleaning. The tenants located a cleaner, paid her and were reimbursed.

On December 9, the colleagues of the male tenant spent time at the rental unit to seal all points through which rats could access the rental unit.

On December 11, a company hired by the landlord attended to remove carpet and other rubbish from the crawl space. The tenants testified that at that time, the company advised that a pipe in the crawl space was bowed and leaking. The tenants claimed that the company said they would advise the landlord of the issue with the pipe.

The tenants completely cleaned and sanitized the unit and moved back in on December 15. They requested compensation from the landlords, which was denied.

The tenants testified that on December 15 they advised the landlord of the leaking pipe and asked that it be repaired as it presented a possible source of water for rats.

The tenants stated that on May 5, the basin into which the washing machine drained overflowed. They had started the machine before leaving the house and returned to find water on the floor. The tenants stated that they cleaned up the water and tested the basin drain to discover that it drained slowly. The tenants did not use the washing machine again without closely monitoring it and turning it off to allow the drain to work. The tenants stated that on May 6 they tried to clear the drain with Drano but it was ineffective. On May 7 the tenants looked into the crawl space and observed that 1/4 - 1/3 of that area was covered with standing water. The tenants stated that they telephoned the landlords to report the water in the crawl space.

On May 14 the same company which had attended the unit on December 11 returned to assess the issue with the crawl space. On May 15, the company repaired the bowed pipe and the tenants claim that they advised the tenants that there was another leak below the toilet which was leaking a minimal amount of sewage. The tenants claimed that the company expressed concern about sewer gases and advised them to drain as little water as possible.

On May 22 the tenants sent the landlords a message on Facebook to ask whether they would repair the sewage leak. The landlords replied on May 23 advising that the plumber had reported that the leak was minor so the landlord did not intend to perform a repair.

On May 27 the tenants arranged for an Environmental Health Officer with the Fraser Health Authority to inspect the pipe. The officer wrote the landlord a letter dated May 27, 2011 advising that there was a pool of what she suspected to be sewage in the crawlspace and asked the landlords to effect a repair by June 10. The tenants testified that on May 28 the landlords advised that a plumber would be inspecting the area which occurred on May 30. On May 31, the tenants received from the health officer a forwarded email from the landlords in which the landlords stated that plumbers had told her that the leak was very minor and that the landlords intended to repair the leak in July when they returned to Vancouver.

The tenants testified that they were concerned about the health effect of living in a unit in which there was a sewage leak and standing water below the home and stated that because of this concern and the odour in the rental unit, they stopped living in the rental unit in the second week of June and moved the last of their belongings out on June 26.

The tenants claimed that they did not immediately report issues to the landlord because at the outset of the tenancy, the landlords had advised that they intended to demolish the rental unit at the end of the tenancy and did not want to spend a lot of money on repairs.

The landlords testified that at the outset of the tenancy they showed the tenants rat droppings in the garage and advised them to ensure that a trap door in the garage door was always sealed because in the past, it had been an entry point for rats. The landlords maintained that they immediately responded whenever the tenants telephoned to report a problem and testified that when the pest control company attended the rental unit in November to set traps, the landlords directed the company to focus on possible points of entry. The landlords claimed that the pest control company directed the tenants to call immediately if there were any sign of rats. The landlords provided a copy of a letter from the company in which it confirmed that this request was

made of the tenants. The author of that letter advised that the landlords made several telephone calls to check on the progress of the extermination and that despite a return visit, no rodents were caught and on December 4, a week after traps were set, no fresh evidence of rodents was noted.

The landlords testified that they were in the city on May 10 and attended at the rental unit to inspect the damage to the laundry room caused by the flooding. They discovered significant damage. The landlords maintained that the pipe was plugged and that it was repaired and no further drainage problems occurred. The landlords acknowledged that the sagging pipe in the crawlspace was reported in December, but stated that the company that reported it advised that it was not leaking at that time.

Upon receipt of the letter from the health officer, the landlords arranged for an agent to inspect who discovered that the only problem was pooled water on concrete. The agent stated that there was no sewage.

The landlords entered into evidence a letter from the repairmen who attended at the unit in December and again in May. The author of that letter reported that there was not a leak in December and that in May, he engaged the assistance of the tenants to run water from various sources to determine whether there were more leaks. The author noted one more minor leak and determined that it was not sewage. He claimed to have told the tenant that there was not a sewage leak and advised the tenant to not use water excessively. The author specifically stated that he told the tenants they could still do laundry, have showers and use the toilet and sinks as usual. The author claimed that the tenant told him he was moving out in 2 weeks and just wanted to ensure that there would be no trouble with the pipe in the interim. The author claimed to have assured the tenant that unless there was an earthquake, the pipe would be fine. The author stated that he reported to the landlords that it was unnecessary to do any repairs to the pipe at that time.

The landlords submitted copies of their correspondence with the health officer which showed that she had reported that she had run fluorescent dye tests in the sinks and toilet and that as these tests had been inconclusive and the landlords' plumber had reported that there was no sewage, she closed the file and took no further action.

The landlords claimed that the tenants' failure to report the flood immediately on May 5 resulted in extensive damage to the floor and drywall, necessitating more than $5,000.00 in repairs. The landlords have limited their claim to $5,000.00.

Analysis

The Residential Tenancy Act places a burden on landlords to maintain residential property and when landlords are made aware of a maintenance issue, they are expected to act reasonably to make whatever repairs are required. While I accept that the tenants attempted to resolve issues on their own prior to advising the landlords, this hampered the landlords' ability to address issues in a timely manner. While the landlords were aware of historical issues with rats, they had no reason to believe that there was current activity until they were informed by the tenants. The tenants testified that they first noticed rodent activity in late October but delayed reporting this issue for approximately a month while they attempted to battle the infestation on their own. When they contacted the landlords, the landlords acted quickly and reasonably by sending a pest control company. The tenants had an obligation to report further problems to the pest control company, but for some reason chose not to do so.

I accept that the tenants lost quiet enjoyment of the rental unit during the infestation period, but I find that to a large extent, they were the authors of their own misfortune as they did not give the landlords an opportunity to address the issue. Under normal circumstances, I would accept that the pest control company should have acted to look for points of entry. However, as the tenants chose not to report ongoing activity, the company had no reason to believe that such action was necessary.

For these reasons I find that the landlords cannot be held liable for the tenants' loss of enjoyment due to the rat infestation and I dismiss that claim. The claim for the cost of replacing area rugs and a vacuum cleaner must also fail as I find that there is reason to believe the infestation would not have escalated and the items not been damaged had the tenants reported the situation immediately and permitted the landlords to act in October rather than waiting for a month.

With respect to the second part of the tenants' claim, the allegation that the landlords failed to respond quickly to the report of leaks, I accept that the landlords were advised of the sagging pipe in December but I find that at that time, they had no reason to believe that immediate action was necessary based on the report they were given by the repairperson who had been in the crawlspace. While the tenants may have reported in December that the pipe was leaking, I accept the report of the repairperson which indicates that there was not a leak at that time.

The tenants advised the landlords of the leak on May 7, one of the landlords inspected the unit on May 10 and arranged for a repairperson to attend at the unit on May 14. The leaking pipe was repaired on May 15. I find that there was a one week period in which the tenants were inconvenienced. However, the tenants testified that they were able

use the washing machine during this period by stopping it mid-cycle and allowing water to drain slowly. The tenants provided no evidence to show that they incurred expense washing clothing elsewhere and as they were not entirely deprived of the use of the washing machine, I find the inconvenience to be so minimal that it does not warrant compensation.

Although the tenants claim that the repairperson advised them that they should limit their water usage because of a further leak, I find it more likely than not that the repairperson's account is accurate and that the tenants were told not to use an excessive amount of water. This is consistent with what was told to the landlords by the repairperson. I find that if the tenants chose to limit their water usage after May 15, it was a self-imposed limitation and not one required because of the situation with the pipes.

I find that the leak which was noted but not repaired on May 15 was not a sewage leak, but a very minor water leak. I have determined this because this was the finding of the repairperson and although an allegation of a sewage leak was made by the health officer, her tests were inconclusive and she closed her file on the report which indicates that she no longer suspected a sewage leak.

I find that the tenants were not forced by the situation to vacate the rental unit earlier than planned and that they did not suffer a loss of quiet enjoyment as a result of the landlords' actions or failure to act and accordingly I find that the claim must fail.

The tenants' claim is dismissed in its entirety.

There has been no allegation that the flood in the laundry room occurred as the result of the tenants' actions, but that the resultant damage was exacerbated by the tenants having delayed reporting the flood for 2 days. In order to prove their claim, the landlords must prove that the damage is directly linked to that delay. Although the landlords postulated this theory, they provided no evidence to corroborate this claim. The tenants testified that they cleaned up the water the same day the flood occurred and that they used the washing machine carefully thereafter to ensure that another overflow did not occur. I find that the tenants' actions did not cause or exacerbate the damage and accordingly I dismiss the landlords' claim.

Conclusion

Both claims are 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: October 11, 2011

Residential Tenancy Branch