Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order and a cross-application by the landlord for a monetary order. The hearing was originally scheduled to take place on September 14, 2011. On that date, both parties appeared at the hearing and agreed to an adjournment as the landlord had not yet received the tenants' evidence. The parties agreed to adjourn the hearing. The reconvened hearing was held via telephone conference call on October 17 and both parties participated.

Issues to be Decided

Are the tenants entitled to a monetary order as claimed?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in September 2009 and ended on either May 1 or 2, 2011 pursuant to a 2 month notice to end tenancy. They further agreed that the monthly rent was $1,000.00 per month and that the tenants did not receive the one month's compensation to which they were entitled under section 51(1) of the Act.

The tenants seek to recover the aforementioned compensation as well as $5,000.00 in loss of quiet enjoyment of the rental unit for a 5 week period in January and February 2011. The tenants testified that on January 9, they noticed that they had no heat in the rental unit and on January 10 they noticed flooding in the furnace room and the bathroom. Water had covered the floor and soaked into the drywall in those rooms. They stated that on January 11 they called the landlord who sent a family friend to inspect and perform repairs. The tenants testified that 3 weeks after they had first reported that they had lost heat, the furnace was repaired and they were without heat during that period. They further testified that from January 10 – February 12 while repairs were underway to the areas damaged by the flood, they could not use the bathroom because the shower was not connected and there was asbestos in the walls

so the tenants could not go anywhere near the open walls. They stated that for 15 days they could not use the bedrooms and had to sleep in the living room.

The tenants expressed concern that they had been exposed to asbestos and stated that they were told by workmen that asbestos had been found and had to be removed. They provided photographs of the rental unit which show that a sheet of plastic was taped over the hallway leading to the bedrooms and bathroom, held in place by red tape. A sign was on the plastic sheet identifying the area behind the sheet as a containment area. The tenants acknowledged that the sign did not state that there was asbestos in the containment area but argued that containing the area would have not been required had there not been asbestos in the area.

The tenants testified that during the weeks in which they did not have access to the bathroom, they had to use the bathroom at a local coffee shop and bathe in buckets in their kitchen. They testified that their washer and dryer could not stay in the bathroom where they had hooked it up and they moved the machines into the kitchen, which took up considerable space and became a safety issue.

The landlord testified that the furnace didn't operate for just 2 days and that she provided heaters to the tenants during that time period. She testified that she made the bathroom on the upper floor of the residence available to the tenants, but they declined her offer. The landlord argued that laundry facilities were not included in the rent and that the tenants had provided their own washer and dryer. When the flooding occurred, they asked the landlord if they could put the washer and dryer in the kitchen and she permitted them to do so. The landlord provided an email from her contractor in which he said that the furnace was repaired within 2 days and that the toilet was left in place as long as possible and could have been used by the tenants. The landlord denied that asbestos was found in the rental unit.

The tenants claimed that the email was written by an employee of the insurance company and that they had contacted the insurance company and been told that the employee no longer worked for them. The tenants acknowledged that the landlord had offered the use of the upper bathroom, but stated that they were not comfortable using it. They claimed that they could not use the toilet in the rental unit even when it was in place because they were afraid of breathing in asbestos.

The landlord advanced a claim to recover monies spent to repair damages. She claimed that the unit had been freshly painted at the outset of the tenancy and that at the end of the tenancy, she had to repaint that part which had not been repaired by the contractors because there were nail holes and dents in the drywall. The tenants

testified that they did not hang any pictures on the walls and denied having caused any damage.

The landlord claimed that at the end of the tenancy, there were holes in the fireplace, slate was broken and bricks were missing. The tenants acknowledged that there were holes in the fireplace, but stated that they had been put there by the landlord's daughter, who had previously lived in the rental unit. They stated that the slate was not damaged and that no bricks were missing.

The landlord testified that the tenancy agreement did not include laundry facilities but that at the outset of the tenancy, the tenants asked if they could install hook-ups in the spacious bathroom. The landlord granted her permission. She testified that at the end of the tenancy, her electrician advised that the hook-ups were installed dangerously and posed a risk. In particular, the electrician had said that hook-up for the dryer, which was right beside the bathtub, was dangerous. The tenants testified that a friend installed the hook-ups and argued that because the landlord did not object to it for 2 years, it was not open to her to raise an objection at the end of the tenancy.

The landlord testified that in November 2010, she had to replace a toilet in the rental unit. She testified that there was nothing wrong with the toilet at the beginning of the tenancy, but within a few months, it was completely plugged. The landlord arranged for the toilet to be inspected and a toy was discovered lodged in the toilet. The toilet had to be broken to remove the toy and the landlord replaced the toilet at a cost of $300.00. The tenants testified that the toilet plugged occasionally from the outset of the tenancy and claimed that the landlord had told them that her grandson had placed a toy in the toilet and that the plumber had told them the same thing when he replaced the toilet.

The landlord testified that the tenants did not pay rent for the period from February 15 – March 15. She provided copies of receipts, most of which showed payment in full for other months. The receipt for February 13 – March 13 stated that the tenants "didn't pay because of husband on comp will pay later". The tenants argued that they had paid rent for that month and provided a copy of their bank statement showing that $1,000.00 was withdrawn from their bank on February 13, the date that rent was due. They claimed that the landlord had never given them receipts.

Both parties seek to recover the filing fees paid to bring their applications.

Analysis

As the parties agreed that the tenants did not receive the compensation to which they were entitled under section 51(1) of the Act, I award the tenants $1,000.00.

The landlord had an obligation to provide the tenants with a fully functional rental unit. Although there is no evidence that the landlord was negligent, it is clear that there was a 5 week period in which the tenants did not enjoy full use of the rental unit and therefore did not receive what they were entitled to receive under the terms of the tenancy agreement. I accept that the furnace was repaired 2 days after it was reported. I accept the email from the landlord's contractor as legitimate. Although the tenants argued that the email was in some way fraudulent, the basis for their argument was that the contractor was an employee of the insurance company and there is no evidence showing that this was the case.

The landlord offered to the tenants the use of a bathroom on an upper floor and while this may have somewhat minimized the disruption to them, it did not change the fact that they no longer had shower facilities available inside the rental unit. I accept that the toilet in the rental unit was available for part of 5 week period in question.

As the use of the washer and dryer was not part of the tenancy agreement and as the tenants requested that the landlord move the washer and dryer into the kitchen during the repair period, I find that the tenants are barred from claiming loss of quiet enjoyment as a result of the machines having been in the kitchen.

The tenants claimed that they were exposed to asbestos, but there is no evidence to corroborate this claim. There are many reasons why an area under renovation might be contained, including a desire to contain dust and debris. I find that the tenants have not proven that they were exposed to asbestos or that they could not have used the toilet when it was operational because of asbestos.

The tenants seek to recover $5,000.00 in compensation for a period of less than 5 weeks. I find their claim to be excessive as it represents more than 4 times what they paid in rent during that period. I find that the tenants were inconvenienced for a 5 week period and substantially inconvenienced for the 2 weeks in which they could use neither the bathroom nor the bedrooms. I find that an award of $600.00 will adequately compensate the tenants for their loss of quiet enjoyment and I award them that sum.

Turning to the landlord's claim, the landlord did not provide photographs of the walls or the fireplace. In order to prove her claim for the cost of repairing and repainting, the landlord must prove that the tenants caused damage which goes beyond what may be characterized as reasonable wear and tear. In the absence of photographic or witness evidence, I am unable to determine whether the damage was excessive and accordingly I dismiss those claims.

The parties agreed that the tenants arranged for the laundry hook-ups. Although the landlord did not act to change the hook-ups during the tenancy, I find it reasonable that she waited until she had a professional opinion advising her that the hook-ups were unsafe. The landlord did not provide a copy of that opinion or photographs. However, common sense directs that hooking up a dryer immediately beside a bathtub could not be safe. The tenants did not dispute that although they arranged for the original installation, the landlord paid the installation fee. As the landlord had to incur an additional expense correcting the tenants' error, I find that the landlord should recover that expense. I award the landlord $500.00.

I find on the balance of probabilities that it was more likely than not that the tenants caused the toy to lodge in the toilet. I have arrived at this conclusion because I find it unlikely that the toilet would work sufficiently for 2 months with such an obstruction. I find that the landlord should recover the cost of replacing the toilet. I find the $300.00 claim to be reasonable and I award the landlord $300.00.

I dismiss the landlord's claim for $1,000.00 in rent as I find that the landlord has not proven on the balance of probabilities that the tenants failed to pay rent for the period in question.

The parties each enjoyed limited success in their claims and I find it appropriate that each bear their own filing fees.

Conclusion

The tenants have been awarded $1,600.00 and the landlord has been awarded $800. Setting off these claims as against each other leaves a balance of $800.00 owing by the landlord to the tenants. I grant the tenants a monetary order under section 67 for $800.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 21, 2011

Residential Tenancy Branch