



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an application by the tenant for money owed or compensation for damage or loss. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

Background and Evidence

This tenancy began April 21, 2011 with monthly rent of \$800.00 and the tenants paid a security deposit of \$400.00 and a pet damage deposit of \$400.00.

At the outset of the hearing the tenants counsel stated that they were withdrawing the tenants claim for \$1000.00 in legal fees and \$700.00 in food expenses.

Wages Due

Tenant PS stated that he often went to the rental unit when it was being renovated and assisted in hanging drywall, tiling, removing concrete and the use of equipment. Tenant PS stated that he also made trips to get more supplies and paid for them with his own funds. Tenant ML assisted in cleaning the rental unit during and after completion of the construction. Both tenants acknowledge that they were never hired by the landlord and that they have never had any type of agreement with the landlord whereby the landlord would pay them for assisting with the renovation of the rental unit or property. The tenants are seeking \$3610.00 in wages due.

The landlord was adamant that neither tenant had ever been in her employ nor that she ever told the tenants she would pay them for work done when the tenants were on site. The landlord stated that she had hired a contractor to complete the renovation project and that if the tenants were on site helping out it was of their own accord.

RL the landlord's contractor testified that he had never told the tenants that they would be paid for any of the work they assisted with on site and the tenants had been on site helping out on a voluntary basis.

The tenants also had to clean the rental unit after it flooded and maintain that the flood was due to the landlord's negligence and lack of drainage in the foyer. The tenants stated that they did have renters insurance but that did not want to make a claim as they did not want their premiums to go up. The tenants are seeking \$335.05 for books damaged in the flood of the rental unit.

The landlord stated that the rental unit had flooded during a heavy rain due to a crack in the foundation and that the entire building has since been repaired, re-roofed and made waterproof. The landlord commented that the building had been in a state of great disrepair when she purchased it and that extensive repairs had been required. The landlord stated that she was not responsible for the flood in the rental unit and had advised the tenants to use their renters insurance to recover their loss.

Construction Costs

The tenants testified that on February 17, 2011 they entered into an agreement with the landlord whereby the tenants would provide the landlord with \$8000.00 to complete renovations at property the landlord had recently purchased. The tenants stated that they would then occupy the rental unit when it was completed and the \$8000.00 be repaid to the tenants as monthly pre-paid rent at a rate of \$800.00 per month. The tenants then on March 23, 2011 also paid the landlord \$800.00 as a security and pet deposit for the rental unit. The tenants in this application are now requesting return of the \$8000.00 and \$800.00 for the renovations having not been completed. The tenants have been occupying the rental unit since April 21, 2011 and \$800.00 per month is being deducted from the \$8000.00 they had loaned the landlord to complete renovations.

The tenants stated that the rental unit remains unfinished and referred to missing baseboards, a wall not painted, a light fixture in a bedroom not being correct, there was no dishwasher, a delay in kitchen counters, no thermostat for the radiant flooring and that the foyer was to be converted into a sun room and this was never completed. The tenants also noted that the toilet was not installed until April 21, 2011 nor all the interior doors installed in a timely manner.

The landlord stated that the \$8000.00 loan was always intended to be pre-paid rent and that was understood by all parties. The landlord also stated that the \$800.00 cheque from the tenants clearly notes in the memo field that it is a deposit for the rental unit. The landlord stated that all work had in fact been completed but that the tenants were not happy with the aesthetics of the work. The landlord stated that the bedroom has a working light fixture, that baseboards had been installed throughout the rental unit and that there had been a temporary kitchen counter in place until the actual kitchen counter was delivered.

The landlord noted that the tenancy agreement does not include a dish washer and stated that the bedroom wall had not been painted as the tenant ML did not want the landlord to do any sanding in the rental unit and this was required to prep the wall. The landlord stated that the radiant flooring was not working at this time as a special electrical breaker needed to be installed at an approximate cost of \$150.00 not including the cost of the electrician for installation and charging of the radiant flooring. The landlord stated that the foyer is an outdoor storage area that is shared by the landlord and tenants and used by the landlord to gain access to plumbing. The landlord was adamant that she never had any intention of converting the foyer into a sun room and that her building plans did not reflect such a conversion.

The landlord stated that the toilet was installed on April 21, 2011 when the tenants took possession of the rental unit and that installation of the toilet and interior doors had been delayed as the radiant floor installation had to be completed first. The landlord stated that many of the finishing projects were delayed due to the installation of the radiant flooring that the tenants had insisted be installed.

Hotel Fees

Tenant ML took a blank, signed tenancy agreement to the landlord in February and the landlord returned the tenancy agreement in April to the tenants with a start of tenancy date of April 21, 2011 and noting the deposits paid by the tenants. The tenants stated that they believed the tenancy would start April 7, 2011 however the rental unit was not ready to be occupied on that date. The tenants stated that because the rental unit was not ready they had to stay in a hotel for two weeks at a total expense of \$1036.00.

The landlord stated that she had entered into the original agreement with the tenants but that at the very beginning had told the tenants she could not commit to a specific date for occupancy due to the nature of renovating. The landlord again stated that much of the delay in completion of the rental unit was due to the tenants insisting radiant flooring being installed. The landlord stated that she had never planned on radiant heating but that after the tenants advised her they had already bought it, the landlord agreed to the installation. The landlord stated that the radiant floor installation had to be completed prior to the tile floors, baseboards and doors being installed.

Construction Expenses

The tenants have submitted receipts for installation of the radiant heat floor \$995.47, pet doors \$65.27, a door bell \$20.15, tile cement \$55.98 and door keys \$4.46 for a total of \$1141.33.

The landlord stated that she is willing to reimburse some of these expenses but that she did not agree with the expense for the pet doors as she never wanted any installed or the tile cement as she never asked the tenant to make this purchase. The landlord stated that the tenants had ordered the radiant floor on their own and then told the landlord after the fact about it. The landlord stated that she had consented to the installation of the radiant flooring and pet doors.

Analysis

Wages Due

The tenants have acknowledged that they did not any sort of agreement with the landlord or the landlord's contractor whereby the tenants would be reimbursed for work they completed or helped with on the site and during the renovation. I therefore find that the tenant's application for \$3610.00 in wages due is dismissed without leave to reapply.

In regards to the loss of the tenant's books due to the flood, the tenant's must show that the landlord breached the care owed to him or her and that the loss claim was a foreseeable result of the wrong. I do not find on a balance of probabilities that this claim has met the requirement of proving that a personal wrong was caused either intentionally or unintentionally by the landlord. I therefore find that the tenant's application for \$335.05 for loss is dismissed without leave to reapply.

Construction Costs

The \$8000.00 and \$800.00 that the tenants are now claiming as construction costs were always intended to be used as pre-paid rent and a security/pet deposit. The tenants have also utilized the benefit of this pre-paid rent and \$800.00 rent per month for the past 7 months has been deducted from the \$8000.00 that was paid to the landlord in February 2011. The \$800.00 cheque provided to the landlord also notes clearly in the memo field that it is a deposit. There is also no written agreement between the parties that indicates the money is to be used for construction expenses and repaid as such.

The tenants have not met the burden of proving that the rental unit remains unfinished even though they are not satisfied with the final product. It must also be noted that delays in completion of the project were directly related to the radiant heat flooring that the tenants wanted installed. The radiant heat flooring however remains inoperable and one must believe that there is a reasonable expectation on the part of the tenants that this flooring would be made operational. To ensure that this project is completed in a timely fashion the landlord will be given until November 30, 2011 to have the radiant heat flooring operational. If the landlord does not comply with this direction the tenants may come back to this office and apply for and Order for the landlord to complete the project.

I therefore find that the tenants have not established that this money is or was solely for construction costs related to the renovation of the rental unit. The tenants and landlord have in fact used these monies as discussed by the parties in February 2011 and that is as prepaid rent. I therefore find that the tenant's application for \$8800.00 in construction costs is dismissed without leave to reapply.

Hotel Fees

The parties disagreed as to the start date of the tenancy and the only written agreement in place notes the tenancy starting April 21, 2011 however this agreement is in question. It is noted that the tenants took possession of the rental unit on April 21, 2011 and started paying rent on that date. The tenants maintain that the rental unit was to be ready by April 7, 2011 as that was when they were vacating their prior rental unit. The landlord maintained that she had never agreed to a specific date of occupancy due to the nature of construction and the many delays that are encountered throughout the process.

While it is recognized that the tenants did suffer a financial burden by having to stay in a hotel for 2 weeks, there is no evidence to substantiate the April 7, 2011 start of tenancy date. I therefore find that the tenant's application for \$1036.00 in hotel fees is dismissed without leave to reapply.

Construction Expenses

In regards to the construction expenses I find that the tenants have met the burden of proving that they have grounds for entitlement to reimbursement of some of these costs.

The landlord while not agreeing with the installation of the radiant floor and purchase of the tile cement, gave implied consent when she told the tenants that they could proceed with the installation of the flooring and her contractor consented to the tile cement being purchased. It must also be considered that the installation of the radiant flooring is permanent and this is not something the tenants can take with them when they vacate the rental unit. As the floors were installed at the insistence of the tenants the burden of this expense will be shared by the parties with the landlord responsible for 75% of the cost or \$746.60.

I therefore find that the tenants are entitled to reimbursement in the amount of \$802.58 for these costs.

The landlord has agreed to reimbursement of the door bell and door keys in the amount of \$24.61.

In regards to the pet doors that the tenants installed, the landlord stated that she had not wanted the doors installed and the pet doors are items that the landlord may be required to remove at the end of this tenancy. I therefore find that the tenant's application for \$65.27 for pet doors is dismissed without leave to reapply.

The total award to the tenants in this application is \$802.58 for repayment of construction expenses and \$24.61 for the doorbell and keys for a total of \$827.19.

As the tenants have been successful in their application the tenant's are entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the tenants have established a monetary claim for **\$827.19**. The tenants are also entitled to recovery of the \$50.00 filing fee.

The tenants may deduct **\$877.19** from future rent owed to the landlord for the compensation awarded and recovery of the filing fee paid to bring their application.

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: November 3, 2011.

Residential Tenancy Branch