



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC RP PSF RR FF

Introduction

This hearing convened on December 01, 2011 and reconvened for this present session December 29, 2011 to deal with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to obtain Orders to have the Landlord comply with the Act, regulation, or tenancy agreement, to have the Landlord make repairs to the unit, site or property, to have the Landlord provide services or facilities required by law, to allow the Tenants to reduce rent for repairs, services, or facilities agreed upon but not provided, and to recover the cost of the filing fee from the Landlords for this application.

The parties appeared at the teleconference hearings, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have the Landlords breached the *Residential Tenancy Act*, regulation, and/or tenancy agreement?
2. If so, have the Tenants met the burden of proof to obtain orders pursuant to sections 32, 62, 65, and 67 of the *Residential Tenancy Act*?

Background and Evidence

The Tenants affirmed they did not provide copies of their evidence to the Landlords. The Landlords' evidence was served to and received by the Tenants.

The parties agreed they entered into a fixed term tenancy agreement that began on May 1, 2011 and is set to switch to a month to month tenancy or another fixed term after April 30, 2012. Rent is payable on the first of each month in the amount of \$1,000.00 and on April 22, 2011 the Tenants paid \$500.00 as the security deposit plus \$500.00 as the pet deposit. The rental unit is a separate self contained suite in the lower part of the house and the Landlords reside in the upper portion of the house. When entering into

the tenancy agreement the Landlord had agreed to have the entrance and hall carpet replaced as written on the tenancy agreement.

The Tenants affirmed they were seeking monetary compensation and to have the Landlord repair the items that were listed on their August 2011 letter that was previously sent to the Landlords, a copy of which was provided in their evidence. After reviewing the seven items listed they confirmed five of the seven items were repaired or completed prior to writing the list in August and prior to making this application. Some of the items were completed by the Landlord and some by the Tenants as they decided not to wait any longer. The two items which remain outstanding are the doorbell repair and changing the carpet. The Tenants stated they are concerned that because the carpet is ripped and the nails are poking through that it is a risk for someone stepping on one of the nails. Since making this application the bathroom fan stopped working and the light in the storage room needs repair.

The Tenants stated that when they ask the Landlord to make repairs it takes him way too long to complete them. He starts the repairs and then stops for long periods of time and so it takes several months to complete anything. When the lawn remained uncut for several weeks the Tenants discussed this issue with the Landlord and agreed to cut the lawn as they did not want to wait for the Landlord to do it. They were told the Landlords would have the carpets cleaned before they moved in and when they arrived they found that they had not been cleaned. The Tenants stated that they rented a machine and cleaned the carpets themselves and later changed their testimony to clarify that they did not have to pay for the machine as they borrowed one from their work for free.

They wish to be compensated for having to cut the lawn and for completing some of the cleaning that the Landlords should be responsible for. They also would like Orders to have the Landlord complete the remaining repairs without delay and to have him start cutting the grass when needed. They advised he keeps stalling them saying he is saving money to buy a better quality carpet. They do not want to wait any longer and will be okay to have a less expensive carpet installed.

The male Landlord affirmed that some of the Tenants' complaints are justified; however he does try to respond to their requests as soon as possible; however he works very long hours and does not always have the time to fit in their requests. The Landlord made reference to his written statement that was provided in his evidence and pointed out his current financial hardship.

The Landlord confirmed the house was built in 1988, which he has owned it for the past four years, and the carpet that needs replacing was installed in October 2007. The Landlord advised the following pertaining to the outstanding repairs:

- The door bell has been repaired however after repairing it they determined it only rings upstairs and not downstairs in the Tenants' suite. He is agreeable to have this repaired however it is not a priority as their guests can knock.
- The bathroom fan burned out because the Tenants were using it to ventilate the entire suite and left it running continuously instead of using it as a bathroom fan only after a bath or shower. This repair is also not critical as the bathroom has a window and can be vented by opening the window.
- The carpet seems to be the Tenants' focus and he agrees that it needs to be repaired however he is holding out trying to save enough money to have a better quality carpet installed. Although he agreed to have new carpet installed the agreement was to have it installed within the first year of the tenancy as this would give him time to save up for the cost.

The Landlord stated that he has been trying to deal with the Tenants in good faith. He said the Tenants came to him and told him that they love doing yard work and gardening and they asked him if they could cut the lawn. The Tenants use the greenhouse and offered to maintain the lawn, he did not request or force them to do the yard work, nor did they discuss payment for this. As for the items that were repaired prior to them writing the August 2011 list, he notes that several of these items were completed within the first week of their tenancy so he questions why they are seeking money now. The Landlord confirmed that there were never any written requests prior to August 2011 for repairs. He believes the Tenants are seeking to have money for a lack of value in their lease or to have the ability to get out of their lease as they are both working in a nearby city so have to travel each day now.

The hearing time expired prior to the Landlord completing his testimony. The parties were advised that the hearing would reconvene and that no additional evidence would be accepted from either party. The parties are to expect a notice of reconvened hearing and that we would resume with the Landlords completing their testimony and then I would hear final submissions before concluding the hearing.

The hearing reconvened at 1:30 p.m. December 29, 2011. The aforementioned testimony was reviewed and the Landlords were given the opportunity to finish their testimony and each party was given the opportunity to provide their closing remarks.

The male Landlord began by stating he has been ill these past few weeks and has not worked during the last week. He stated he has no problem with working to resolve these issues however he needs time to be able to afford the repairs. He confirms seeing the wood poking through under the carpet at the edge where it is frayed however he has not seen the nails poking through as the Tenants have this covered with a throw carpet.

The female Landlord confirmed the Tenants were not happy that the lawn was not getting cut and that they offered to cut it themselves even though she told them they did not have money to pay them for cutting the lawn. As for the carpet, she said she told the Tenants they could provide them with a runner to go over top of the ripped area or they could have the carpet stretched and stitched back together.

In closing the Tenants advised that at the outset of their tenancy the Landlords informed them of their tight budget and financial situation and after the Landlord explained his long hours of work the Tenants agreed to take care of a few things for them. They accepted a short delay in getting the carpet replaced but it has gone on for too long with no new carpet in sight. They do not believe the \$700.00 is unreasonable as they are only seeking 10% of what they have paid during their tenancy as compensation for all the things they had to do. The male Tenant added that he has a disorder and these delays in getting things repaired cause him undue stress.

The Landlords concluded by stating the yard work has never been a major priority for them and it gets done when the male Landlord has the time to get it done.

Analysis

The Tenants confirmed that they did not provide the Landlords with copies of their evidence in contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the Respondent Landlords have not received copies of the Tenants' evidence I find that the Tenants' evidence cannot be considered in my decision. I did however consider the Tenants' testimony.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the 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.

Policy Guideline # 1 provides that the landlord is usually responsible for cutting grass, shovelling snow and weeding flower beds and gardens of a multi-unit residential complex unless the parties enter into an agreement otherwise.

Neither party disputes that the Tenants completed some of the cleaning themselves and that they offered to cut and maintain the lawn because they were tired of waiting for the Landlord to do it. Both parties agreed that there was never a discussion of payment for work completed by the Tenants and no requests were put in writing until the August 2011 letter at which time most of the items requested had been completed. The evidence further suggests that the Tenants no longer want to assume the responsibility of yard maintenance and request that the responsibility of lawn maintenance return to the Landlords.

As per the aforementioned, I find there is insufficient evidence to prove the Tenants are entitled to monetary compensation for cleaning or lawn and yard maintenance which they offered to provide. There is insufficient evidence to prove the Landlords breached the Act relating to these items and therefore I dismiss this section of the monetary claim.

Yard maintenance was not required as part of the Tenants' tenancy therefore I find that as of January 1, 2012 the Landlords regain the responsibility of maintaining the lawn and yard, pursuant to section 62 of the Act.

If the Landlords fail to maintain the yard in a manner that makes it suitable for occupation by a tenant as required under section 32 of the Act, then the Tenants need to request, in writing, that the yard be maintained. Then if the Landlords fail to comply with the written request within a reasonable amount of time the Tenants will be at liberty to seek financial compensation through dispute resolution at that time.

Section 27 stipulates that a landlord must not terminate or restrict a service or facility if that service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

If the landlord terminates or restricts a service or facility, other than one that is essential or restricts a material term of a tenancy the landlord must provide 30 days notice and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy.

Although the Tenants had applied for a rent reduction based on Section 27, I find they have provided no evidence indicating that the Landlords had breached this section of the *Act*. Therefore I dismiss their claim for reduced rent.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental unit suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building or unit would deteriorate occupant comfort and the long term condition of the building.

I accept the parties' evidence that they agreed at the onset of the tenancy that the Landlords would have the entrance and hallway carpet replaced, as noted on the tenancy agreement. I also acknowledge that the Tenants understood that the work would be completed in a reasonable amount of time after the start of the tenancy and that the Landlords were of the opinion that it would be completed sometime during the first year of the tenancy.

In the absence of a definite date noted on the tenancy agreement as to when the repairs would be completed, I must revert to the *Act* which stipulates a material term of a tenancy agreement must be rectified within a reasonable period after the tenant gives the Landlord written notice of the failure. I accept that the first written request to have the carpet replaced was provided to the Landlords in August 2011 and the second request on November 14, 2011 when the Tenants filed their application for dispute resolution.

From the evidence that was presented during the hearing, I accept that the damaged carpet located in the main entrance and down the hall may be cosmetically unappealing and that it has also reached the state where the board with the nails which hold the edge of the carpet is exposed and could cause injury. The Tenants have placed a throw carpet over this area which has limited the exposure and risk of injury.

Policy Guideline 6 states that in determining the amount by which the value of the tenancy has been reduced, the Dispute Resolution Officer should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed”.

As per the aforementioned, I find the Tenants have had full unobstructed use of the entire rental unit once they covered the frayed carpet with a throw carpet to lessen the negative cosmetic appearance and reduce the chance of stepping on the tacking wood at the edge of the carpet, and therefore suffered only a minimal loss to their quiet enjoyment of the unit while they wait for the carpet to be replaced. Accordingly I award the Tenants **\$50.00** as compensation for waiting for the carpet replacement, pursuant to section 67 of the Act (\$10.00 per month from September 2011 to January 2012).

While I accept that the Landlords are attempting to save money in order to install a higher quality carpet, I find the Tenants should not have to bear the burden of delay, further loss of their quiet enjoyment, or risk of injury due to the Landlords’ financial hardship. Therefore I find the Landlord has not complied with a material term of the tenancy agreement, after being notified in writing and then by failing to install new carpet in the entrance and hallway within a reasonable period. Accordingly I order the Landlords to have the carpet in the hallway and entrance installed no later than **February 15, 2012**. If the Landlords fail to comply with this order then the Tenants will be at liberty to make application for additional monetary compensation.

The Tenants have been partially successful with their application; therefore I award **\$25.00** recovery of the filing fee.

Conclusion

The Tenants may deduct the one time award of **\$75.00** (\$50.00 + \$25.00) from their next rent payment as payment for the amounts awarded above.

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: December 30, 2011.

Residential Tenancy Branch