



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a monetary order for money owed or compensation for damages or loss under the Act.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Are the tenants entitled to a monetary order?

Background and Evidence

The tenancy began on October 1, 2006. Rent in the amount of \$1,236.00 was payable on the first of each month. A security deposit of \$573.50 was paid by the tenants. The tenancy ended December 2010.

The tenant testified that they are seeking compensation for loss of quiet enjoyment due to water leaks and water damage in their rental unit.

First water leak

The tenant testified that in September 2009, there was a small water leak on the living room ceiling and by the end of October 2009 the water leak had caused extensive damage and drywall started to fall off the ceiling. They had to move their furniture that was below that area of the ceiling and leave that area open for the landlord to make the necessary repairs.

The tenant testified that on November 19, 2009, they sent a written request asking the landlord to reduce rent for the month of December 2009. The landlord agreed to reduce rent for December 2009, by fifty percent.

The tenant testified that they sent the landlord a further request asking the landlord to reduce rent for January 2010. However, the landlord did not respond to that request.

The landlord testified that they agreed to give the tenants a fifty percent reduction in rent for the month of December 2009. However, when the landlord granted the reduction of rent it was in good faith and for the tenants' inconvenience. It was not because they felt the rental unit was in such poor condition that it justified a rent reduction of fifty percent.

The landlord testified they are relying on a term in the tenancy agreement, which states, "The resident will not hold the company liable for any discomfort or inconvenience during repairs or upgrades to the suite, building or property."

The landlord testified that they did their due diligent to fix the water leak. They did extensive work on the roof and the balconies as it was hard to determine where the water was entering the building.

The landlord testified that by January 29, 2010, the majority of the work to the ceiling had been repaired, except the patch in the ceiling still had to be painted.

Second water leak

The tenant testified that in September 2010, they noticed on the ceiling and wall watermarks and that the carpet was wet in the entrance.

The tenant further testified that it damaged their bookcase and other property and they had to move everything from the entrance and store it in other areas of their rental unit until the water leak was fixed.

Filed in evidence is a copy of various emails. The first one that indicates a water leak is dated September 22, 2010. Filed in evidence are photographs of their property stored in other areas of the rental unit.

The tenant testified that in early October 2010, they were informed by the landlord that they would be repairing the damage that was caused from the second water leak. The carpet would be replaced and the wall and ceiling would be painted.

The tenant testified that they accommodated the landlord's request to replace the carpet and they moved everything out of the entrance and living room into the bedroom although it was very challenging for them. The tenant stated they were able to vacate the rental unit for a few days while the repairs to the rental unit were completed. However, when they came back the rental unit was in an incredible mess; there was a thick layer of very fine dust everywhere and they spent over six hours to get the rental unit back into a livable condition. Then they had to move their furniture back into the living room and entrance.

The tenant testified that it took the landlord another week to have the baseboards installed.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The parties agreed there was a leak in the building that required the landlord to do extensive repairs on both the roof and the balconies above the tenants' rental unit.

The first leak was reported by the tenants during the month of September 2009 and gradually the water leak created extensive damage to the drywall on the ceiling. The tenants were required to move the furniture from below that area until the necessary repairs were made. The leak was found and the ceiling was repaired at the end of January 2010, except for the painting.

The evidence of the landlord was they reduced December rent by fifty percent and at that time the landlord had taken into consideration the inconvenience of the tenants.

The evidence of the parties was that this leak did not affect their ability to use the kitchen, bathroom or bedroom, and this area was a small portion of the living area. I find that the landlord has compensated the tenants by reducing December 2010, rent for the first water leak.

Criteria Considered When Awarding Damages

If a claim is made by the tenant for loss of quiet enjoyment a dispute resolution officer may consider the following criteria in determining the amount of damages:

- the amount of disruption suffered by the tenant.
- the reason for the disruption.
- if there was any benefit to the tenant for the disruption.
- whether or not the landlord made his or her best efforts to minimize any disruptions to the tenant.

The evidence of the parties was a second water leak occurred on September 22, 2010 and the landlord made the required repairs by October 8, 2010.

The landlord is relying on a term of the tenancy agreement that states, "The resident will not hold the company liable for any discomfort or inconvenience during repairs or upgrades to the suite, building or property."

Section 5 of the Act states - This Act cannot be avoided

- 5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

I find this term of the tenancy agreement is of no effect, as it attempts to contract outside the Act.

In this case it is necessary to balance the tenants' rights with quiet enjoyment, with the landlord's obligation to maintain the premises.

I find that the landlord made reasonable efforts to make these repairs and they were done in a reasonable time. However, the tenants did suffer a disruption and loss of use of a portion of the property. The tenants had to move their furniture to the bedroom and other areas of the rental unit, leaving very little useable space until those repairs were made. The tenants also vacated the rental unit while those repairs were made.

Further, the tenants were required to clean the rental unit, as the rental unit was not cleaned by the contractors and a thick layer of very fine dust was found throughout the rental unit. Therefore, I grant the tenants a monetary order in the amount of **\$668.00**, which represents a fifty percent rent reduction for one month and \$50.00 paid to file their application.

Conclusion

I grant the tenants a monetary order in the amount set out 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: January 19, 2012.

Residential Tenancy Branch