



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI MNDC RP FF

Preliminary Issues

The Tenants affirmed they attended dispute resolution on November 3, 2011 at which time their application to cancel a notice to end tenancy was amended to include matters pertaining to reduced rent. Testimony was heard pertaining to the Tenants requests for repairs of items which were indicated on the move in condition form dated November 1, 2010, that were not completed within a reasonable amount of time and an agreement between the parties whereby rent would be reduced by \$400.00 beginning May 1, 2011. In the November 3, 2011 decision Dispute Resolution Officer A. Wood made a finding that the Landlord was obligated to honour the Tenant File Change for a reduction in rent.

As testimony was previously heard for the period of November 1, 2010 to November 3, 2011, (the hearing date) and a finding made in the November 3, 2011 decision, I find the matters before me in this present hearing pertaining to the Tenants' claim for monetary compensation for the months prior to May 1, 2011, constitute res judicata.

Res judicata is a doctrine that prevents rehearing of claims and an issue arising from the same cause of action between the same parties after a final judgment was previously issued on the merits of the case.

Consequently, I find the Tenants are barred from raising in this hearing the matters pertaining to monetary compensation for repairs that were not completed prior to November 3, 2011, and may only seek compensation for new matters raised in this application; i.e. to dispute the rent increase and or matters that have occurred since November 3, 2011.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to dispute an additional rent increase, to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to

recover the cost of the filing fee from the Landlord for this application, and to obtain an Order to have the Landlord make repairs to the unit, site or property.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has a Notice of Rent Increase been issued and served in accordance with Section 42 of the *Residential Tenancy Act*?
2. Have the Landlords breached the *Residential Tenancy Act*, Regulation, and/or tenancy agreement?
3. If so, have the Tenants met the burden of proof to obtain Orders as a result of that breach pursuant to sections 32 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The following facts are not in dispute:

- The parties entered into a fixed term tenancy agreement that began on November 1, 2010 and switched to a month to month tenancy after April 30, 2011;
- Rent is payable on the first of each month in the amount of \$1,400.00 plus \$40.00 per month parking;
- The Tenants paid \$700.00 as the security deposit on November 1, 2010;
- The parties attended a move in condition inspection walk through on November 1, 2010 and documented deficiencies that were required to be repaired;
- The Tenants have continued to deduct \$400.00 from their monthly rent in accordance with the November 3, 2011 dispute resolution decision as the required repairs have not yet been completed;
- The required repairs which are listed on the "Tenant File Change" document have not been completed;
- The Tenants received a Notice of Rent Increase on November 14, 2011 the same day it was posted to their door which was signed October 17, 2011 which lists an effective date of February 1, 2012.

The Tenants dispute the Notice of Rent Increase because it was not received three months prior to the effective date. Because there was a delay in receiving this notice

they are of the opinion that it should be cancelled. They further believe this rent increase should be disallowed as the Landlord has not completed the required repairs. The Tenants confirmed that some of the required repairs have been completed, such as repairs to the skylights; however the following repairs remain outstanding:

Deck Floor: The vinyl type coating that was put on the deck floor bubbled the same day it was applied. The Tenants said they are afraid to use the deck now because of these bubbles as they are concerned the coating will tear if they use the deck.

Deck Railing: The deck railing was replaced with a thinner railing; however, when the railing was installed the contractor failed to properly seal around the railing at the point it attaches to the wall leaving a gap for water to go in behind the stucco and run down the interior of the wall. The Tenants stated that mold is now growing in and around this opening in the exterior wall.

Elevator: The elevator has had graffiti in it since moving in and has been vandalized during this past year. The Tenants are seeking to have the walls repaired or painted and confirmed the elevator is operating fine.

Common areas and halls: The hallways and stairways have walls with holes cut into them exposing the rotten wood and mold. Also the carpets are torn, dirty, and moldy. When the front door is opened water rushes in and soaks the walls and carpet so now everything is very moldy and the Tenants breathe this in when they enter and exit the building which they believe to be a health hazard.

The Tenants stated that when they met with the building manager to consider moving into the rental unit they were told the Landlord was conducting major renovations on another building and the manager promised that this building would be renovated next with repairs and replacement of carpets, the roof and more. They were also told that the renovations would begin within three months of the start of their tenancy. They are concerned because the building continues to deteriorate. They do not feel comfortable having guests over because they have to walk through the stair wells with holes in the walls and mold everywhere or come up through a vandalized elevator which gives the impression they are living in a dumpy building.

During the hearing the Landlord assured the Tenants that it was okay for them to begin using their deck as the bubbling is nothing to worry about. She stated that this building is over 40 years old therefore they have to expect some things will be old and require fixing at some point but that she is not the owner so she cannot say when things will be fixed. She noted that the Tenants chose to move into this building after seeing the condition it was in at the beginning. She argued the building is clean and confirmed she told them it was on the list to be renovated but she does not get to say when the work

will be completed. The Landlord confirmed she had a conversation with the Tenants prior to their tenancy where she told them about the upcoming renovations but she never provided them with a time when the work would be performed.

The Landlord argued that all the repairs inside the Tenants unit have been completed and the remaining items are all located in the common areas and do not affect the Tenants' use of their rental unit or the rest of the building. She pointed out that the Tenants are currently receiving a \$400.00 reduction in rent and she has no control on when the repairs will be done.

Analysis

Section 42 of the Act provides as follows:

- (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies: (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement; (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
- (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
- (3) A notice of a rent increase must be in the approved form.
- (4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply [emphasis added].**

Section 53 (2) of the Act stipulates that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Upon review of the Notice of Rent Increase (the Notice) I find it to be completed in the proper format listing an amount of increase that complies with the Act and Regulation (4.3 % for 2012) and was served to the Tenants in a manner that complies with section 88 of the Act. The evidence supports the Notice was not received by the Tenants until November 14, 2011, and as a result of the delay in service the effective date is incorrect. Accordingly, I find the effective date of the Notice would automatically correct to March 1, 2012, pursuant to sections 42(4) and 53 (2) of the Act as listed above.

The Residential Tenancy Policy Guideline # 37 provides that a tenant cannot dispute a rent increase that does not exceed the percentage permitted as an Annual Rent Increase, an amount the tenant has agreed to in writing, or an amount ordered by a dispute resolution officer as an Additional Rent Increase.

After careful consideration of the aforementioned I find the Tenants' application to dispute the rent increase to be without merit and their claim is dismissed. Therefore their rent will increase in accordance with the Notice as of March 1, 2012 (\$1,400.00 + \$60.00 = \$1,460.00 + \$40.00 parking).

The Tenants request for monetary compensation of \$2,400.00 directly relates to the period of November 1, 2010 to November 3, 2011 and was found to be res judicata in the preliminary issues. Accordingly this request is dismissed.

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.

Neither party disputes that this building is in disrepair and that there is work still required to be completed throughout the residential property. As such, I make no findings on the matter of the necessity of the work.

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 units 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 envelop would deteriorate occupant comfort and the long term condition of the building.

The parties entered into a mutual agreement in May 2011, as indicated on the Landlord's "Tenant File Change" form which states "*rent deduction of by \$400 each month till all of the deficiencies are fixed Broken skylight window (leak when is rain) Balcony had to fixed, major problems in the building (Open walls, mold growing...)[sic]*."

Dispute Resolution Officer A. Wood made a finding on November 3, 2011, that the "Landlord is obligated to honour the Tenant File Change issued in May of 2011".

The evidence supports that "all of the deficiencies" have not been fixed as of the time of this hearing, therefore the November 3, 2011 Order stands and the Tenants are to continue to deduct \$400.00 from their monthly rent, until all of the deficiencies are fixed.

Furthermore, I find the Tenants have met the burden of proof to warrant an Order be issued to the Landlord to make repairs to the unit, site or property.

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

Conclusion

The Notice of Rent Increase is valid and of full force and effect. The Tenants' rent will increase to \$1,460.00 plus \$40.00 for parking beginning March 1, 2012, pursuant to section 62 of the Act.

Note: if the required repairs have not been completed as of March 1, 2012 then the Tenants will continue to deduct \$400.00 from their rent resulting in monthly payments of $\$1,460.00 + \$40.00 - \$400.00 = \$1,100.00$ until repairs are completed.

The Landlord is HEREBY ORDERED to complete the required repairs, pursuant to sections 32 and 62 of the Act.

The Tenants may deduct the one time award of **\$25.00** from their next rent payment.

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 06, 2012.

Residential Tenancy Branch