



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the "Act"), and dealt with an Application for Dispute Resolution by the Tenants requesting a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Are the Tenants entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

The parties agree that they had a tenancy agreement which commenced in April 2004 with a monthly rent of \$900.00 due on the first of the month. The parties agree that the Tenants were to pay for utilities and maintain their yard. The Tenants rented a house with yard from the Landlord. The parties agree that they have a settlement agreement from a previous hearing September 07, 2011, that ended the tenancy on October 02, 2011, and allowed the Landlord to keep the security deposit. The Tenants current claim is for compensation for damage or loss under the Act, regulation, or tenancy agreement, which is an issue that was not previously applied for or dealt with at the previous hearing.

The Tenants stated that the Landlord harassed them throughout the 7 ½ years of their tenancy. The Tenants stated that every time they complained to the Landlord about an issue he would threaten them with eviction. The Tenants stated that the Landlord came onto the property unannounced on several occasions, however, they could not recall the specific dates. The Tenants stated that they would do their own yard work, but they would often see the Landlord on adjacent properties trimming trees and sometimes the

tree trimmings would fall in their yard and they would have to clean it up. The Tenants stated that the Landlord owns four to six houses in the neighbourhood and that their rental house was adjacent to two other rental properties the Landlord owns. The Tenants stated that the Landlord has taken pictures of the condition of the yard and the house including pictures through the window of the condition of the interior of the house. The Tenants' son AV stated that he saw the Landlord take pictures and one time when the Landlord came into the rental unit he took pictures while inside. The Tenant's stated that sometimes they would let the Landlord in and sometimes they felt he would come in through the unlocked back door. The Tenants stated that they have invited the Landlord in to inspect a mould issue in the past and to deal with raccoons and a hole in the roof and that the Landlord has done a remodelling of the house. The Tenants stated that they wrote to the Landlord to complain about his taking of photos in their letter of September 30, 2007, however in evidence prior to the hearing they only submitted the first and last page of this letter and neither page contained any evidence of complaints about the Landlord taking photographs.

The Tenants stated that other harassment from the Landlord was the Notice to End Tenancy and his contact with the City utilities department which resulted in their utilities being cut off on occasions in the past and several notices from the City threatening to cut off their utilities due to their bill payments to the City being late. The Tenants stated that the Landlord interfered by contacting the City several times about the utility bills for the rental unit. The Tenants provided no evidence of occasions where the utilities had been cut off. The Tenants provided copies of two Notices from the City for August and September 2011 threatening to cut off their utilities unless they paid their outstanding utility bills in full to the City. The Tenants stated that the City can only pursue a Landlord for their utilities debt if they fail to provide the City with a forwarding address. The Tenants stated that the Landlord came onto the property uninvited on October 02, 2011 to serve them with documents. The Tenants stated that they moved out by 11:00 P.M. on October 03, 2011. The Tenants also stated that they did not come back to do any cleaning and the Landlord has their security deposit from the previous hearing of September 07, 2011.

The Landlord stated that he did not harass the Tenants and he denies coming to the rental unit unless invited in. The Landlord stated that he has done tree pruning on his adjacent rental properties and this is only around the sides of the property and did not impact the Tenants. The Landlord stated that he issued a one month Notice to End Tenancy for Cause because the Tenants had damaged the rental unit in the months prior to the tenancy ending. The Landlord stated that he did contact the City in August to see if the Tenants were in arrears with the utility bills, as the Landlord stated that the City holds him responsible if the Tenants do not pay. The Landlord explained that there

is a city bylaw to charge the Landlord as he is the property owner, if the Tenants get into arrears and fail to pay their utilities debt. The Landlord states that he was inconvenienced and feels the Tenants harassed him by not paying their utility bills to the City on time. The Landlord states that at the previous hearing on September 07, 2011 he received an order of possession for the rental unit effective October 02, 2011, however he states that the Tenants did not vacate the rental unit on time. The Landlord stated that when he went to the rental unit on October 02, 2011 with the order of possession and the intention to do the move out inspection, the Tenants would not let him in. The Landlord stated that the Tenants did not move out until October 05, 2011, they failed to provide a forwarding address to him, and he did not receive the keys until he went to the rental unit on October 07, 2011 and found that they had moved out and left the keys in the rental unit.

The Tenants are seeking \$800.00 as compensation for harassment, damages and losses in relation to this tenancy.

Analysis

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

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, the balance of probabilities. To prove a loss and have the Landlord (Respondent) pay for the loss, the Tenants (Applicants) must prove the following:

- that the damage or loss exists;
- that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- the actual amount required to compensate for the claimed loss or to repair the damage; and

- that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenants did not prove that they had any losses or incurred any costs during their tenancy in relation to any actions of the Landlord. The Tenants resided in the rental unit for 7 ½ years until the Landlord served them with the order of possession effective October 02, 2011, which was a result of a settlement agreement between the parties from a previous hearing of September 07, 2011.

The Tenants were required to provide any evidence to support their claim in advance of the hearing. I find that the Landlord contacting the City, to inquire about the whether the utility bills were paid up to date on his property or not, does not constitute harassment. In this case, the parties agree that there is a bylaw in the City where the rental unit is located that requires the Landlord to bear the burden of paying any outstanding utility bills on a property owned by a landlord if a tenant vacates the rental unit and does not provide the forwarding address to the City. I find that it was the City that issued the utility late payment Notices to the Tenants and not the Landlord. The Tenants provided no evidence of any occasions where the utilities to the property were cut off due to any actions of the Landlord. The Tenants failed to provide any evidence of any specific dates or times where the Landlord came onto their property uninvited and/or took photographs. The Tenants also failed to provide any evidence that they had raised a concern about this to the Landlord previously. The Tenants did not indicate whether they had applied previously for any orders restricting the Landlord's access to the rental property during their tenancy.

I find that the Tenants are not entitled to any compensation for losses or damages under the Act, regulation or tenancy agreement. As a result the Tenants' claim is dismissed.

Conclusion

The Tenants' claim is dismissed.

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 03, 2012.

Residential Tenancy Branch