



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, OLC, RP, RR, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the tenants disputing an additional rent increase; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlords comply with the *Act*, regulation or tenancy agreement; for an order that the landlords make repairs to the unit, site or property; for an order permitting the tenants to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlords for the cost of this application.

Both landlords and one of the tenants attended the conference call hearing, gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. Evidence packages were also provided by the parties to the Residential Tenancy Branch and to each other. All evidence and the testimony of the parties have been reviewed and are considered in this Decision.

Issue(s) to be Decided

- Is the tenants' application disputing an addition rent increase justified?
- Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Are the tenants entitled to an order that the landlords comply with the *Act*, regulation or tenancy agreement?
- Are the tenants entitled to an order that the landlords make repairs to the unit, site or property?
- Are the tenants entitled to an order permitting the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The parties agree that this month-to-month tenancy began on October 1, 2009 and the tenants still reside in the rental unit. Rent in the amount of \$1,238.40 per month is currently payable in advance on the 1st day of each month, having been raised from

\$1,200.00 per month which was payable at the commencement of the tenancy, and there are no rental arrears. On September 1, 2009 the landlords collected a security deposit from the tenants in the amount of \$600.00 and no pet damage deposit was collected. The rental unit is the main floor of a house, and the landlords' son resides in the basement suite.

The tenant testified that the parties met to sign the tenancy agreement, which was completed together. Nothing in Section 3 of the agreement had been completed, which speaks to the payment of rent and what is included in the rent. The tenant ticked the boxes of what is included in the rent, and was only ticking the boxes pertaining to appliances and other physical inclusions. Water does not show as included, however, the boxes beside garbage removal and storage are also not ticked. A copy of the tenancy agreement was provided in advance of the hearing.

The tenants received a letter from the landlords in April, 2010 requesting payment of a water bill. The tenant testified that this amounts to an additional rent increase because the tenants hadn't paid for water from the commencement of the tenancy, and the landlords increased rent annually in accordance with the *Residential Tenancy Act*. Copies of the annual rent increases were provided in advance of the hearing. The tenant further testified that the only utilities that were discussed when the tenancy agreement was prepared were hydro and gas which were in the landlord's name, and the landlords left it to the tenants to either change the utilities into the tenants' name or leave it. The tenants chose to leave it, and the landlords deliver monthly gas and hydro bills in an envelope and the tenants paid the landlords directly.

On August 6, 2010 the tenants received a copy of a water bill for April, 2010. They called the landlords on August 12, 2010 stating that they did not agree to pay for water, and if it hadn't been included in the rent, the tenants would not have rented the house. The parties met, and the landlords wanted the tenants to pay 2/3 of the bill, or \$141.21. The tenant further testified that the tenants would not have agreed to 2/3 anyway because of watering flowers and lawns. The tenants assumed the annual rental increases were to cover water. The tenants paid the rental increase and didn't hear about water bills again until August 31, 2011 when the landlords pointed out that water was not included in the tenancy agreement. The landlords also pointed out to the tenants that taxes had been increased and the landlords had a lot of unexpected expenses. The tenants responded with a letter and paid the \$141.21 because the Residential Tenancy Branch recommended it. Less than a month later, the tenants received another rent increase. The tenants claim the payment of \$141.21 from the landlords.

The tenant also testified that the soaker tub in the ensuite leaks and has been an on-going problem. The landlords complete all repairs themselves and the soaker tub is still not fixed. On August 20, 2011 the landlords took measurements, and attended at the rental unit on weekends, but have not hired a professional to get the work done in an effort to save the landlords money. The tenants claim a rent reduction until the tub is fixed but have not specified the amount of that claim.

The landlords testified that they bought the house in August, 2009 and didn't get a water bill until February, 2010. On October 12, 2011 the landlords gave the tenants a letter in response to the tenants' application, a copy of which was provided for this hearing. The letter states that the first water bill was received in February, 2010, after the landlords had owned the house for six months. The landlords paid the \$965.00 bill, and then a water meter was installed to lower the amount of payment required at one time. The City then sent a new bill for \$235.30 sometime in April, 2010 which was the first bill given to the tenants and the tenants flatly refused to pay it. The landlords did not pursue the matter until 2011. The landlords did not know their rights at the time, so in August, 2010 they gave the tenants a rental increase. The Residential Tenancy Branch suggested that the landlords write a letter to the tenants asking for future and current bills to be paid. To date the landlords have paid \$1,800.00 or more for water bills and are not asking the tenants to pay past water bills, only the current and future bills.

Copies of the two rental increases were provided by the landlords prior to the hearing. The first is dated August 12, 2010 which raises the rent from \$1,200.00 per month to \$1,238.40 per month effective December 1, 2010. The second one is dated September 28, 2011 which raises the rent to \$1,291.65 per month commencing January 1, 2012.

Two weeks after the landlords took possession of the house, they had to take out the shower entirely due to wood rot in the ensuite. Those repairs were completed in November, 2009. The tenants knew about it and were still willing to rent. The landlords did not know about a leak in the soaker tub until the beginning of December, 2010; it leaked into the bedroom of the basement suite. The landlords put silicone on the drain. Near the middle of December the tub leaked again. In January, 2011 the landlords asked the tenants when it would be convenient for the landlords to complete the repairs, but didn't hear from the tenants about it again until August. The landlords cut a hole in the ceiling of the basement suite in the fall of 2010 and could not find the problem. The tile was taken off the front of the soaker tub in October, 2011, then took off the faucet and ordered a part. The portion of the faucet was corroded and it took a couple of weeks to get the part, the part had to be adapted to fit properly, which was finished the

day before this hearing. The landlords can now finish the job. The tenant has not been without a tub; the other bathroom has a double shower and a tub.

The landlords further testified that in August, 2010 the tenant was away on vacation, but the tenant's son caused a flood from the shower and the tenant in the basement suite couldn't use the bedroom in that suite for almost a week as a result. Also damage in the rental unit had been caused by the tenant's fish tank, and the tenants were never asked for compensation from either of those incidents.

With respect to the tenancy agreement, the landlords testified that they had a very complicated form when the parties met, but the one that the tenant brought was shorter and simpler so that form was used. The parties had no discussion about water. The meter was put on the water about March, 2010.

Analysis

Firstly, with respect to rental increases, I have reviewed the notices provided to the tenants and I find that both rental increases are in accordance with the *Residential Tenancy Act* and the regulations. I further find that the landlords have not imposed an additional rent increase upon the tenants, and the tenants' application disputing an additional rent increase must be dismissed.

With respect to the water bills, I find that in the circumstances the issue before me is whether or not there was an implied agreement that water was included in the rent. The tenant raised the fact that the tenancy agreement does not state that water is included, but it also doesn't state that garbage removal is included and the tenants have not been requested to pay for that service. I also note that storage is not included, and I have some concern that if the City decides to charge extra for garbage removal, the landlords may be in a position to pass those charges on to the tenants, which I don't believe was the intent of the parties at the commencement of the tenancy. Further, the landlords did not pursue the payment of the water bills from the tenants until almost 2 years after the tenancy began, although they did provide a bill to the tenants about 6 months after the commencement of the tenancy. The landlords explained the delay stating that they didn't know what their rights were, and then decided to pursue it based on advice received from the Residential Tenancy Branch. The landlords also testified that not knowing what their rights were, the landlords increased the rent.

On the other hand, the tenant indicated that had the tenants known water was not included in the rent, they would not have rented the unit. That amounts to whether or not water was considered a material term of the tenancy.

The landlords and the tenant testified that payment of water was not discussed when the tenancy agreement was signed. Presumably garbage removal and storage were not discussed either. The parties did discuss other utilities, and agreed that those utilities would stay in the name of the landlords and the tenants would reimburse them. The landlords and the tenant testified that no such discussion took place with respect to water. If the agreement had included a requirement for the tenants to pay for water, I have no evidence before me on what amount the tenants had agreed to pay. The landlords have testified that 2/3 would be a fair amount however the tenancy agreement is silent. Therefore, I must find that no agreement exists between the parties with respect to the payment of water bills or garbage removal. The tenants have paid the landlords the sum of \$141.94, which is not disputed by the landlords, and I find that the tenants are entitled to reimbursement of that amount. I further find that water, garbage removal and whatever storage is in the rental unit are included in the rent.

With respect to the soaker tub, the *Residential Tenancy Act* states that a landlord must repair and maintain a rental unit in a state of decoration and repair that complies with the housing constructions required by law and make it suitable for occupation by a tenant even if the tenants knew about the required repairs at the outset of the tenancy. The tenants are entitled to use of the soaker tub because it is inside the rental unit, and the landlords' obligation commenced at the outset of the tenancy. However, the tenants have not provided me with any evidence or testimony to satisfy me that rent abatement in a certain amount is justified. I find that the tenants' claim amounts to a claim for damages, and in order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the opposing party's failure to comply with the *Act*, regulation or tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce the damage or loss suffered.

In this case, I find that the tenants have established elements 1 and 2, but I have no evidence of the amount of loss suffered. Therefore, the tenants' application for a reduction in rent must be dismissed.

With respect to the tenants' claim for an order that the landlords make repairs to the soaker tub, the landlords' testimony that they left it to the tenants to let the landlord know when would be a convenient time to complete the repairs, I find that the *Act* places the onus on the landlords to complete the repairs, not on the tenants to invite the landlords to make them. I therefore must order the landlords to complete the repairs to

the soaker tub. If the landlords fail to complete the repairs before the end of November, 2011, the tenants will be at liberty to apply for a monetary order for the loss suffered. The tenants will not be permitted to apply for a retroactive order for any period before November 30, 2011 because the tenants had an opportunity in this hearing to establish an amount suffered and failed to do so. However, having ordered the landlords to complete the repairs, I find that the tenants may be entitled to re-apply for rent abatement for any time period after November 30, 2011 that the repair is not completed.

Since the tenants have been partially successful with the application, the tenants are also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby order the landlords to make the required repairs to the soaker tub by November 30, 2011. If the landlords fail to make those repairs by that date, the tenants will be at liberty to apply for rent abatement for any time period after November 30, 2011 that the repairs have not been completed.

The tenants' application disputing an additional rent increase is hereby dismissed.

The tenants' application for a reduction in rent is hereby dismissed.

I hereby grant a monetary order in favour of the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$191.21. The tenants may deduct this amount from a future month of rent payable or otherwise recover the amount. This order is final and binding on the parties and may be enforced.

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 18, 2011.

Residential Tenancy Branch