



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RP, FF, O

Introduction

This matter dealt with an application by the Tenants for compensation for loss or damage under the Act, regulations or tenancy agreement, for the Landlords to comply with the Act, for the Landlords to make repairs to the unit site or property, to recover the filing fee for this proceeding and for other considerations.

The Tenant said she served the Landlords with the Application and Notice of Hearing (the “hearing package”) by registered mail on January 27, 2012 and to the Property Manager by personal delivery to his office on January 28, 2012. The Tenant said she did not serve the second Landlord R. R., but the Landlord R.R. said she would continue with the hearing with the service as is. Based on the evidence of the Tenants and the Landlords saying they received the hearing package, I find that the Landlords were served with the Tenant’s hearing package the hearing preceded with both the Landlords and the Tenants in attendance.

Issues(s) to be Decided

1. Are there loss or damage to the Tenants and if so how much?
2. Are the Tenants entitled to compensation for the loss or damage and if so how much?
3. Has the Landlords complied with the Act?
4. Are there repairs to be made to the unit?
5. What other considerations are there?

Background and Evidence

This tenancy started on December 15, 2010 as a fixed term tenancy for 22 months. Rent is \$1,600.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$800.00 on November 21, 2010.

The Tenants said they amended their application on January 24, 2012 to read \$6,920.00 to replace their original claim of \$1,910.00. The Tenant said their amended claim is now for the following:

1). Lose of use of the back deck at the unit	\$ 150.00
2). Loss of peaceful enjoyment of the property	\$ 1,760.00
3). Jeopardize the health and safety of the tenants	\$ 4,800.00
4). Loss of use of the rental unit	\$ 165.51
5). Filing fee for this application	<u>\$ 100.00</u>
Total	<u>\$6,975.51</u>

The Tenant said item #1 is because the Landlords resurfaced the back deck on the property with an unsafe surface and there has been a number of falls on it because of the surface. As a result the Tenants have not been able to use the back deck for the last few months and they calculated its value for the time they have not used it at \$150.00.

The Tenants continued to say that item #2 is for the loss of peaceful enjoyment of the property and rental unit because the Landlords owns three barns at the back of the property that businesses are being operated out of. The Tenants said this business activity has disturbed their enjoyment of the property and the rental unit. The Tenants said the disturbances include vehicles coming and going, men walking around the barn area and people coming to their door asking about the business in the back part of the property. In addition the Tenants said when they moved in the Landlords told them the barns were used as storage and did not mention that businesses were operated out of the barns. The Tenant said they calculated their loss of enjoyment of the property and rental unit at 5% of their rent over 22 months in the amount of \$1,760.00.

Item #3 is a result of the Tenants health concerns. The Tenants said they have seen their doctor with complaints about headaches and nausea. The Tenant said their Doctor told them to check the furnace for carbon monoxide leaks. The Tenants did this and the furnace service company said the furnace need to be decommissioned immediately and replaced as soon as possible because of a crack in the furnace which was leaking carbon monoxide. The Tenants said as well that the furnace service company did air quality checks and found high levels of carbon monoxide in the air in the rental unit. The Tenants said they are claiming 10% of their rent for 20 months for each of the two adults in the amount of \$3,200.00 and 5% of their rent for 20 months for each of their two children in the amount of \$1,600.00 for a total of \$4800.00. The Tenants also said there were no carbon monoxide detectors in the unit and the smoke detectors in the unit did not work.

Item # 4 was for the time period of February 3, 4 and 5, 2012 when the Tenants moved out of the house during the installation of the new furnace. The Tenants said although the Property Manager dropped off two space heaters the rental unit was too cold to live in without a furnace. The Tenants said they moved to a relative's house for these three days. The Tenants have requested the daily rental rate to be returned to them because they did not have use of the rental unit. The Tenant said they are claiming \$55.17 per day for 3 days in the amount of \$165.51.

The Tenant said item #5 is the \$100.00 filing fee for this proceeding.

The Landlord said they would like to address each of the Tenant points separately.

The Landlord Property Manager said with regards to item # 1 the Landlords did resurface the back deck with a marine/deck paint and the Property Manger said he has walked on it and he did not find it to be slippery. In addition the Property Manager provided into evidence Environment Canada weather reports for the days the Tenants said there were falls/slips that happened on the back deck. The Property Manager said the weather reports showed fog and ice crystals in the forecast so caution should have been use on back deck or on any walk way. As well the Property Manager said they had the back deck inspected by a building inspector and the building inspectors report said the deck was not unreasonably slippery and it was not a major safety hazard, but it could be made safer by adding some grit to the surface to reduce the risk of slip hazard in wet periods. The Landlord said the Tenants did not lose the use of the back deck and therefore their claim is not valid.

The Property Manager said that the Tenants' claim for loss of peaceful enjoyment of the property because of the commercial activity in the barns at the back of the property is not correct because the Tenants were aware the barns were rented out to other tenants for commercial activities at the start of the Tenants tenancy. As well the Property Manager said the Landlord has contacted the commercial tenants not to go on the Tenants property and the Landlords constructed a fence and gate to give the Tenants more privacy. The Property Manager said the commercial part of the property has its own entrances and they have worked with the tenants to reduce any issues. The Property Manager said the Landlords have responded to the Tenants complaints in a timely manner and the Tenants claims are not justified.

The Landlord R.R. said she did not want to discuss the Tenants allegations about the furnace problems and carbon monoxide issues as these are very serious charges. The Property Manager said they first heard of the furnace problem on January 31, 2012 and he sent a furnace service company to the unit as soon as he could. The Property Manager continued to say that those tests were inconclusive, but the Tenants had the furnace inspected and it was proven the furnace was unsafe to operate therefore it was decommissioned immediately after the inspection. The Property Manager said that on receiving this information he contacted the furnace company and made arrangements for the furnace to be replaced. The Property Manager said the furnace replacement was completed on February 6, 2012.

On questioning the Landlord she said her husband had serviced the furnace on November 5, 2010 and on October 3, 2011, but he is not certified to work on furnaces. The Landlord R.R. said her husband cleaned the filters and inspected the furnace on both occasions.

The Property Manager said with respect to item # 4 the Tenants did not have to move out of the rental unit on February 3, 4 and 5 2012 as there are gas fireplaces in the rental unit and he dropped off 2 space heater for the Tenants to use. The Property Manager said he believed the unit was liveable with the supplemental heat for the short time it took to replace the furnace.

The Landlords closed their remarks by saying they did not believe the Tenants' claim have merit because they had not proven a loss has occurred and the Landlords have responded to the Tenants concerns in a timely manner.

The Tenants closed their testimony by first saying that the back deck is dangerous as illustrated by the photograph of the bruised leg on their mother which resulted from a fall on the back deck because it was slippery. That they have lost peace enjoyment of their property and rental unit because of the activity in the barns at the back of the property which the Tenants said they were not told about at the start on the tenancy. In addition and most importantly the Tenants said their health has been affected because of carbon monoxide gas in the unit which resulted from a furnace that was not maintained correctly and which the Landlord is responsible for. Finally the Tenants said they should be compensated for the time they could not live in the unit because the furnace was being replaced. The Tenants said the Landlords have not complied with the Act and as a result the Tenants have experienced health and safety issues, loss of enjoyment of their rental unit and they should be compensated for time they could not use the rental unit.

Analysis

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

With respect to the Tenant claim for compensation for the loss of use of the back deck in the amount of \$150.00. The Tenant said they chose not to use the deck as they believed it to be unsafe. The Landlord said the Tenant could have used the deck in good weather and with reasonable caution in poor weather. There was much contradictory testimony given and the building inspectors report provided by the Property Manager says although the deck is not a major safety hazard he indicates it could be made safer by putting grit on the surface on the deck, which infers that a risk due to a slippery surface may exist. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is **not** met. Consequently, I find the Tenants have not established ground to prove that they were unable to use the deck; therefore I dismiss the Tenants claim for \$150.00 for loss of use of the deck, but I have concerns with the safety of the deck and I **Order**

the Landlord to take measures to change the surface on the deck with a material that will make the deck safe to use in all weather. The Landlord has until April 1, 2012 to complete the work on the deck and if the work is not completed, I order the Tenant to reduce the rent by \$50.00 per month until the repairs are completed.

The Tenants second claim for \$1,760.00 and is calculated at 5% of the rent of \$1,600.00/month for 22 month of the tenancy. This claim is for the loss of enjoyment of the property and the rental unit because of activities in the barns at the back of the property. Again there was much contradictory testimony and a large volume of emails. The Tenants agree that the Landlord told them at the start of the tenancy that commercial activities were taking place in the barns, but the Tenants continued to say the Landlords did not say to what extent the commercial activities were. The Landlord say they told the Tenants that businesses were been operated in the barns at the start of the tenancy. The Property Manager said the Landlord have constructed a fence and built a gate to reduce the issues between the Tenants in the front of the property and the tenants in the back of the property. Neither party provided corroborating evidence as to what the understanding on the barns were at the start of the tenancy; therefore it is unclear if there is an obligation on the Landlords part to monitor the traffic and interaction between the tenants on the property. As well the Tenants have not proven the severity of the loss that they are claiming. A person coming to the door for directions or driving into your driveway by mistake on occasion is not serious enough to warrant a monetary claim. As a result again the burden of proof has not been met by the Tenants as it is only the Applicants word against the Respondents word and this does not met the burden of proof to be awarded a claim. I find the Tenant has not established grounds to be awarded monetary compensation for loss of peaceful enjoyment in the amount of \$1,760.00 due to the barns in the back of the property being used for commercial purposes. The Tenants claim is dismissed with leave to reapply.

In the Tenants claim for \$4,800.00 for health and safety problems due to, as the Tenant said, a furnace that was leaking carbon monoxide. The Tenants have not provided any corroborative evidence that their health problems are proven to be carbon monoxide related. The Tenant said their Doctor told her to check the furnace to see if there was a problem with the furnace. The Tenant did this and a problem with the furnace was discovered, but there is no diagnosis that proves the Tenants health problems were caused by the furnace. A claimant is required to prove a loss actually happened solely because of the Respondents actions and the claimant must verify the loss. In this situation a letter from the Doctor with a diagnosis of carbon monoxide poisoning could have proved the claim, but in the absence of any corroborative evidence like a Doctors diagnosis the claim is not proven. Consequently, I dismiss the Tenants claim of \$4,800.00 for health and safety damages with leave to reapply. Further, I caution the Landlords from doing work on a rental unit that they are not qualified to do and I **Order** the Landlord to have a qualified trades person verify or install new carbon monoxide and smoke detectors in the rental unit immediately. If the Landlord has not installed the detectors by March 15, 2012 the Tenants may deduct \$50.00 from their rent until the carbon monoxide and smoke detectors are verified to be working.

Further with respect to the Tenants claim for \$165.51 for the loss of use of the rental unit on February 3, 4 and 5, 2012 while the furnace was being replaced; I accept the Tenants testimony that the unit was too cold to live in with no furnace. Consequently I award the Tenants \$165.51 for loss of use of the rental unit for February 3, 4 and 5 2012. I **Order** the Tenants to make a onetime rent reduction of \$165.51 from either the March 2012 rent payment or the April, 2012 rent payment depending on when the Tenants receive this Order.

As the Tenants were partially successful in this matter I order the Tenants to recover the \$100.00 filing fee for this proceeding from the Landlords. Pursuant to section 67 I order the Tenants to recover their monetary claim of \$100.00 by a by making an additional onetime rent reduction of \$100.00 from the March or April 2012 rent payment depending on when the Tenant receives this Order.

Conclusion

I Order the Tenants to recover their monetary claim by a onetime rent reduction of \$165.51 for loss of use of the rental unit and \$100.00 to recover the filing fee for this proceeding. The total one time rent reduction is \$265.51.

Further I order the Landlord to resurface the back deck so it is safe to walk on in all weather.

Further I order the Landlord to verify that smoke and carbon detectors are installed and are working in the rental unit.

I dismiss the Tenants claim of \$1,760.00 for loss of peaceful enjoyment of the rental unit due to commercial activity in the barns due to lack of evidence.

I dismiss the Tenants claim of \$4,800.00 for health and safety issues due to the furnace issues as the Tenants did not establish grounds to prove their illness was solely caused by the Landlords.

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*.

Residential Tenancy Branch