



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNR, MNDC, RP, RR, FF, SS

Introduction

This hearing was convened in response to an application filed by the tenants seeking:

1. To cancel a Notice to End Tenancy given for Cause;
2. A Monetary Order for costs expended for emergency repairs;
3. A monetary order for monies owed or for compensation for damage or loss;
4. An Order the landlord makes repairs to the rental unit;
5. An Order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided;
6. An Order to recover the filing fee paid for this application; and
7. An Order allowing the tenants to serve documents or evidence in a different way than required by the Act.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

1. Has the landlord met the burden of proving cause to end this tenancy?
2. Have the tenants met the burden of proving they expended sums for emergency repairs for which they should be reimbursed?
3. Have the tenants met the burden of proving that the landlord should be compelled to make repairs to the rental unit?
4. Have the tenants met the burden of proving that repairs, services or facilities agreed upon are not being provided to them by the landlord in which case they should be allowed to reduce their rent?
5. Should the tenants be allowed to recover the filing fee they paid for this application?
6. Should the tenants be allowed to serve documents or evidence in a different way than as required by the Act?

Background and Evidence

This tenancy began in June 2011. Rent was fixed at \$800.00 per month. The landlord testified that during the course of the tenancy the tenants reported some repairs required such as installing a dishwasher, painting to be done, a leaking roof, an electrical issue and garbage disposal that did not work. The landlord testified that the rental unit is approximately 600 kilometres from his own home and because of this he instructed the tenants to contact local contractors to complete the repairs and the landlord paid for the repairs. The landlord testified that for the period December to February 29, 2012 he did not hear from the tenants. He was aware that they had planned to travel. On February 29 the tenants contacted the landlord to let them know that the roof was leaking and that there had been a flood and the property was not inhabitable. The tenants demanded a rental refund and advised the landlord that they were concerned about asbestos and mould and they moved out of the rental unit on March 3, 2012. The landlord submits that he did return their rent although he believes he should not have done so. The landlord says the damage is going to exceed \$30,000.00 and he has had to make a claim on his insurance for which he will have to pay a \$2,500.00 deductible. In addition his insurance costs will go up by approximately \$200.00 per year. The landlord says the tenants abandoned the rental property for 2.5 months and had they not done so the leaking pipe would have been discovered and repaired before it caused extensive damage to the house. The landlord says the tenants then began demanding that the landlord make repairs so they could move back in and the landlord then issued a Notice to End Tenancy for Cause.

The landlord produced MH as a witness. MH testified that she lives in the area and that she passed by the rental property almost daily. The witness says there is a great deal of snow in this area in the winter months and it was very apparent that no one was living in the rental unit nor were there any footprints or vehicle markings in the snow covered driveway to show that someone was inspecting the premises. MH was aware where one of the tenants worked and such was her concern about the property that she attended the tenants' employer's office and inquired where the tenants were and if they were having the property taken care of in their absence. The tenant's employer would not release information about the tenants' whereabouts but did advise that he would contact the tenants about the matter. MH testified that the employer advised her that he had been in touch with the tenants and they told him they had someone looking after the property. MH testified that this was simply not so as she would have seen footprints in the snow coming and going from the property and there was never any evidence of this.

The tenants agree their rent has been returned to them and they are withdrawing their claim for a monetary award. The tenants say they vacated the rental unit on March 3, 2012 due to "...mould and asbestos concerns and general disrepair of the house with the landlords' blessing". The tenants say they are now living in a house next door to the rental unit and they want the rental property repaired so they can move back in and they want a rental reduction during the period they have had to vacate. The tenants are also seeking to cancel the landlords' Notice to End Tenancy.

Analysis

Following the hearing the tenants' submitted further evidence and written submissions. These materials have not been considered because evidence and submissions are required to be served on the other party.

The evidence presented at the hearing shows that the tenants left the rental property for 2.5 months during the winter season, a time of heavy snowfall in the area. While the tenants claim they were having the property taken care of during their absence they have provided little evidence of this. In contrast the landlord has presented an eye witness who testified that she passed by the property on an almost daily basis and she had concerns that the property was not being looked after. The witness testified that there were never any signs, such as footprints in the snow surrounding the home, to show that it was being visited. Being aware of the damage that can result from the heavy snowfall in the area the witness consulted the tenant's employer as to the tenants' whereabouts and while she was told someone was looking after the rental unit she never saw any evidence of this. I accept the testimony of the witness. I find further that had the property been being inspected as stated by the tenants it is reasonable to conclude that the leak would have been discovered and the damage may have been less severe. However, the evidence is that the leak was not discovered nor reported to the landlord until the tenants returned to the property after their 2.5 month absence. While it may be that there was a fault in the pipe that caused the flood I find it is reasonable and probable to conclude that if addressed right away the damage may not have been so severe.

Overall I find that the tenants were in the care and control of the rental property and they vacated it for 2.5 months during the winter season without regard for the property. I find that in so doing the tenants breached a duty of care afforded to them which resulted in severe damage to the rental property as cited in the landlord's Notice to End Tenancy. I therefore dismiss all of the tenants' claims including their claim to cancel the Notice to End Tenancy given for Cause. The evidence shows that the tenants vacated

the rental unit on March 3, 2012 and I see no reason to reinstate the tenancy. I therefore find that this tenancy ended when the tenants moved out on March 3, 2012.

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: May 15, 2012.

Residential Tenancy Branch