Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have requested compensation for damage or loss under the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present for each of the 2 hearing dates held. At the start of the initial hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided; each party submitted a number of documents and photographs.

Preliminary Matter

The tenants reduced the total claim to $9,009.42; a clerical error was made in relation to the amount of rent abatement sought in the detailed breakdown of the claim.

The tenants submitted a computer disc of photographs; the landlord was able to view these photographs, however; the disc supplied to the Residential Tenancy Branch was not compatible with our system and could not be viewed.

At the 2nd hearing the parties were reminded that they continued to provide affirmed testimony.

Issue(s) to be Decided

Are the tenants entitled to $9,009.42 in compensation for damage or loss under the Act?

Are the tenants entitled to filing fee costs?

Background and Evidence

The tenants have made the following claim:

Loss of quiet enjoyment September 26 – November 12, 2011, loss of shower and utility room October 24 to November 12, 2011	1,670.00
Increased hydro costs over 5 days	50.00
Increased gas costs over 4 days	40.00
1 month's rent as result of notice to leave property	1,670.00
Materials to paint house	250.00
Cost of paint and items to improve yard	1,200.00
Replace towel rail	37.00
Replace toilet seat	21.00
Air vent cover replacement	42.00
Vines and plants	180.00
Labour 10 hours @ 13.00 per hour – drain pipes	130.00
Dry cleaning costs	274.42
Loss of specific belongings	2,445.00
TOTAL	9,009.42

At the start of the hearing the tenant withdrew the portion of the claim for labour.

The tenancy commenced on November 1, 2004; at the conclusion of the tenancy rent was $1,670.00; it was last increased effective January 1, 2011.

A move-in and move-out condition inspection report was completed. The move-in report indicated several blinds would be installed.

The move-out report was signed by the parties on November 13, 2011, with the tenant agreeing to the state of the home, as indicated on the report; no deficiencies were noted. The tenant stated she did not believe that the matters related to this dispute could be included as part of the condition inspection report.

The landlord returned the deposit paid and refunded to the tenant's the balance of November, 2011, rent that had been paid, in the sum of $1,002.00. The deposit was also returned. A mutual agreement ending the tenancy had not been reached.

The rental unit was a home built in the 1950's; the landlord stated it had been renovated in 1979, which brought the home up to standard. There are 2 bedrooms and a bathroom upstairs and a bedroom, bath, utility room and sitting room in the basement.

The building had experienced a leak in 2006 and while the landlord did repair the leak, he did not offer to clean and dry the area affected. The tenants believe that this prior leak contributed to a mould problem in the carpet, which had been removed in 2004.

The tenants submit that utility room was unfinished at the start of the tenancy and that in early September 2011, another leak occurred which the landlord failed to address. During September, the tenants made a number of requests that the leak be investigated.

On September 25, 2011, the tenants gave the landlord a letter, a copy of which was provided as evidence, reporting mould in the basement and that mould had grown on clothing. Water was seeping in through the laundry room door; there were problems with decks, a fence, gate and drain pipes. The tenants wished to have these problems addressed.

Commencing September 25, 2011, the landlord began to excavate around the exterior of the home. Vines planted by the tenants were removed. The leak in the basement continued with

the tenants again calling on the landlord for a resolution. Over the weekend of October 15, 2011, the male tenant assisted the landlord with digging out and replacing drainage tile.

The leak continued and on October 24, 2011, the landlord returned to the home and reported he believed the leak was originating in the shower, not from the exterior of the home. Drywall was removed from the utility room, which exposed mould on the walls. The tenants submitted photographs of the walls after the insulation had been removed; the walls were coated in a black substance. On October 25, 2011, the landlord removed more drywall and when the tenants returned home they could smell mould. The tenants showed the landlord a closet that was mouldy, but the landlord denied it was mould. The landlord stated the photographs show that the foundation was coated with a sealant, which is black.

On October 26, 2011, the landlord supplied a large heater to dry the basement, but he refused to pay the tenants for any increase in heating costs. The landlord stated he had asked for copies of bills that showed an increase in costs, but never received a bill.

From October 26, 2011, onward, the tenants requested an asbestos inspection; they were concerned that asbestos was present in the dust from the construction; the landlord refused to pay for a report; the tenant stated they were told they could move out if they wished.

The tenants were concerned that the unit had mould and asbestos, materials were left in the basement and the house smelled of mould. On October 29, 2011, the landlord and his daughter came to the unit and suggested the tenants sign a mutual agreement to end the tenancy. The tenants refused to sign the agreement. The tenants believed the home was of an age that asbestos would be in the walls and they wanted an inspection completed; at this point the tenants asked that no further work be completed on the home and the landlord complied with their request.

The tenants gave the landlord written Notice on October 30, 2011, to vacate the unit on November 12, 2011. The tenants also gave the landlord a schedule of damages for the cost of plants, loss of quiet enjoyment over a 6 week period of time, increased hydro costs, materials, labour and dry cleaning. The notice ending tenancy given to the landlord indicated the tenants believed the landlord wanted them to leave. The tenant confirmed that a notice to end tenancy was never issued by the landlord.

The tenants submitted a copy of a letter issued on November 4, 2011, by an Environmental Health Officer, with the local Health Authority. The letter indicated the officer had attended at the home and confirmed the presence of mould on some of the building surfaces; the letter indicated mould may have penetrated the building materials. The report stated that the presence of mould did not necessarily indicate a health hazard. The report went on to provide general information on remediation steps, such as preventing moisture and controlling humidity.

The landlord spoke with the Environmental Health Officer who said the letter was generic and sent out when any mould complaint is made. The Officer stated he did a visual inspection of the unit, that he could not say what type of mould might be present and that he had not seen any mouldy clothing or belongings.

On November 6, 2011, the landlord contacted the tenants to inform them that he would obtain an asbestos report. The tenants pointed out that the landlord arrived at the unit on November 8, 2011, without having given prior notice.

The November 8, 2011, inspection was completed by an accredited lab and a report issued November 18, 2011, determined that the home did not have any asbestos present. A copy of this report was supplied as evidence. The tenants questioned the report as page 3 of 3 was missing. The tenants did not obtain a report, independent of the landlord's, in an attempt to support their suspicion that hazardous mould or asbestos was present in the unit.

The landlord stated during the 2nd hearing that the 3rd page of the asbestos report had been located, that it was a blank page and did not contain any additional information. The tenants suggested the landlord was not being truthful.

The tenants submitted a November 23, 2011, letter issued by the landlord in response to their notice ending tenancy. The landlord agreed that he had been confident there was no asbestos in the home and that he had said if the tenants were unhappy they could vacate; the landlord denied ever telling the tenants they must move out. The landlord stated that he had refunded the tenants the balance of rent paid, even though proper notice ending the tenancy was not given, plus the deposit had been repaid. The landlord spent money on an asbestos report which confirmed the absence of asbestos in the bathroom shower wall, basement entrance drywall and insulation.

The tenants testified that they had made many improvements to the property, that they replaced heat vent covers, a toilet seat and towel rack some time during 2007; that they planted many perennials in the garden, painted portions of the unit and generally cared for the property.

In 2008 a snowfall caused a deck on the outside of the home to collapse and rather than replace the deck the landlord had it removed. Two remaining decks required repair and as a result the tenants were unable to use 3 of the 4 decks. The tenants stated they repeatedly asked about replacement of the removed deck.

The landlord provided pictures of the deck area that had been removed; it was a lower portion of the deck that was outside of the kitchen. The lower portion had been removed as a result of snowfall damage, but useable deck space remained outside of the kitchen. Another deck area that the tenants requested be repaired would have resulted in the removal of a kiwi tree; the tenants opposed this removal, so work was not completed on that deck; which the landlord believed was in good condition.

The tenants provided a number of photographs of belongings which they claim were damaged by mould. The tenants have claimed $2,445.00 for the loss of these personal items; some of which included shoes, curtains, a recliner, travel bag, purses, pants, suitcases and other items. The tenants claimed dry cleaning costs for items that had mould; the invoice notated that mould was present on the items.

The landlord testified that they did not see any clothes that had been damaged by mould and that a call was placed to the drycleaners who told them they only make notations on the invoice, as suggested by their customers. The drycleaner told the landlord they act as a depot and ship to a cleaning service.

The tenants have claimed compensation equivalent to 1 month's rent as they felt they were forced to leave the rental unit; they believe the landlord wanted them to leave.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Residential Tenancy Branch policy suggests that a dispute resolution officer may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to compensation claimed by the tenants.

In relation to the claim for loss of quiet enjoyment from October 24, 2012, to November 12, 2011; I have considered the tenant's submission that a call was placed to the landlord in early September and that on October 24, 2012, some preliminary work commenced in the basement, in an attempt to locate the source of a water leak.

Residential Tenancy Branch Policy suggests that a claim for quiet enjoyment must include consideration of factors such as the amount of disruption suffered by the tenants, the reasons for the disruptions, if there was any benefit to the tenants for the disruptions and whether or not the landlord made his best efforts to minimize any disruptions to the tenant. I find this to be a reasonable policy.

I find, from the evidence before me that the amount of reported disruption caused as a result of the remediation work that commenced in the basement did result in some loss of use to the tenants; thus affecting their right to quiet enjoyment of the rental unit. While a landlord has a responsibility to maintain the home, as required by the Act; the removal of drywall and the need to work on the bathroom resulted in a loss to the tenants.

I find that the loss experienced by the tenants occurred between October 24, 2012, the date the landlord commenced repairs, and October 29, 2012, when the tenants insisted the landlord cease working on the home. The landlord, faced with the opposition of the tenants, did cease repairs and did obtain an asbestos report which was issued after the tenants vacated the home. After October 29, 2011, I find that the tenant's refusal to allow further work disqualifies them from further compensation for loss of quiet enjoyment or use.

Therefore, for the period of 6 days from October 24 to October 29, 2012, I find that the tenants are entitled to compensation in a nominal sum of $100.00.

The tenants have claimed a loss of the use of 3 decks, dating back to March 2008.

Section 7 of the Act provides:

> ***Liability for not complying with this Act or a tenancy agreement***
>
> ***7*** *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
> *(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or*

> *their tenancy agreement* ***must do whatever is reasonable to minimize the damage or loss.***
>
> (Emphasis added)

There was no evidence before me of any attempts made by the tenants, dating back to March 2008; that showed, on the balance of probabilities, the tenants had made on-going requests to have the decks repaired. Even if I were to find that this had been the case, there was no evidence before me that the tenants were unable to use the decks. The tenants had a responsibility to minimize the claim they are making by taking action at the time the alleged breach of the Act occurred. The tenants have allowed their claim to accumulate over a period of almost 4 years; which I find is unreasonable, given the requirement of section 7 of the Act. Therefore, in the absence of any attempt to mitigate the loss they are now claiming, I find that this portion of the claim is dismissed.

In relation to the claim for additional heating costs; if find, in the absence of any verification of hydro bills, which could have confirmed the claim for additional costs above and beyond normal consumption levels, that this portion of the claim is dismissed. In the absence of verification of a loss, I have made the same finding in relation to the claim for gas costs, paint materials, improvements, the towel rail, toilet seat, air vents and vines and plants. There was no evidence before me that the tenants were thwarted from removing any plants that they had purchased; they were free to do so. There was no evidence before me that that the tenants had asked the landlord to replace the towel rail, toilet set and air vents and verification of the cost of these items was not provided.

Even if the tenants had been contracted by the landlord to make improvements to the property, such as painting and yard improvement, in the absence of a term of the tenancy agreement term which provided for these services, I would find that those items would not fall within the jurisdiction of the Act.

The tenants alleged that the home had mould and relied upon a letter from the local Health Authority Environmental Health Officer to support their claim for compensation. The tenants have the burden of proving that mould was present and that mould posed a risk to their health. The tenants did not deny the landlord's submission that the Environmental Health Officer did not take any samples of mould and there was no evidence of any analysis completed which indicated a toxic substance was present in the home. In fact, the letter issued by the Health Authority indicated the presence of mould would not necessarily indicate a health hazard.

There was no evidence before me that the tenants had any independent analysis completed on the clothing they submit was damaged by mould. The photographs submitted by the tenants of clothing, were bereft of any evidence of mould; while items appeared to have been worn and damaged, I find, on the balance of probabilities, that the photographs did not conclusively demonstrate the presence of mould. Even if I accepted that the dry cleaning staff had written the notation on the invoice, that mould was present on the clothing; there was no evidence before me that the staff member was trained to analysis the presence of mould. Therefore, I find that the dry cleaning costs are dismissed.

The tenants insisted the landlord have the home assessed for the presence of asbestos and the failure of the landlord to immediately order an assessment resulted in the tenants giving notice to end the tenancy. I have rejected the submission of the tenants that the home was somehow uninhabitable; the report issued for the landlord on November 18, 2011, supported the

landlord's belief that renovations completed in 1979 would have ensured the concern related to asbestos was unfounded.

The tenants did not supply any independent evidence in support of their submission that they must vacate as a result of a health hazard and their testimony suggesting the landlord had withheld page 3 of the report from them, as a means of obtaining a decision based on fraud, is of no weight, given page 2 of the report indicated that asbestos was not located in the basement. If evidence of information on page 3 that contradicts page 2 were to be brought forward, this could be determined to constitute fraud. However, I have placed weight on page 2 of the report which clearly indicated that asbestos was not present in the basement bathroom and entrance fibreglass and drywall; the area where work walls had been disturbed.

I find that the notice given by the tenants on October 30 2012, ending their tenancy effective November 12, 2011, was not based on any valid health risk and that the tenants are not entitled to compensation equivalent to 1 month's rent. The landlord did not issue a notice to end tenancy, nor was there evidence before me of any other reasons the tenants should relocate. I find that the landlord was making efforts to remediate the basement; work which ceased based on a request by the tenants.

As the landlord has previously provided the tenants with compensation in the form of a return of the balance of rent paid for November, 2011, in the sum of $1002.00; I find that the tenants have been compensated and that a monetary order for the sum I have awarded is not required. The notice given by the tenants on October 30, 2011, was effective November 30, 2011. The landlord was not required to return the pro-rated amount of rent for the balance of November, but as he did so, I find that the compensation I have ordered is satisfied.

As I have determined the compensation ordered has been previously provided to the tenants, I decline filing fee costs.

Conclusion

The tenants are entitled to compensation in the sum of $100.00 for the loss of quiet enjoyment. Previous compensation given to the tenants by the landlord has satisfied the claim.

The balance of the 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: May 31, 2012.

Residential Tenancy Branch