



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RP, RR, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the tenants 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.

One of the named landlords and both tenants attended the conference call hearing, and all parties gave affirmed testimony. The parties also provided evidence in advance of the hearing to the Residential Tenancy Branch and to each other, all of which has been reviewed and is considered in this Decision.

During the course of the hearing, the tenants withdrew the applications for an order that the landlords make repairs to the unit, site or property and for an order permitting the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, and those matters are hereby dismissed.

Issue(s) to be Decided

- 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?

Background and Evidence

This fixed term tenancy began on August 31, 2011 and expires on August 31, 2012. The tenants still reside in the rental unit. Rent in the amount of \$1,000.00 per month is payable in advance on the last day of each month for the following month's rent, and there are no rental arrears. On August 21, 2011 the landlords collected a security

deposit from the tenants in the amount of \$500.00 and a pet damage deposit was collected on August 30, 2011 in the amount of \$300.00.

The first tenant testified that throughout the winter, ice built up on the windows in the rental unit, and the landlord told the tenants to leave the windows open to prevent icing, but the windows still froze. Also, the entrance door to the rental unit has a big gap and ice forms in the hallway. The landlord was told about the problem several times and was shown the gap in the door as well as gaps between the window frames and the windows.

The tenant also testified that wood bugs infested the bathroom all winter, coming from under the heater. The landlord was told of that problem, but sent the tenants a letter saying that the bugs are harmless. Further, the toilet is chipped and rusty, but functional.

Further, during the tenancy the screen and window on the front door was loose and fell off when the tenant attempted to open the window. The tenant emailed the landlord the same day, but the landlord arrived 30 days later, took it off, put it in the shed and never replaced it. The doorway now looks horrible.

The tenant further testified that the landlords repaired the weather stripping on one of the doors, but the door now doesn't lock. The landlords sent another person to fix it but it didn't help because the door is warped. The tenants asked the repair person to check the door, but all he did was tighten the dead bolt.

The tenant also testified that a pipe under the kitchen sink was leaking and became mouldy and very smelly. The landlord's spouse sprayed some solution referred to as 3% which was said to reduce mould, but the tenant is not satisfied that the solution has the ability to do so.

The tenant also testified that the plug in the kitchen doesn't work and the tenants cannot plug in the microwave oven using that plug, but have to plug it into the stove or the breakers blow.

The tenants wanted to move out of the rental unit in September, 2011 but the landlords told the tenants that they were being held to the fixed term.

Every door frame and the drawers in the kitchen cabinets are stained, and the entire rental unit is need of painting.

The tenants claim 4 month's rent for difficulties encountered during the winter that the landlords did not attend to. The light in the bathroom did not work and the landlord said

it might get fixed but the tenant called an electrician and paid \$100.00, but did not get a receipt. The tenants reduced the rent paid by \$100.00 during that month.

The other tenant testified that the landlord told the tenant when rent was paid that the tenants could move in on August 31, 2011. It took a month to get the fridge fixed; the breaker for the fridge would blow if any other plugs were used, and the tenants lost food during the tenancy as a result.

The tenant further testified that the landlord torments the tenants. A neighbour had left mattresses in front of the yard, and the landlord called the tenant twice on the tenant's cell phone telling the tenant to get rid of them. The landlord also put it in writing.

The tenant also testified that a neighbour, who shares a wall with the tenants, had level 2 mould which came through to the tenants' bathroom, which was confirmed in writing by a restoration company. The landlord then blamed the mould on the tenant accusing the tenant of smoking marihuana in the rental unit causing the mould.

An electrician told the tenant that the house needs wiring, and the landlord blames the tenants' television or other appliances or gaming devices belonging to the tenants.

The railing on the deck is rotted and loose. The landlord promised to fix it but never did. The tenant testified that nothing gets fixed.

The tenants also provided a copy of a letter sent to the landlords dated April 30, 2012 setting out the repairs requested and responses that the tenants had received from the landlords. Also provided is a letter addressed to the Residential Tenancy Board dated May 2, 2012 also setting out the repairs requested and responses received from the landlords. The latter document states that on August 21, 2011 when the deposit was paid, the landlord promised that the rental unit would be clean and ready to move into by August 31, 2011 in the afternoon. Upon the tenants' arrival, numerous issues were noted: cracked living room window, screen doors were defective, old and beyond repair and the sliding window in the front screen door did not fit the frame, the rental unit had not been painted, cupboards were smelly. The letter also states that the tenants undertook some of the work that the landlords failed to attend to, and states that the landlord had told the tenants that the tenants rented the unit "as is."

The tenants provided photographs of the rental unit to illustrate the tenants' claim.

The landlord testified that the tenants moved into the rental unit while the carpet was still wet.

The landlord denies that the tenants ever told the landlords about a space in the door. The repair person was there twice and another later.

The landlord further testified that the tenants asked the landlord to take the screen door off, so the landlord did. It doesn't serve any purpose. However, the tenants did not tell the landlord that the window fell out of the screen door, and it was never brought to the landlords' attention.

The landlords provided a copy of the move-in condition inspection report signed by the landlord and one of the tenants on August 31, 2011. The report shows that at the outset of the tenancy, the stove filter required cleaning and the top of the stove edge had 2 chips; the fridge contained a 3 inch dent; the countertop was chipped; a small water stain existed on the cupboards; burn marks on the floor coverings in the living room; the living room window had a crack on the outside window; the lip of the windows and screens in the bedrooms required attention; the deck boards required painting; the screen on the patio door was torn; and 3 marks appear on the stairwell.

The landlords also provided a copy of an invoice for cleaning the entire unit, top to bottom, on August 31, 2011 for which the landlord paid \$144.00. Further, an invoice has been provided dated August 31, 2011 for painting the living room window and front door trim.

Another document has been provided by the landlords signed by a person who states that the person repaired under the kitchen sink on October 27, 2011, and applied weather-stripping to the front door of the rental unit on November 4, 2011.

The landlord also provided a copy of a list of improvements to rental units, which shows that on September 8, 2011 the landlord replaced a faulty heater in the bathroom; on September 15, 2011 replaced faulty breakers; and on October 27, 2011 added a plug for the fridge. Copies of invoices for those improvements were also provided in advance of the hearing to prove the improvements made.

Also provided are copies of letters from the landlord to the tenants. One in particular, dated November 14, 2011 states that the previous tenants were had not been given sufficient time to complete the cleaning due to the tenants' insistence on moving in before the carpets were dry, and therefore any items requiring attention, including cleaning, became the responsibility of the new tenants. The letter also points out that paragraph 8 of the tenancy agreement states that the rental unit is being rented "as is" and that the window tracks and other cleaning required at the beginning of the tenancy will now be the responsibility of the new tenants before vacating the rental unit. A copy of the tenancy agreement was provided for this hearing, and the paragraph states: "8.

CONDITION OF PREMISES. The Tenant accepts the premises as is and has had an opportunity to inspect the premises prior to entering into this Agreement. The Tenant agrees to maintain the premises in a clean and tidy condition.”

Analysis

I have reviewed the evidentiary material provided by the parties, including the photographs provided by the tenants and the tenancy agreement. I find that paragraph 8 of the tenancy agreement is not a legal term. The *Residential Tenancy Act* states that a landlord must provide and maintain a rental unit in a state of decoration and repair that makes it suitable for occupancy by a tenant, whether or not the tenant knew of a breach of that by the landlord at the time of entering into the tenancy agreement. The *Act* also states that landlords and tenants may not contract outside the *Act*, and any attempt to do so is of no effect. Further, the tenancy agreement was signed on August 21, 2011 and the move-in condition inspection report was not completed until 10 days later. Paragraph 8 states that the tenants had an opportunity to inspect the rental unit prior to entering into the tenancy agreement, but I find that the tenants did not have an opportunity to inspect prior to entering into the tenancy agreement. For those reasons, I find that paragraph 8 in the tenancy agreement is of no effect.

I also disagree with the landlord that the screen door has no purpose. The photographs provided by the tenants show that the loss of the screen door has left the rental unit in a poor state of decoration and repair. The door was on the rental unit when the parties completed the move-in condition inspection and the landlord has failed to return it to the condition the tenants had every right to expect. In the circumstances, I find that the tenants’ application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is justified.

However, during the course of the hearing the tenants withdrew the applications for an order that the landlords make repairs to the unit, site or property and for an order that the tenants be permitted to reduce rent for repairs, services or facilities agreed upon but not provided. The tenants’ remaining application is for a monetary order for money owed or compensation for damage or loss due to the landlords’ failure to complete repairs in a timely manner and request reimbursement from the landlords 4 month’s rent for the winter months. The landlord testified that the tenants did not advise the landlord of a space in the door. It’s clear in the photographs that neither the door nor the window fit the frames and consequently, I find that the gaps existing are evidence of the tenants’ claim that ice builds up in the winter months and the outside cold temperatures enter the rental unit. Whether or not the tenants ever told the landlords about it is not entirely clear, but I find that the landlords ought to have known simply by looking at the closed

door and closed window. Further, the landlord did not deny the testimony of the tenant that the landlords told the tenants to keep a window open to prevent icing. I fail to see how the landlords can expect tenants to keep windows or doors open in the winter months or that that would be an acceptable solution to the obvious repairs required.

I am not satisfied, however, that the tenants are entitled to a monetary order for the entire rent paid for the winter months. Tenants pay rent for a rental unit that complies with the *Act*. The tenants have not provided any evidence with respect to increased utility bills as a result of the gaps in the door and window, however, I find that the tenants have established a claim for loss of enjoyment due to the ice build-up and for the landlords' failure to comply with Section 32 of the *Act*. I hereby grant a monetary order in favour of the tenants in the amount of \$200.00 per month for 4 months.

Since the tenants have been partially successful with the claim, the tenants are also entitled to recover the filing fee from the landlord for the cost of this application.

Conclusion

For the reasons set out above, I hereby order the landlord to comply with the *Act* by maintaining the rental unit pursuant to Section 32.

I hereby grant a monetary order in favour of the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$850.00. This amount may be deducted from a future month's rent payable under the tenancy agreement or otherwise recovered.

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: June 04, 2012.

Residential Tenancy Branch