



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, RP, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the tenants for an order cancelling a notice to end tenancy for cause; 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; and to recover the filing fee from the landlords for the cost of this application.

The tenants and one of the named landlords attended the conference call hearing and all gave affirmed testimony. The parties agree that the tenants' application for dispute resolution and notice of hearing documents were served on the landlords by registered mail on June 23, 2012, and I find that the landlords have been served in accordance with the *Residential Tenancy Act*.

The parties also provided evidence in advance of the hearing, however the evidence provided by the landlords was not received by the Residential Tenancy Branch within the time provided by the *Residential Tenancy Act* and the Rules of Procedure. The tenants did not oppose inclusion of that evidence and all evidence and testimony provided has been reviewed and is considered in this Decision.

Issues to be Decided

- Is the tenants' application for an order cancelling a notice to end tenancy for cause justified in the circumstances?
- Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the tenants' application for an order that the landlords comply with the *Act*, regulation or tenancy agreement justified in the circumstances?
- Are the tenants entitled to an order that the landlords make repairs to the unit, site or property?

Background and Evidence

This fixed-term tenancy began on October 1, 2011 and expires on October 1, 2012. Rent in the amount of \$1,150.00 per month is payable in advance on the 1st day of each month, and there are presently no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$575.00 which is still held in trust by the landlords.

Notice to End Tenancy:

The landlord testified that the tenants have been late paying the rent on at least 3 occasions. The tenants gave the landlords 12 post-dated rent cheques at the beginning of the tenancy, all payable on the 1st day of each month of the fixed term. The landlords gave them all to the bank, and the bank makes the deposits into the landlords' account when the date arrives. The landlord does not recall when the cheques were given to the bank, however the landlord testified that the first rent cheque was not deposited at the request of the tenants and the tenants paid cash on October 3, 2011. The November, 2011 rent cheque was returned for insufficient funds on November 2, 2012, and the tenants asked the landlords not to deposit the December, 2011 rent cheque and the tenants deposited cash on December 5, 2011. A copy of a letter from the bank to the landlords dated July 4, 2012 was provided for this hearing, and it confirms that the October and December cheques were not deposited by bank personnel at the request of the landlords and were instead deposited on October 3 and December 5, 2011. The landlords' evidentiary material states that the tenants were late with rent 4 times over an 8 month period, 2 of which were N.S.F. cheques in November, 2011 and June, 2012, although the landlord did not provide any oral testimony about June's rent.

The landlord further testified that on June 20, 2012 the tenants were served with a 1 Month Notice to End Tenancy for Cause by personally handing the document to one of the tenants. A copy of the notice was provided for this hearing and it is dated June 20, 2012 and contains an expected date of vacancy of July 31, 2012. The reason for issuing the notice is stated to be that the tenants are repeatedly late paying rent.

During cross examination the landlord testified that the day before the notice to end tenancy was served on the tenants the tenants had written a letter to the landlords about repairs requested to the rental unit.

The first tenant testified that the November, 2011 cheque was returned for insufficient funds on November 2, 2011 and the tenant gave cash on November 3, 2011 to the

landlords' daughter who lives in another suite within the complex, but did not receive a receipt. The tenant denies that the tenants asked the landlords to hold the October, 2011 cheque; the landlords' bank held the cheque and the tenant texted the landlords' daughter to ask why but she didn't know. The tenant had asked the landlords to hold the November, 2011 cheque, but the landlords stated that the bank would not hold it, so it was returned N.S.F.

The other tenant testified that October 1, 2011 was a Saturday and the cheque wasn't processed by the bank until after the weekend. Therefore, the tenants were not late with the rent but it was late being deposited into the landlords' account. The tenant denies asking the landlords to hold the October, 2011 cheque, but admits that the November, 2011 cheque was returned for insufficient funds.

Repairs, Compliance with the Act or Tenancy Agreement, and Monetary Compensation

The first tenant testified that the landlords reside in Alberta and appointed their daughter to be the agent for the tenancy. The tenants emailed the agent on January 22, 2012 regarding leaky windows. A few days later, the landlord called the saying that the shower steams up but the tenant replied that they hadn't even been in the rental unit for a few days and therefore the heat was turned off. The landlord told the tenant he'd inspect but didn't show up until April, 2012. The tenants had been told by previous tenants about leaks in the rental unit. The landlords had replaced windows in November, 2011 but they still leaked.

The tenants also provided photographs of the rental unit, pointing out that one of the photographs shows a wavy ceiling in the living room, and stated that the tenants fear that mould is growing between the walls. The window tracks contain mould, and provided a photograph to illustrate the problem in the rental unit.

The tenant further testified that at the outset of the tenancy the landlords offered to rent the rental unit at \$1,250.00 per month or \$1,150.00 per month and the tenants would pay their own electricity bills. The tenants had opted for paying their own electricity having been told by the landlord's daughter that it would be about \$250.00 every 2 months for the electric bill. The tenants pay it, and it includes the basement suite that the landlords' daughter resides in and that suite has a washer and dryer. The tenants had to keep the heat up to keep the house warm from November through January. The bill for October and November was \$700.00; December and January \$800.00, although the only bill provided is \$374.77 for April 4 to June 4, 2012.

The tenant also testified that the roof was repaired 2 days prior to the hearing and the window still leaks and the air conditioner runs constantly.

The other tenant testified that the previous tenant stayed to tell the tenants about the windows and the electric bill. In mid-October, 2011, the first rain of the season after the commencement of this tenancy, the spare bedroom window leaked. The tenants told the landlord's daughter who advised that all windows were being replaced. In November, 2011 the landlords replaced only the windows in the 2 bedrooms.

The tenant was hospitalized for 4 days while having a baby. During that time, the tenant's husband only went home to shower, and while there he took photographs and sent an email to the landlord's daughter. The landlord responded to it saying that it was caused by humidity, but since the tenants hadn't even been at home, it didn't make sense.

In April, 2012 the landlord arrived and found the hole in the roof which was why the window leaked. The tenant is concerned about mould. The hole in the roof was patched in April, 2012 but it still leaked. The hole in the roof was repaired a couple of days ago, but no warnings or notices were provided to the tenants prior to the contractors arriving. There has been no rain lately, so the tenants do not know if there are still leaks.

The tenants had emailed the landlords on June 19, 2012 with respect to repairs and provided a copy for this hearing. The letter requests a specialist be retained to take samples by June 22, 2012. The letter further requests 50% of \$1,625.00 worth of power bills that the tenants had paid, and that all windows be replaced because the seals are broken. The tenants ask the landlords in the letter to provide accommodation for the tenants if the work disrupts their child's sleep.

The tenants ask that I order air quality tests at the expense of the landlords and for compensation for half of the heat bills and repairs to the ceiling in the living room. The tenants' monetary claim is in the amount of \$800.00.

The landlord testified that the landlords' daughter and agent pays for all the water bills for the complex, which includes water for the tenants' rental unit.

The landlord further testified that it was not appropriate for the tenants to leave the house with no heat for 4 days. The photographs of the tenants show that the thermostat was off and the rental unit froze up. There is no evidence of mould in the rental unit and no evidence of water in the attic. The ceiling in the living room appears wavy because it's an old house.

Analysis

Notice to End Tenancy:

I have reviewed the evidentiary material provided by the parties and I find that the landlords have failed to establish that late deposits of the rent cheques were due to the tardiness of the tenants. The landlords have post-dated cheques, and in order to prove late payment of rent, the landlords must ensure that the cheques are deposited to the account on time, and if the landlords agree to hold off depositing any at the request of the tenants, the landlords should ensure that the request is in writing. I accept that the letter from the bank states that 2 cheques were not deposited on the 1st of the month at the landlords' request, but the tenants deny that they asked for the first month's rent cheque be delayed until after the weekend when it wouldn't have been processed until after the weekend in any event. The tenant also testified that the landlords' daughter was asked why the cheque wasn't deposited, but the landlords' daughter did not know why. The landlord testified that the tenants paid cash to replace the October, 2011 rent payment, but the documentation from the bank states that the post-dated cheque was deposited into the landlords' account on October 3, 2011. The tenants admit to being late with the rent due to insufficient funds in November, 2011 and June, 2012. Two late rent payments do not constitute repeated late rent.

The notice to end tenancy is hereby cancelled.

Repairs, Compliance with the *Act* or Tenancy Agreement, and Monetary Compensation

The *Residential Tenancy Act* states that a landlord must provide and maintain a rental unit in a state of decoration and repair that complies with housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. The *Act* also states that anyone who claims compensation from another party must do whatever is reasonable to reduce the damage or loss. The tenants provided no testimony of what was done to mitigate any concern for mould at all other than to ask the landlord to replace the windows. I have reviewed the photographs and I accept that there is something black in the window tracks, but there is no evidence that the tenants ever tried cleaning it off. A solution of bleach and water may be sufficient to remove any possibility of health concerns. I further find that the tenants have failed to establish that the existence of mould is evident enough, or has caused illness proven to be contributed to the existence of mould, that would justify ordering the landlords to retain mould remedial experts.

I further find that the tenants have failed to establish that the wavy ceiling in the living room is anything to be concerned about. I accept the testimony of the landlord that the ceiling is wavy because it's an old house. The tenants fear that it may be warped due to the leak that was in the roof, but there is absolutely no evidence and only speculation of that.

With respect to the tenants' monetary claim, I find that the tenants have failed to establish what portion of the power bills the landlord ought to be responsible for. I accept that the house required a new roof, which the landlord has completed. The tenants testified that the electric bills were large from October to March, 2012, but provided no evidence of that; the only bill provided was for April 4, 2012 to June 4, 2012 which is approximately half of what the tenant testified the earlier bills were.

In the circumstances, I find that the tenants have not satisfied me that the landlords ought to be ordered to comply with the *Act*, regulation or tenancy agreement. I further find that the tenants have not established that the landlords ought to pay \$800.00 for power. I further find that the tenants have failed to establish that the ceiling in the living room is in a state of decoration and repair that is not in compliance with the *Act*.

Since the tenants have been partially successful with the application, the tenants are entitled to recover the \$50.00 filing fee from the landlord for the cost of this application, and I order the tenants to reduce that amount from a future rent payable to realize that sum from the landlords.

Conclusion

For the reasons set out above, the notice to end tenancy is hereby cancelled.

The tenants' application for an order that the landlords comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

The tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

The tenants' application for an order that the landlords make repairs to the unit, site or property is hereby 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: July 16, 2012.

Residential Tenancy Branch