



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution made by the Tenants for monetary compensation under the Act or tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

Preliminary Matter

The Tenants submitted their photographic evidence late, contrary to the rules of procedure. The Agent for the Landlord testified that he had received the photographs the day before the hearing. I asked the Agent if he had any objections to the evidence being admitted, or if he wanted an adjournment to have more time to review the evidence. The Agent for the Landlord testified that he had no objection to the evidence being admitted and that he did not require an adjournment, as he was ready to proceed. I allowed the evidence to be admitted and the hearing proceeded.

Issue(s) to be Decided

Are the Tenants entitled to monetary compensation from the Landlord?

Background and Evidence

This tenancy began in late December of 2011. The rent was \$1,400.00 per month and the Tenants paid a security deposit at the outset.

The Tenant who appeared at the hearing testified that when they were moving into the rental unit in December of 2011, they complained to the Landlord about a bad smell in the rental unit. The Tenant testified that the Landlord told her the previous renters had a baby and the bad smell might have been from a diaper left at the residence.

The Tenants moved in their furniture over the next few days and continued to detect the same bad smell. They cleaned the rental unit using bleach and cleaners and yet could not remove the smell. They phoned the Landlord again and complained of the bad smell. The Landlord did nothing, and apparently went on vacation for an extended period. The Tenants had to deal with the Agent for the Landlord, who is apparently the Landlord's son.

Early in the tenancy, after the Tenants did a load of laundry, they noticed fluid rising up from the septic system in the backyard. They suspected the tank needed to be pumped. They called the Landlord and the tank was pumped out. Within two weeks of this the tank overflowed again.

After further investigation the Tenants discovered that most of the drain lines from the house had been connected into the septic tank. They also discovered some drain lines were not connected to anything and simply drained out under the house. They also found that much of the piping under the house had been removed.

The Landlord or his Agent did some work to the system, which included using a sump pump and extension cords (which ran outside across the yard) to power the sump pump. The Tenant alleged this was an illegal repair.

The local municipal authority came to the house and apparently ordered the Landlord to do certain repairs, such as put a fence around the septic tank. The Landlord did not provide any evidence for the hearing of what the municipality ordered or told him to do.

Despite the Landlord's efforts, sewage waste was still coming up in the backyard and around the perimeter of the house.

The Landlord or his Agent covered the sewage area with garbage bags and took wooden pallets and placed them over the garbage bags, apparently to act as the "fence" ordered by the municipality.

The Tenant testified the sewage odour was very strong. She testified she could not have her pet dog go into the backyard for fear of it getting into the seeping sewage. The Tenants could smell sewage constantly from the backyard.

The Tenant provided several photographs in evidence. One of the photographs depict a hole in the floor of the laundry room, approximately the size of a furnace duct hole. The Tenant testified that the odour would come up from under the house and enter through this hole.

The Tenant testified they called the Landlord many times about this and always received promises to make repairs and fix the problems, but the Landlord did not hire anyone to do these repairs and attempted to do these himself or with his Agent. For example, the Tenant testified that the Landlord dug a trench around the perimeter of the house, which shortly after had sewage from the system seep into it.

The Tenants grew tired of the situation and the failed attempts of the Landlord to make repairs. They vacated the rental unit at the end of July 2012.

I note that toward the end of the tenancy the Tenants and the Agent for the Landlord exchanged a few text messages. The Tenant was very upset about the slanderous nature and inappropriate content of some of the messages sent from the Agent. These were provided in evidence.

At the outset of the tenancy the Landlord was going on an extended vacation and reduced the Tenants rent by \$400.00 a month for a period of time. The Tenants request compensation based on this, of \$400.00 per month for April, May June and July of 2012, plus the filing fee of \$50.00 for the Application, for a total claim of **\$1,650.00**

In reply, the Agent for the Landlord testified that the claims of the Tenants were exaggerated.

The Agent testified that there was a small amount of water coming up from the ground a few times. The Agent testified that this could not have affected the use of the rental unit that much and that the Tenants and their dog still had use of most of the backyard.

The Agent for the Landlord further testified that the last renters never complained about the septic system and that it worked fine for them. The Agent alleges the Tenants were misusing the septic system, causing a strain on the system. He testified he threw lime on the waste fluid and that reduced the smell.

The Agent alleged that this situation must have been safe, otherwise the municipality would have required the rental unit to be vacated.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Landlord has breached section 28 of the Act by allowing the Tenants to suffer from an unreasonable disturbance, that being the sewage smell from the septic system, and breached section 32 of the Act by failing to provide a rental unit that was suitable for occupation.

I found the testimony of the Agent for the Landlord should be given little or no credibility. His attempts to downplay this situation were unconvincing, to say the least.

Furthermore, I find that the Agent sent the Tenant a threatening text message, in which he threatened to accuse the Tenants of having marijuana in a shed on the property, even though he knew this was not true. For these reasons, I find the Agent's evidence of little value.

The Tenants' photographic evidence indicates a significant portion of the backyard strewn with palettes, garbage bags, lime, sewage effluent laying on the topsoil and electrical extension cords running across the top of the ground, dangerously exposed to the elements. There is sewage fluid seeping up from the ground around the septic tank, filling up the cracks in the cement and lying in small pools in the yard.

There was insufficient evidence from the Landlord or the Agent that they did anything properly in addressing this egregious problem. It is clear the Landlord has spent very little money or effort trying to protect his Tenants or his own property.

Immediately following the early reports from the Tenants regarding this situation, the Landlord should have had a **professional** company attend the rental unit and repair the septic tank and area, and inspect the building's plumbing and pipes.

Septic sewage leaks are not simply a source of noxious odour, they can also cause serious health problems and dangerous conditions to occur. By attempting to do these repairs by themselves the Landlord and the Agent risked doing more harm than good to

the Tenants and to their own property. I find the Landlord and his Agent failed to act with any regard to the serious nature of this problem.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the breaches of the Act by the Landlord caused the Tenants to suffer a loss of quiet enjoyment of the rental unit and loss of use of a portion of the rental unit property they were paying for.

I order the Landlord to pay the Tenants the sum of **\$1,650.00**, comprised of \$1,600.00 for the four months claimed and the \$50.00 filing fee for the Application. I grant and issue the Tenants a monetary order in these terms which they must serve on the Landlord. This order may be enforced in the Provincial Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 22, 2012.

Residential Tenancy Branch