



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR and FF

Introduction

This hearing was convened on an application by the tenants seeking a monetary award for \$4,535.04, a rent reduction and recovery of their filing fee on the claim that lack of maintenance results in limiting their use of their patio.

Issue(s) to be Decided

Are the tenants entitled to the compensation sought and, if so, in what amount?

Background and Evidence

This tenancy began on September 1, 2010 under a one-year fixed term rental agreement, defaulting to a month to month tenancy on September 1, 2011. Rent is \$1,230 per month and the landlord holds a security deposit of \$615.

The rental unit is a 1,010 square foot apartment in an approximately 25-year-old strata-titled building which contains 150 rental units. The rental unit is somewhat unique to the extent that it has a patio which, according to the tenants, is approximately 550 square feet compared to the standard 40 square-foot balconies attached to most units. The patio is situated on the roof of street level commercial units below.

The tenants have submitted voluminous evidence including numerous photographs and exchanges of emails among themselves, their property manager and the strata council addressing their concerns over the frequency and nature and nature of garbage on their patio and weeds growing up through the cracks in the interlocking brick surface.

The parties agree that:

1. The problem has been ongoing since the inception of the tenancy;
2. The items appearing on the patio with some frequency have included foodstuffs (which explains a photograph of a crow with a captured mouse), condoms, underwear, and tin cans, etc. and on one occasion a steak knife, all of which appear to have descended from balconies above;
3. Finding a solution has been frustrated by the multiple layers between the tenants, the landlord's property manager, the landlord, the strata corporation's property manager and the strata council and its maintenance employee;
4. The strata corporation appears to have accepted some responsibility for the maintenance by occasionally providing clean up services, but not nearly enough;
5. The property manager acknowledges the extent of the problem and the tenant acknowledges the property manager's continued efforts to have the strata corporation take preventive and remedial action;
6. The strata council has communicated with tenants including signage posted in building advising of the problem and imploring owners and tenants to take greater care avoid items falling or being thrown from their balconies. The council but short of installing video cameras as suggested to them out breach of privacy concerns;
7. The neighbourhood has had some problems with addicted persons frequenting the area.

The property manager stated that he manages 17 rental units in the building at an average rent of \$1,400 and that under normal circumstances, the subject rental unit's market value would be greater than that because of the large patio. However, in view of the ongoing problems, he stated that the lower \$1,230 rent has not been increased and the landlord is probably losing in the order of \$200 per month.

The property manager stated that he is currently encouraging the landlord to press the strata council to treat the patio surface in some way that will prevent the weed growth, to explore a mechanism by which the tenants would have standing to directly access to the strata council, or to consider whether he might have a cause of action against the council.

Analysis

Residential Policy Guidelines 1, states in part that:

4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.
5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

While I fully sympathize with the tenants with respect to some of the disgusting materials they are left to clean up, and while I recognize the occasional assistance offered by the maintenance staff, I cannot find that the landlord is responsible for cleaning the patio which appears to be routine yard maintenance.

It is arguable that the weeds growing up through the cracks between the patio bricks could constitute a major project that falls to the landlord. However, even in that case the landlord may be hampered by the strata council's prerogative with respect to limited common property.

In any event, I accept the evidence of the property manager that the tenants have already received fair compensation by virtue of the rent being substantially below what should be market value.

Therefore, I find that tenants are not entitled to a rent reduction or other monetary award and the application must be dismissed without leave to reapply.

Conclusion

The application is dismissed without leave to reapply.

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: November 16, 2012.

Residential Tenancy Branch