



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC; CNR; MNDC; RP; RR; FF

Introduction

This is the Tenants' application to cancel a One Month Notice to End Tenancy for Cause and a 10 Day Notice to End Tenancy for Unpaid rent; for an Order that the Landlord make regular repairs to the rental unit; for a rent reduction; for compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlords.

The Tenants gave affirmed testimony at the Hearing.

The Tenants stated that their Landlord DY ("DY") sublet the rental unit to the Tenants. They stated that the Landlord PN ("PN") is DY's mother and has acted on behalf of the Landlord for the latter part of the tenancy. The Tenants stated that DY has moved away and has not provided an address to the Tenants. They testified that they served PN with the Notice of Hearing documents and copies of their documentary evidence at the address noted on the 10 Day Notice to End Tenancy, by registered mail sent May 15, 2013. The Tenants provided a copy of the registered mail receipt and tracking numbers in evidence.

Based on the Tenants' testimony and documentary evidence, I accept that PN is a landlord as defined by the Act. I am satisfied that the Landlords were served with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act. Despite being duly served, neither Landlord signed into the teleconference and the Hearing continued in their absence.

Preliminary Matters

At the outset of the Hearing, the Tenants withdrew their applications to cancel the notices to end tenancy. They stated that they had reached an oral agreement with PN that the Tenants could pay half a month's rent for June and move out on June 15, 2013. The Tenants testified that they have paid the pro-rated rent for June in the amount of \$550.00. The Tenants stated that PN told them he would be sending them a letter confirming this agreement in writing, but that they have not received it yet.

The Tenants stated that PN agreed to end the tenancy effective June 15, 2013, as a result of an Order from the City dated June 5, 2013. A copy of the Order was provided in evidence. The Tenants stated that the septic field has backed up and that PN dug a trench which dumps raw sewage into a pond on the rental property, and which ultimately empties into Englishman River. The City Order provides direction to the owners of the property ("PN"s landlords) with respect to complying with section 31 of the Health Act.

Based on the Tenants' undisputed testimony, **pursuant to the provisions of Section 44(f) of the Act, I find that the tenancy ends on June 15, 2013**, and therefore the Tenants' application that the Landlord make repairs to the rental unit is dismissed. **I also find that the Tenants do not owe any rent to the Landlord.**

Issue to be Determined

- Are the Tenants entitled to compensation under the provisions of Section 67 of the Act?

Background and Evidence

The Tenants gave the following testimony:

- A copy of the tenancy agreement was provided in evidence. Monthly rent is \$1,100.00. This was a term lease, commencing June 1, 2012 and ending June 1, 2013. The Tenants paid a security deposit of \$1,100.00 at the beginning of the tenancy.
- PN's rottweilers killed 4 of the Tenants' turkeys. The Tenants seek compensation in the amount of \$200.00.
- PN was supposed to complete renovations at the rental unit in time for the Tenants to move in on June 1, 2012, however none of the renovations were completed. The Tenants had no choice but to move into the rental unit because they had already paid their security deposit and given their notice at their old place. The Tenants put racks in closets, installed shelves because there were no kitchen cupboards, and painted the inside of the duplex. PN agreed to reimburse them, but only paid \$200.00 of their \$301.81 cost. The Tenants seek to recover the balance of \$101.81. The Tenants provided invoices in support of this portion of their application.
- The Tenants paid full rent for the month of June, 2012, but were not able to move in until June 4, 2012, because the rental unit was not habitable. The Tenants seek to recover pro-rated rent for June 1 – 3, in the amount of \$109.80.
- The Tenants also seek compensation in the amount of \$800.00 for loss of peaceful enjoyment because of unfinished repairs and sewage issues.

Analysis

Section 7 of the Act states:

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.

Section 2 of the Act provides that this Act applies to tenancy agreements, rental units and other residential property. Section 62 of the Act provides that the director has authority to determine any matters that arise under the Act or a tenancy agreement. I find that the Tenant's claim with respect to compensation for the loss of the turkeys and for compensation for work done at the rental unit does not fall within the jurisdiction of the Act. These issues are outside the tenancy agreement. Therefore, this portion of the Tenants' application is dismissed.

Residential Tenancy Branch Policy Guideline 5 provides the following, with respect to the duty to mitigate or minimize loss:

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss¹. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation². Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim.

The Tenants did not provide evidence that they gave the Landlords written demand to make repairs to the rental unit, nor did they file an application for repair orders when the tenancy started. The Tenants did not file for compensation until 11 months after the beginning of the tenancy. With respect to the Tenants' claim for loss of peaceful enjoyment of the rental unit, I find that the Tenants did not comply with Section 7(2) of the Act, and this portion of their claim is dismissed.

The tenancy agreement indicates that the tenancy started on June 1, 2012. I accept the Tenants' undisputed testimony that they were unable to move into the rental unit until June 4, 2013, as a result of the Landlords failing to complete required renovations on time. Therefore, I allow the Tenant's claim in the amount of **\$109.80** for recovery of rent paid for the period of June 1 to 3, 2012.

The Tenants' application had some merit and therefore I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Landlords.

Conclusion

Pursuant to the provisions of Section 67 of the Act, I hereby provide the Tenants with a Monetary Order in the amount of **\$159.80** for service upon the Landlords. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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 20, 2013

Residential Tenancy Branch

