



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an application by the tenants for a monetary order. Both parties appeared and had an opportunity to be heard.

The landlord had filed a second evidence package with the Residential Tenancy Branch on July 24, 2013. The tenant said he had not received it. The landlord said the evidence had been given to one of the tenant's children, who had answered the door when she called at the tenants' home. This child was younger than a teenager. Section 88 allows for service of documents to be made by leaving the document at the person's residence with an adult who apparently resides with the person. Leaving a document with a child is not good service. Accordingly, the evidence delivered in this manner was not considered.

Issue(s) to be Decided

Are the tenants entitled to a monetary order and, if so, in what amount?

Background and Evidence

This tenancy commenced August 20, 2012 as a one year fixed term tenancy. The monthly rent of \$1850.00 was due on the first day of the month. The tenants paid a pro-rated rate for August in the amount of \$656.45 and a security deposit of \$925.00.

The tenants moved out of the rental unit on November 16, 2012. In a previous decision dated February 19, 2013, on file 800891 the tenants were ordered to pay the landlord \$3280.00 comprised of the balance of the October rent in the amount of \$1380.00, the November rent in the amount of \$1850.00, and the \$50.00 fee paid by the landlord for its' application.

On June 13, 2013 the tenants filed this application claiming:

- financial compensation for the fact that the rental unit was smaller than the size stated on the advertisement; and,
- financial compensation for damage done to books by silverfish.

The tenants moved to the Lower Mainland from Europe. They first lived in a three bedroom home for about ten months. The monthly rent for that home was \$2000.00. The tenant did not know the square footage of that home. They then lived in a holiday rental for about six weeks before moving into this home.

The ad for this home described it as a three bedroom home with a large fenced yard, three bedrooms, 1.5 bathrooms, den, family room, huge laundry room, and storage area. It also stated the home was 2200 square feet. The landlord, who is the rental agent for this property, said this number was supplied by the owner.

The tenant said his wife looked at several properties before they looked at this home. The agent who showed the property to the tenants said the tenants liked the home, made an immediate application for tenancy, and did not ask questions about the square footage. The landlord testified that several other prospective tenants looked at this property at the same time as the tenants and that there is always a lot of interest in this particular property because of the number of rooms and the price point.

Both parties acknowledge that the home had all the rooms listed on the ad and that the tenancy agreement does not make any reference to the square footage.

After the tenants moved out of this home they moved into another short term rental before moving into a home in an area several miles away. This home is smaller and cheaper.

During the tenancy there was a dispute about the heating of the home. The landlord had a heating and air - conditioning company inspect the furnace. The technician's report stated that there was "plenty of heat to heat a home at 1824 sq.ft." This document was filed as evidence in the previous hearing.

The landlord testified that when assessing a rental value the following factors are considered (in no particular order): number of bedrooms and bathrooms; age of home; location; condition; and square footage. The tenant testified that the important factors they considered were price, square footage and school district.

The tenant argues that when a tenancy agreement is signed the tenant is obliged to pay the rent and the landlord is obliged to provide the property and services promised. He

argues that the home was actually 20% smaller than advertised so they should be given a credit equal to 20% of the rent they paid.

The tenants' second claim relates to two sets – one four volumes and one two volumes – of antique books. These books came to the tenant from his great-grandparents. Before moving to Canada the tenant had the books appraised for insurance purposes.

After the tenants moved into this house they noticed silverfish, including in the books. The tenants reported the problem to the landlord who had a pest control company attend at the rental unit within a few days. The landlord says that the tenant cancelled the service. The tenant says that the most effective treatment involved the family leaving the home for up to a day and that was not feasible.

The tenant says that four pages of the books have been marked where a bug was squashed. He sent a photograph of the mark together with a description to the same book dealer in Germany. The appraiser responded with an e-mail stating that the books had been devalued by at least \$150.00 as a result of the pest damage. The tenant acknowledged that this was a very general statement.

The employee of the landlord who is responsible for arranging the maintenance to the rental units testified that they never received a complaint about silverfish from the tenants who lived in the unit before these tenants or from the subsequent tenants.

Analysis

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

The evidence is that the home contained all of the rooms and features that were advertised. The first issue is whether the home was smaller than advertised and, if it were, did the tenants suffer any loss as a result?

There is no proof as to the actual square footage of the house. None of the witnesses at the hearing have actually measured or had some one measure the house. The tenants' only evidence on this point is the report from the heating and air conditioning technician. There is no evidence as to how that person calculated that number or whether it is, in fact, a more accurate number than the one provided by the owner of the

property. The evidence does not establish, on a balance of probabilities, that the home was smaller than the size advertised. Accordingly, the tenants' claim for an adjustment to the rent is dismissed.

Before the landlord can be held responsible for any damaged caused by silverfish I must find that the landlord's lack of diligence created the problem.

The tenants' evidence is that:

- The tenants lived in two other rental properties on the Lower Mainland before moving to this unit.
- The tenants lived in this unit for a month before reporting the presence of silverfish to the landlord.
- The landlord had a pest control company to the rental unit within a few days of the complaint.
- The tenants decided that the inconvenience of the treatment outweighed the risk posed by the silverfish and chose not to co-operate with the recommended treatment.
- The tenants lived in two other rental units between the time they moved out of this unit and when they obtained the second opinion of value from the book dealer.

On the other hand the landlord's testimony is that they did not receive any complaints about silverfish before or after this tenancy. The landlord's rapid response to the tenants' complaint is consistent with them taking these type of complaints seriously and if previous tenants had reported the presence of silverfish it is reasonable to conclude they would have acted just as promptly.

The evidence does not establish, on a balance of probabilities, that they landlord's neglect or lack of action was the sole reason for the presence of silverfish and any damage they may have caused. Accordingly, the tenants' claim for damage to their books is dismissed.

Conclusion

The tenants' claim is 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: August 01, 2013

Residential Tenancy Branch

