



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; to reduce rent for repairs, services and facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

This hearing was adjourned to allow the tenant to amend their application to include an address of service so the landlord can send any evidence to the tenants. The hearing was reconvened on today's date. The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant and landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to have rent reduced for repairs, services and facilities agreed upon but not provided?

Background and Evidence

The parties agree that this tenancy started on March 01, 2009 for a fixed term of one year. The tenancy then reverted to a month to month tenancy after the first year. Rent for this unit was \$2,000.00 per month and was due on the 1st day of each month. The tenants paid a security deposit of \$1,000.00 on February 09, 2013. The security deposit was dealt with at a previous hearing.

The tenant DR testifies that when they were first shown the home there were various amenities on offer such as a speaker system, a fire place, central vacuum and intercom. The tenant testifies that these items were not hooked up at the time and there were no window coverings. The fireplace was in a box in the middle of the living room. The tenant testifies that the landlord said these items would be included and that's why the rent was so high. The tenant testifies that the landlord did not provide window coverings and the tenants had to provide their own for the bedrooms. The tenants had to install the fireplace themselves and the other services such as the speaker system, intercom and central vac were never installed. The tenant testifies that they discussed these issues with the landlord over a period of time but the landlord never provided them.

The tenant testifies that throughout the tenancy there were times when the tenants did struggle to pay the rent on time. The tenants understand that the landlord was frustrated about this but the landlord did not follow the prescribed methods to deal with the tenants; instead the landlord would harass the tenants, disturb their meals by turning up without notice, drive by the house at all hours and yell at the tenants guests. On one occasion the landlord came to the house with a metal bar. The landlord pushed his way into the house screaming at the female tenant and their son. The landlord pushed the female tenant against a wall and threw the metal bar out of the door. Since that incident the female tenant was too scared to be in the house alone. The landlord also threatened to kill the male tenant. The police were called out twice by the tenants concerning these threats and although the tenants have not pressed charges against the landlord the police files remain open.

The tenant testifies that the landlord would enter the house without 24 hours notice and would conduct very intrusive inspections which involved opening closets and the pantry. The tenant testifies that they would allow the landlord to enter the house in order to keep the peace. The tenant testifies that an incident occurred when the landlord drove by the house when the tenants were entertaining friends. The landlord stopped and was shouting about a water bill. The tenant went and got the bill but the landlord grabbed it out of the tenant's hands. The tenant testifies that the landlord appeared intoxicated and when the tenant's son offered to go and get money to pay the water bill the landlord took a swing at the tenant's son and threatened to kill the tenant again. The tenant testifies that his guests heard this altercation and have provided witness statements. Due to the loss of promised facilities and the loss of quiet enjoyment of the rental home the tenants seek a rent reduction of \$50.00 per month for the 50.5 months of their tenancy to a total sum of \$2,525.00.

The tenant testifies that prior to moving into the house the tenants asked the landlord if they could use the garage for storage for a week. The landlord agreed and gave the tenants the garage key. The tenant does not remember if they agreed to pay the landlord for this storage but does not think a charge was mentioned. When the tenants signed the tenancy agreement the landlord informed the tenants that they owed \$700.00 for the garage rental for the week. The tenant testifies that they paid this to the landlord but now think this is an unfair amount. The tenants have calculated the square footage and a daily rate based on the total rent for the property. The tenants therefore think that \$45. 92 would be a fairer amount to pay for the use of the garage for a week and the tenants seek to recover the extra amount they paid of \$654.08.

The tenant testifies that there was a flood in the house that occurred on May 23, 2011 due to problems with the plumbing. The tenant testifies that they could not get hold of the landlord and in order to protect their belongings and the landlord's property the tenants called a restoration company. This company came to view the house on May 26, 2011 and the tenants had to move all their belongings in the basement to the two unaffected rooms. The restoration company said they had to wait for authorisation from

the landlord before they could complete any work. The landlord came to view the property three days later and the landlord handled everything from that time onwards with the restoration company. When nothing was happening the tenants called the restoration company and were told that they had been trying to get hold of the landlord. New carpets were installed on September 07, 2011 and the other work was eventually completed on September 09, 2011. The tenants have provided some evidence confirming these dates from the restoration company.

The tenant testifies that they wrote to the landlord asking for a rent reduction for the loss of the basement during the three and a half months it took to remedy the damage from the flood. The landlord told the tenants he would lock off the basement. The tenants informed the landlord that this was not acceptable as it was an access route and their belongings were stored there. Any loss of rent would have been covered by the landlord's insurance company. The landlord did pay \$1,000.00 deductible for his insurance when the work was completed. The tenants seek a rent reduction for this three and a half month period of 50 percent of their rent to an amount of \$3,500.00.

The landlord's agent testifies on behalf of the landlord. The landlord's agent testifies that he was involved when the tenants signed the contract and the tenants were shown that the speakers, intercom and central vac were only roughed in. The landlord did not make any promises to install these items. The landlord's agent testifies that the fireplace just needed to be plugged in. There were no window coverings on the windows when the house was shown and the landlord did not promise to fit any. These items were not part of the contract with the tenants. The landlord's agent testifies that if the landlord had promised these items and had not fulfilled that promise why did the tenants continue to rent the property after the fixed term expired.

The landlord's agent testifies that the neighbours had complained to the landlord about the tenants having loud parties, the tenant's dogs defecating in the neighbours yards and garbage being left outside the home. The landlord's agent testifies that the tenants were late with their rent 85 to 90 percent of the time. The landlord had to keep going to

the house to collect the rent as the landlord had a mortgage to pay. The landlord disputes that he ever assaulted the tenants or the tenant's son. The landlord states that these incidents did not occur as described by the tenants. The landlord has never been spoken to by the police. The landlord agrees that he did have to go to the house on many occasions but never went to the house with a metal rod.

The landlord's agent testifies that he was present during the meeting between the landlord and tenant as he had to translate for the landlord. The tenant asked the landlord if the tenant's could move things into the garage. The landlord agreed but told the tenants it would cost \$700.00 for the week. The tenant agreed to this and paid the landlord. This was never an issue until four years later. The agreement to rent the garage happened before the tenancy agreement was signed and the tenant had the option to agree or refuse to use the garage. This agreement has nothing to do with the tenancy.

The landlord's agent testifies that a flood did occur however the tenants did not notify the landlord and dealt directly with the restoration company. The tenants should have contacted the landlord so the landlord could have informed his insurance company. The landlord was only made aware of the flood when he got a call from the tenant saying that the flood was already cleared up. The landlord did later get a call from the restoration company to go and sign some paperwork and the landlord paid for the restoration company's work. The landlord was also called to go and look at carpet samples for the new carpet.

The landlord's agent testifies that the tenant approached the landlord and said he wanted a rent reduction as the tenants did not have use of part of the house due to the flood. The landlord said he would lock off a portion of the house but the tenant said he still wanted to use that area.

The tenant disputes the landlord's agent's testimony. The tenant testifies that the landlord's agent is the contractor who built the house and is a friend of the landlord. The

tenant refers to a letter provided by the landlord's agent's sister and testifies that this sister works for a government agent's office and had access to information which she imparted to the landlord. The tenant denies enjoying happy meals together with the landlord as stated in this letter. The tenant testifies that the landlord could be a nice guy but had an explosive temper when he had been drinking. The tenant testifies they would never eat meals with the landlord as the female tenant was afraid of him.

The tenant testifies that the reason they continued with the tenancy is because they are foster parents and they needed a larger home and did not want to move, causing disruption to the children. The tenant testifies that they did not have parties as indicated in another witness letter from a neighbour who is also a sister of the landlord's agent. The tenant agrees they had family gatherings and birthday parties for the children which is normal family behaviour. The tenant disputes the landlords evidence that their dog defecated in the neighbour's yard. The tenant testifies that they own an older four pound yorky who never left the tenants' yard as he is crippled. The tenant's son did have a German Shepherd who came to visit but that dog never defecated in the yard and used a vacate field close by.

The landlord's agent disputes the tenants claims that his sister who works for the government agent provided information to the landlord.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim for money owed or compensation for damage or loss; I have considered the tenants claim that the landlord promised the tenants that the speaker system, fire place, window coverings, central vac and intercom would be installed. However, the landlord disputes that these items, with the exception of the fireplace, were promised to the tenants and these items were not in place at the start of the tenancy and there is no mention of them being provided as part of the tenancy. In this matter the tenant has the burden of proof to show that the landlord did

promise that these items would be included in the tenancy. As both parties agree this has not been included in the tenancy agreement or documented anywhere else then I have to consider this as being one person's word against that of the other and therefore in the absence of any corroborating evidence the burden of proof has not been met and the tenants claim is denied.

With regard to the tenants claim for compensation for a loss of quiet enjoyment; again the tenants have the burden of proof to show that the landlord conducted unauthorized entry into the unit to carry out inspections or for other purposes. The tenants agree that they would allow the landlord to entry the unit without proper notice to keep the peace. Therefore I must consider that the tenants gave permission for the landlord to enter and as such the entry is not unauthorized. With regard to the tenants claim that the landlord harassed the tenants about rent and utilities and was aggressive towards the tenants; the tenants have included witness statements, however none of these statements have been sworn or notarized and the tenants have not asked witnesses to attend the hearing to give sworn testimony or submit to cross examination. Consequently, I can place little weight on these witness statements particularly as they are disputed by the landlord. As the burden of proof lies with the tenants and no police action has been taken against the landlord for assault or harassment then without any corroborating evidence from the tenants it is one person's word against that of the other and the burden of proof is not met. The tenants claim for compensation from the landlord for loss of facilities and quiet enjoyment is therefore dismissed.

With regard to the tenants claim to recover \$654.08 for an amount paid to rent the garage. As the tenants rented this garage in a separate verbal arrangement to the tenancy agreement and prior to the tenancy starting then this agreement does not fall under the jurisdiction of the Residential Tenancy Office as it is unconnected to the tenancy agreement. This section of the tenants claim is therefore dismissed.

With regards to the tenants' claim for a rent reduction of 50 percent for three and a half months that the tenants could not use the basement due to the flood; the tenants have

provided documentary evidence from the restoration company concerning the time frames the basement was under restoration. The tenants had to use the rooms not affected by the flood to store their belongings from the rooms that were affected and as such this rendered these rooms unusable for normal living space. The flood occurred on May 26, 2011 and the work was not completed under September 09, 2011. This left the tenants without the use of this area for normal living for three months and 14 days. The landlord argues that the tenants did not contact the landlord about the flood but dealt directly with the restoration company. The tenants argue that they had to call the restoration company as they could not get hold of the landlord for three days. The landlord then took over working with the restoration company. In my experience I find as the landlord is the owner of the property and the insurance would be in the landlords name for the building then the restoration company would have to get authorization from the landlord before completing any remedial work. I therefore find the tenants claim to have more merit and as the work clearly took this length of time to remedy; then it is my decision that the tenants are entitled to be compensated for the loss of this basement area. Consequently I uphold the tenants' claim to recover **\$3,500.00** from the landlord pursuant to section 67 of the *Act*.

As the tenants have been partially successful with their claim I find the tenants are entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$3,550.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The reminder of the tenants claim 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 05, 2013

Residential Tenancy Branch

