



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order and an order allowing a reduction in rent.

The hearing was conducted via teleconference and was attended by both tenants and the landlord.

The parties agree that some of the repairs the tenants had originally requested in their Application have now been completed. This decision references only the outstanding issues identified in the hearing.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for compensation for damage or loss and to a rent reduction for repairs, services, or facilities agreed upon but not provided, pursuant to Sections 28, 32, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy is a month to month tenancy for a monthly rent of \$800.00 due on the 1st of each month with a security deposit of \$400.00 paid. The tenants submit the tenancy began on March 1, 2012. The landlord could not confirm the start date of the tenancy as he has only recently purchased the property.

The tenants submit that when the landlord purchased the property he had the tenants move upstairs so that he could renovate their rental unit. The tenants submit this occurred from the end of June to the end of August 2013. Once moved back downstairs the landlord proceeded with renovations to the upstairs unit. The tenants are not seeking compensation for this period.

However, the tenants submit that since the new occupants moved in upstairs the tenants have suffered a loss of quiet enjoyment. They submit the upstairs occupants start banging around at 5:00 a.m. and will continue throughout the day. The also state

that when they return from being out of the house they play with their dog. Noises continue until 1:30 or 2:00 a.m.

As a result of all of the banging around and dog play the tenants submit that the vibrations are causing fluorescent lights and their covers have falling off the ceiling; shelves and pictures are falling off the walls; the tenants are losing sleep; and friends and family no longer wish to come over to visit because it is so loud.

The tenants submit that they have never had this problem with any other occupants of the upstairs prior to these tenants. The landlord states he has spoken with the occupants upstairs about the noise and they have promised to address this issue. The tenants submit nothing has changed.

The tenants seek compensation for past months and an equivalent rent reduction in the amount of \$125.00 per month for the loss of quiet enjoyment.

The tenants also testified that they have identified to the landlord a number of heating problems with the rental unit. They submit their daughter's bedroom has no heat whatsoever. The tenants state they have placed a thermometer in the room and it has registered as low as 10 degrees.

The tenants also state that the heat is controlled upstairs and that the upstairs occupants will often find their unit too warm and so will turn the heat down or off leaving the tenants' unit very cold. In the alternative when the upstairs occupants have the heat on the tenants have no ability to control the flow of heat in their unit and it can become very hot in their unit.

The landlord submits he had offered the tenants a space heater for their daughter's room but that they turned down the offer. The tenants submit that they are not comfortable with the safety of portable space heaters, particularly in a child's room.

The landlord testified that he is investigating the possibility of installing a separate thermostat system in the tenant's unit that would be independent of the upstairs unit.

The tenants also seek the landlord to have the fireplace cleaned and inspected as it currently sits with the chimney flue open causing drafts resulting from debris in the chimney.

The tenants seek compensation for the landlord's failure to complete these repairs in the amount of \$75.00 per month both for compensation for past months and as a rent reduction moving forward.

Analysis

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance;

exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and use of common areas for reasonable and lawful purposes, free from significant interference.

I am satisfied from the testimony and evidence of both parties that since the new occupants have moved into the unit above these tenants the tenants have suffered a loss of quiet enjoyment. It is unclear, however, whether that loss stems from the behaviour of the upstairs occupants or as a result of the changes made by the landlord to the ceiling of the tenants' unit and the flooring of the upstairs unit.

Either way, I find that until such time as the landlord can remedy the noise problem for these tenants they are entitled to compensation beginning in October 2013.

I find the tenants' request for a reduction of \$125.00 for this compensation to be reasonable. As such for the period from October 2013 to January 2014 I note the total amount of compensation for this is \$500.00.

Section 32(1) of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

I find that regardless of the cause of the lack of heat in the tenants' daughter's bedroom the landlord is failing to meet the obligation to make this portion of the rental unit suitable for occupation. I find that until such time as the landlord finds a permanent solution such as inspecting and repairing any duct work or the installation of a permanent heating mechanism in the bedroom the tenants are entitled to compensation beginning in October 2013.

In addition, I find that until such time as the landlord provides these tenants with an effective mechanism for them to manage their own heat, including the ability to either close the chimney flue or use the fireplace as a heat source, or that will facilitate suitable heat distribution to both units the tenants are entitled to compensation beginning in October 2013.

I find the tenants' request for a reduction of \$75.00 for this compensation to be reasonable. As such for the period from October 2013 to January 2014 I note the total amount of compensation for this is \$300.00.

I note that as the tenants did not, in their Application for Dispute Resolution, seek an order to have these specific repairs completed I make no order on the landlord, however, the orders for rent reductions remain effective until the landlord deals with the issues identified in this decision (noise and heating).

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **\$800.00** comprised of \$500.00 for loss of quiet enjoyment and \$300.00 for repairs not completed. Pursuant to Section 72(2)(a), I order the tenants may deduct this amount from a future rent payments.

In addition I order that the tenants rent be reduced by an amount of \$125.00 per month until such time as the landlord corrects the noise issue and by a further \$75.00 per month until the landlord corrects the heating and fireplace issues.

For the purposes of clarity these orders mean as rent under the tenancy agreement is \$800.00 monthly that for the tenants' next rental payment they may deduct \$600.00 of the \$800.00 awarded and \$200.00 for the rent reduction. For the rent owed for the month following the tenants may deduct \$200.00 from the \$800.00 awarded and \$200.00 for the rent reduction. In the following months rent can be reduced only by the \$200.00 rent reduction based on the conditions of this decision.

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: January 29, 2014

Residential Tenancy Branch

