



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

DRI, MNR, MNDC, OLC, ERP, RP, PSF, LRE, RR

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. Both tenants had filed a separate application for dispute Resolution. The tenants have separate tenancy agreements but share the same unit. The applications were heard separately however the decision has been written for both tenants. The tenants applied for a Monetary Order for money owed or compensation for damage or loss under the Residential Tenancy Act (Act), regulations or tenancy agreement; and to reduce rent for repairs, services or facilities agreed upon but not provided. The remainder of both tenants' applications has been withdrawn by the tenants as they intend to vacate the rental unit in accordance with a Notice to End Tenancy issued by the landlord.

The tenants, the landlords and an agent for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The tenants provided some limited documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlords confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The parties advised me there was an error in the spelling the female landlords first name and an error in her last name. The parties did not raise any objections to the errors being corrected and this has now been amended.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss under the Act?
- Are the tenants entitled to a rent reduction?

Background and Evidence

The parties agree that this tenancy started in November, 2013 although the date is contested. Rent for this unit was \$375.00 for each tenant and was due on the first day of each month. No move in condition inspection report was completed at the start of the tenancy.

The tenants testify that when they first saw the unit and walked through with the landlord it was in a poor condition. The landlords assured the tenants that the unit would be cleaned and move in ready for them. The tenants testify that when they moved into the unit they found that it had not been cleaned, the floors were stained, the walls were filthy, there were some items not repaired and the bathroom was in a dirty condition. There was also mould that the landlords had not treated. The tenant TD testifies that they informed the landlord when they first viewed the unit that they would charge the landlords for cleaning if the unit was not cleaned when they moved in. The landlord RJ said to go ahead as the unit would be 'move in ready'.

The tenants' testify that they had to clean the entire unit from top to bottom. The tenant TD testifies that as he is in a wheelchair he could only clean halfway up the walls and the other tenant JS had to clean the remainder of the walls. TD testifies that he personally spent 57 hours cleaning and JS testifies that she personally spent 86 hours cleaning. JS testifies that she is a professional house cleaner and would charge \$20.00 per hours for a basic clean. The cleaning required in this unit was more of a renovation clean and in instances such as this JS would charge clients \$30.00 to \$45.00 per hour. Both tenants seek to recover \$2,388.00 for cleaning. The tenants' testify that the cleaning is still ongoing above and beyond basic cleaning for living. The tenants testify that the mould issues in the unit are also bad for the tenants' health and need to be remedied by the landlord. The tenants testify that the landlord completed some work in the bathroom where it was noted that the tiles were slipping. The landlord did an unprofessional job by putting up a piece of board or wood and then covering everything in some kind of sealant. The tenants have provided photographic evidence showing this shoddy workmanship, mould issues and other areas of the unit.

The tenants testify that they are both Ministers and the landlord told them that he doesn't want to hear them preaching anywhere as he doesn't like preaching types and will kick them out of the unit if he does. The tenant TD testifies that the landlord was supposed to sand the driveway but failed to do so. The tenant testifies that this is discrimination against TD due to his disability. The tenants testify that they have missed crucial hospital appointments because they have not been able to get their van off the driveway. The tenants testify that the landlord will put sand down when he wants to get off the drive.

The tenants testify that the landlord has affected the tenants' right to quiet enjoyment of their rental unit. The landlord RJ has been banging on the tenants door at 5.00 a.m. and has cursed and sworn at the tenants. The landlord continues to harass the tenants whenever they have to leave the door open to air out the unit due to the mould. The landlord shows disrespect to the tenants and uses abusive and foul language. The tenants testify that the landlord RJ does not respect the tenants' privacy and has

entered the unit without permission and has peered through their windows. The tenant JS testifies that since they served the landlord with these hearing documents the landlord has stopped this kind of disrespectful behaviour.

The tenants have not requested further Monetary Orders for a loss of quiet enjoyment. The tenants have requested a rent reduction for repairs, services and facilities agreed upon but not provided. The tenants testify that the landlords need to do repairs to ensure the wiring is safe as there are faulty outlets in the house and exposed wiring. The heating vents smoke, there is asbestos in the walls, the mould issues need to be addressed, and the driveway needs to be sanded regularly not just when the landlord wants to use it. The tenants testify that they intend to vacate the unit as the landlord has now served the tenants with a Notice to End Tenancy. However the tenants seek to recover the rent paid for each month they have lived in the unit. The tenant JS testifies that they paid \$197.00 for rent in November, \$750.00 for December and January's rent.

The landlords dispute the tenants' claims. The landlord's agent testifies on behalf of the landlords and states that the landlords position is that the unit was move in ready at the start of the tenancy and was not in a filthy condition. The landlords are not sure where the electrical outlet covers are as they were in place prior to this tenancy. The landlords question some of the tenants photographs as they do not think some of them are of the unit as the landlords do not recognise the paint on the wall or the bathtub colour.

The landlords testify that the tenants came and looked at the unit and liked it. After doing a walkthrough they decided to rent the unit and came back and filled in separate tenancy agreements. The landlords testify that no issues were heard until November 20 when the tenants informed the landlord that there was a problem with no cold water in the sink. When the landlord went to repair this issue it caused a small flood and the tenants used their linens which were all on the floor to mop up the water. The landlord DL offered to wash the tenants' linens but the tenants declined. The landlord DL testifies that they tenants did not voice any concerns about cleanliness in the unit and the unit was clean and tidy by the landlords standards.

The landlord RJ testifies that the tenants informed the landlords that the hot water tank was leaking so the landlord went to look at that but could not see a leak. The tenants said the oven was not working and the landlords replaced this. The tenants did not inform the tenants about cleaning, mould or other issues. The landlords testify that the work on the bath surround was done by the landlord and the landlord RJ testifies that he thinks he did a good job. The landlord's agent testifies that the landlords had no knowledge that there was an issue with mould and no testing has been done to determine if it is toxic mould.

The landlords' dispute that RJ has been disrespectful towards the tenants or affected their quiet enjoyment of the rental unit; RJ testifies that he has not been banging on their door at 5.00 a.m. but has been and asked them later in the day to close the doors as the furnace is running full time. RJ testifies that the only time he has sworn at the tenants was when they would not move their van from blocking the driveway and the landlord RJ had to go and shovel them out. The landlord RJ testifies that he does not have anything against religion as his wife attends church every Sunday.

The landlord RJ testifies that he did agree to put dirt down on the driveway and has done so regularly. The landlord refers to the tenants photographs which clearly show that the driveway has dirt on it. The landlord's agent testifies that when the tenants' van was stuck on the driveway the landlord's agent went to inspect the tenants' tires and found that they were summer tires and that the tires were bald. The van was not stuck in a snow bank. The reason the tenants could not get up and down the drive was because of the condition of their tires.

The landlords dispute the tenants claim for a rent reduction. The landlord RJ testifies that the tenants did not pay rent for November and the Government have paid the tenants rent for December only. No rent has yet been received from anyone for January.

The tenant JS disputes the landlords' claims. The tenant testifies that the landlord RJ only put dirt on the driveway after the tenants got stuck. The tenant JS testifies that the tires on the van were not summer tires and were not bald. JS testifies that these tires had been purchased a week before and had 80 percent tread on them. They are off-road tires and suitable for winter driving. The tenant agrees they had burnt off a lot of the tread trying to get up the hill on the driveway.

The tenants call their first witness BJ. This witness is a friend/acquaintance of the tenants. The witness testifies that he first met the tenants when they needed help because they were stuck on the drive. The witness testifies that the drive had not been sanded at that time. The witness testifies that the tenants' van had winter tires with 70 or 80 percent of tread. The witness testifies that he helped the tenants and then went into their unit to use the washroom. The witness testifies that he noticed that the washroom had mould around the shower area. The witness testifies that he knew the previous tenant of that unit and had seen the unit during that tenancy. There was a lot of mould in the unit at that time too. The witness testifies that the bathtub was a pink colour and the surround looked like linoleum. The witness testifies that the walls in the unit were very dirty; the whole house was dirty and needed painting. The tenant JS was washing the walls when the witness visited. The witness testifies that since that first time the tenants have called the witness several times to assist them pulling their van up the drive. The witness testifies that he has seen a thin layer of dirt on the drive when the landlord wants to use the drive. The witness testifies that he had to put his vehicle in four wheel drive to get up the drive.

The tenants call their witness JH. This witness testifies that he has helped the tenants move their van after they got stuck in ice. The driveway was very slippery. The witness describes the condition of the house and testifies that there is mould and the walls are not in a good shape. The house was not move in ready for the tenants and a week later the tenants were still cleaning the house.

The landlords decline to cross examine the witnesses.

Analysis

The tenants presented other evidence that was not relevant to my decision. I looked at the evidence that was relevant and based my decision on this. With regard to the tenants' claims for cleaning the unit; I find the evidence and testimony of both tenants and witnesses is sufficient for me to conclude that the unit was not clean at the start of the tenancy. The landlords testified that it was clean to their standards. While I accept that everyone has different standards of cleanliness the *Residential Tenancy Act* s. 32(1) states:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Consequently I am satisfied with the evidence before me that the landlords did not provide a rental unit that was clean or in a reasonable state of decoration and repair. The bathroom repair completed by the landlord in which the landlord RJ has testified that he considers to be a good repair is considerable below a reasonable standard. However I am not satisfied that the tenants have provided sufficient evidence to support their claim that they cleaned the unit for 57 and 86 hours each. I must therefore limit the tenants' claims and find the tenants are entitled to **\$500.00 each** for their time and labour in cleaning the unit.

With regard to the tenants' claims for a loss of quiet enjoyment; the tenants have not sought a further monetary claim in this matter. I will however address the tenants' claim in this analysis. When one parties evidence or testimony contradicts that of the other then the burden of proof falls to the person making the claim. In this matter the tenants

would be required to provide corroborating evidence to show that the landlords did disturb the tenants' quiet enjoyment by banging on their door, making discriminatory remarks about religion or disability, by entering without permission, and by not sanding the drive as agreed. The tenants have provided no corroborating evidence and therefore it is one person's word against that of the other and consequently the burden of proof is not met.

With regard to the tenants' claims for a rent reduction; in this case the tenants seek to recover all rent paid due to the condition of the unit and the repairs not completed along with the landlords alleged failure to sand the drive. I am satisfied that the unit requires repairs and work to bring it up to a suitable standard for occupation. This includes the electrical outlets. However the tenants have no evidence to show that any other repairs are required or that the landlords have failed to sand the drive regularly. The landlord has testified that each time the tenants informed the landlords of repairs required the landlords have complied and dealt with those issues. I have no evidence before me that the tenants have informed the landlord that the electrical outlets require attention, that there may be exposed wiring or that the furnace smokes causing smoke to rise through the vents. Tenants are required to notify a landlord in writing of any issues and may either deal with issues themselves that fall under s. 33 of the *Act*, (emergency repairs) or request in writing that the landlord reviews any repairs and makes them in a timely manner. Furthermore I have no evidence before me that rent was paid for part of November or January. Consequently, the tenants' claim for a rent reduction is dismissed.

I do however caution the landlords that they should provide the tenants with a 24 hour Notice of Entry. The landlords should then view the unit with regard to any repairs mentioned at this hearing today and take steps to remedy any repairs required in a timely manner.

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decisions will be accompanied by a Monetary Order for **\$500.00** each. The Orders must be served on the respondents. Should the respondents fail to comply with the Orders the Orders may be enforced through the Provincial Court 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: January 27, 2014

Residential Tenancy Branch

