



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order. Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail the landlord did not appear.

The tenant advised that his wife's surname had been misspelled on the documents generated by the Residential Tenancy Branch. The correct spelling has been used on this decision.

Issue(s) to be Decided

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

Background and Evidence

This month-to-month tenancy commenced July 9, 2013. There was no written tenancy agreement. The monthly rent was \$1400.00. When asked when the rent was due the tenant said he usually paid it on the fifth day of the month. The tenants never paid a security deposit. Some adjustment was made to the July rent in return for yard work done by the tenants.

The rental unit is a 2400 square foot, three story, flat roof stucco home that was built in 1994. It has three bedrooms, three full bathrooms, and a half bath. The tenants lived in the unit with their two children, aged nine and five.

The tenants did not view the rental unit before agreeing to rent it as they were living in a different community at the time. They based their decision on six photographs and their communications with the landlord.

When the tenants moved in they discovered that the railing for the third floor was a very artistic metal sail-like design. The gaps between the fins were nineteen inches. The

railing was clearly not child-friendly so the tenants did not let their children onto this level. (In subsequent inquiry the tenants discovered that the railing was not to code either.) The master bedroom, an en suite bath, and another bedroom were located on this level. The tenants' children use the bedroom located on the lower level.

The tenant testified that they immediately started looking for another place but finding affordable housing in this area was difficult.

In October 2013 a leak developed in the exterior wall. As a result water ran into the downstairs bathroom, which was the bathroom the children used. Water was also leaking through the Telus box. The tenants reported the problem to the landlord who promptly hired a contractor. The contractor ripped out the wall of the bathroom down to the studs. As part of this process the heater also had to be removed. Getting the Telus box sealed became an issue and this delayed the repair. The repair was completed by mid-December. When the repair was completed there was clean-up required by the tenants.

While this bathroom was under repair all of the fixtures, except one faucet, were working. Because the heater had been removed the room was chilly.

In mid-November a leak developed in the roof. When the issue was reported to the landlord he said that this had been an ongoing issue. The landlord was out of the country at the time so the tenants made all the arrangements with the roofers. The roofers got to the rental unit in mid-December. They fixed the seams of the rolled asphalt roofing and the leaking quit.

During that month water caused the ceiling in the spare bedroom to bow down significantly but water never actually leaked into the room. When the roof was repaired the ceiling dried out and straightened out but a water stain did remain. The tenants did not use this room while the ceiling was wet.

When the winter rains started the tenants discovered that one living room window leaked every time it rained. The contractor applied silicon to the window but that did not remedy the problem. No damage occurred to the unit or the tenants' belongings as a result of this leak.

The tenant testified about a number of other deficiencies that appeared from December onward:

- The frame of one of the exterior doors was cracked. The tenant said it looked like someone had tried to break in. The problem was reported to the landlord in

December but never fixed. In February the tenants bought a bar to ensure that the door was secure.

- The dishwasher malfunctioned three times. The tenant fixed it on each occasion.
- One bank of lights in the kitchen did not work for about one month. The problem remedied itself after a month.
- The toilet handle in the half bath broke in January. The toilet was still usable but was never repaired during the tenancy.
- At the end of February the upper cabinets in the laundry room fell off the wall.
- There were ongoing water issues in the laundry room.

The male tenant was laid off on December 16, 2013. The family's circumstances became more difficult as did the landlord/tenant relationship.

The landlord served the tenants with notices to end tenancy in December, January, February and March. The landlord is a police officer. Whenever he served the notices he came in uniform, in an unmarked police car, and with another police officer to act as a witness.

The landlord made an application to the Residential Tenancy Branch, which was heard on March 12. By then the tenants had found another place to live and they moved out of the rental unit on March 15.

The tenant felt that the manner in which the landlord served the various notices, combined with the wording of some of the landlord's text messages to him amount to harassment and intimidation. There was also an occasion in March when the tenant observed the landlord open their mailbox. His is pursuing this issue in other forums.

Analysis

Section 7(1) Of the *Residential Tenancy Act* states that if a landlord or a tenant does not comply with the Act, regulation or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Subsection 2 requires any person claiming compensation for damage or loss as a result of the other party's non-compliance with the Act, regulation or tenancy agreement to do whatever is reasonable to minimize the damage or loss.

Section 32(1) states that a landlord must 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 to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find that the landlord did respond promptly to the major repairs reported to him in November and December. However, as explained in *Residential Tenancy Policy Guideline 6: Right to Quiet Enjoyment*:

“It is necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises, however, a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations. . . .In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises and the length of time over which the situation has existed.”

For the disruption caused by the repairs to the downstairs bathroom I award the tenants the sum of \$150.00 (calculated as 5% of the monthly rent for two months) and for the inability to use the spare bedroom while the roof was leaking I award the tenants the sum of \$75.00 (calculated as 5% of the monthly rent for one month.)

The upstairs railing did not meet the requirements of section 32. This limited, to some extent, the tenants’ full use of the rental unit. I award the tenants \$425.00 for this item. I calculated this amount based on 5% of the rent paid for August to February and then deducted a small amount for the fact that the tenants assumed some risk by renting the unit sight unseen and stayed in the unit for several months although they were not legally bound to do so.

No award will be made for the deficiencies reported from December onward. They are all relatively minor in nature and did not significantly affect the tenants’ occupation of the unit.

The tenants’ claim for harassment is dismissed. *Policy Guideline 6* describes the behavior that may amount to a loss of quiet enjoyment. The male tenant’s father was a member of the same police force as the landlord so he may have received the message the landlord was sending more clearly than some other people would, but the behavior described by the tenant did not meet the standard set out in the *Guideline*.

As the tenants were partially successful on their application I find they are entitled to reimbursement from the landlord of the \$50.00 fee they paid to file it.

Conclusion

I find that the tenants have established a total monetary claim of \$700.00 and I grant them a monetary order in that amount. Pursuant to section 72(2) this amount may be deducted from any rent owed to the landlord. Alternatively, it may also be filed in the Small Claims Court 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: May 20, 2014

Residential Tenancy Branch

