



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP, MNR, FF

Introduction

This matter dealt with the Tenants' Application for Dispute Resolution, seeking monetary orders for compensation under the Act or Tenancy Agreement, for an order for the Landlords to make emergency repairs, to all the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Tenants supplied documentary evidence late, and this evidence was not admitted during the hearing. Nonetheless, the Tenants testified as to the contents of the document.

Issue(s) to be Decided

Are the Tenants entitled to monetary compensation?

Should the Landlord be ordered to make repairs or emergency repairs to the rental unit?

Should the rent be reduced?

Background and Evidence

This tenancy began on September 15, 2013, with the parties entering into a written tenancy agreement. The tenancy is for a fixed term of one year, expiring on August 31, 2014. The Tenants were allowed early occupancy.

The rent was initially \$1,800.00 of \$2,300.00, as the Tenants and the Landlord entered into an addendum to the tenancy agreement which sets out that the Tenants will pay a reduced rent of \$1,800.00 per month, in exchange for them performing certain repairs at the rental unit. After a period of six months the rent would return to \$2,300.00, in March of 2014. The repairs were set out in documents agreed to between the parties. The Landlord was to supply materials and the Tenants were to supply labour. The Tenants were also responsible for yard maintenance and grass cutting.

The Tenants claim that they have lost use of the basement of the rental unit due to an infestation of rats. The Tenants are requesting return of half the rent paid since January of 2014, and a reduction in ongoing rent due to the alleged infestation. Their claim is for \$4,175.00 in monetary compensation and they request an ongoing rent reduction of 50%.

The Tenants claimed they notified the Landlord in December of 2013 that they had detected rats in the rental unit. They claim the Landlord did not act to address the rat problem until March of 2014,

In evidence there was a copy of an email to the Landlord from the Tenants, which appears to have been sent on December 22, 2013. The email states the following:

“Hi [Landlords]. Im going to price out paint today so ill let you know the cost before purchasing anything. Also i believe that the rats are getting in through a number of vents on the outside of the house. I was going to get some screen as well to cover them if your ok with that. Thanks”

[Reproduced as written.]

The Tenants allege that they made a verbal request to the Landlords in early December to have pest control brought in, but the Landlords did nothing until March of 2014. The Tenants argue that the above email of December 22, 2013, is a written request for the Landlords to address the rat issues.

The Tenants testified that they are afraid to go into the basement due to the large number of rats there. They testified that the rats had been coming into the rental unit by climbing across tree branches to get into the attic. They allege they can hear the rats crawling around in the attic, behind the walls, and around the other parts of the rental unit.

They testified and provided photographs of the attic in the rental unit. The photographs depict a typical style attic in an older home, with low angled roof lines. There are many boxes of paper and other debris scattered about in the attic and what appears to be a box of rat poison. The Tenants allege there is garbage in the attic attracting the rats.

The Tenants allege that the pest control company informed them that the attic would have to be cleaned out to alleviate the rat problem. They further allege the Landlord did not have the attic cleaned out in a timely manner.

One of the Tenants testified she was losing sleep because one of the rats tried to get into the bathroom when she was in there. She further alleged she saw a rat run across the floor of the living room when she was there.

The Tenants testified they informed the Landlord they felt the rental unit was unsafe to live in and they do not feel comfortable in the rental unit.

The Tenants allege the Landlords delayed things by hiring friends who would then not perform the work, such as cleaning out the attic. They testified they have been living in a terrible situation for months.

In reply, the Landlords allege that they responded to the rat problem in a reasonable period of time.

The Landlords further allege that the Tenants were supposed to have completed the repairs to the rental unit in December of 2013, and have failed to do so. The Landlords allege that when they brought up issues with the Tenants about the incomplete repairs they came up with the rat problem as an excuse to keep the rent at a reduced or lower rate.

The Landlords further allege that they have paid the Tenants for supplies to make the repairs to the rental unit although these supplies are no longer at the rental unit and the repairs have not been performed.

In evidence the Landlords have provided copies of emails or text messages sent between the parties. There is an email from the Landlords dated February 28, 2014, informing one of the Tenants that a pest control company has been hired to address the alleged rat issue.

The Landlords allege that to their best recollection the Tenants did not request the rat problem be addressed by the Landlords until later in February of 2014 and it was an oral request.

In evidence the Landlords have provided invoices from the pest control company engaged to investigate and treat the alleged rat problem. The reports are from March 6, March 20, and April 14, 2014. These reports indicate that traps were set for the rats in the attic and basement. The reports indicate no rat captures were made.

The Tenants testified that one rat was captured and that this is indicated in the report they submitted as late evidence.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlords. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage.

Under section 32 of the Act, the Landlords are required to maintain the rental unit in a state of repair that complies with health, housing and safety standards, and having regard to the age and location of the property makes it suitable for occupation by the Tenants.

In this instance, I find the Tenants have failed to prove the Landlords have breached section 32 of the Act or the tenancy agreement. I find that the Tenants have insufficient evidence that they requested the Landlords to address the alleged rat problem or to make repairs to the rental unit until late February of 2014, and that was done orally.

I do not accept the email from December 22, 2013, as evidence the Landlord was requested to address the alleged problems with rats. It is clear the Tenants wish to address the situation themselves in the email, and there is no request to the Landlords that they address the situation.

Furthermore, I found the Tenants testimony to be somewhat exaggerated in assessing the alleged problems with rats. The pest control reports over the course of over a month indicate no captures, although the Tenants testified that one rat was captured in mid to late April.

I find that once the Tenants orally requested the Landlords to address the rat situation, sometime in late February of 2014, the Landlords responded reasonably and quickly and had a professional pest control company attend and assess the situation in a reasonable amount of time. The Landlords then engaged the pest control company to do an ongoing series of inspections and treatments. Based on the evidence before me, I find that the Tenants have failed to prove the Landlords breached the Act or tenancy agreement. Consequently they have failed to prove the Landlords are responsible for any losses they allege to have suffered.

Therefore, I find the Tenants have insufficient evidence to prove the Landlords breached the Act or the tenancy agreement and their Application must be dismissed without leave to reapply.

Conclusion

The Tenants had insufficient evidence to prove the Landlords breached the Act or tenancy agreement. Following the Tenants oral request for the Landlords to address the alleged rat infestation the Landlords acted in a reasonable amount of time and hired a professional pest control company to address the situation. The Tenants' Application is dismissed without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 08, 2014

Residential Tenancy Branch

