



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION AND ORDERS

Dispute Codes CNR, LAT, MNDC, OLC, OPT, RP, RR, FF

Introduction

These two hearings dealt with the Tenants' Application for Dispute Resolution, seeking orders as follows: to cancel a Notice to End Tenancy for unpaid rent; to allow the Tenants to obtain an order of possession for the rental unit; to authorize the Tenants to change the locks to the rental unit; to allow the Tenants to reduce rent for repairs or services agreed upon, but not provided; to order the Landlord to comply with the *Residential Tenancy Act* (the "Act"), or tenancy agreement; to order the Landlord to make repairs to the rental unit; 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 evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issues

There was an Interim Decision and Orders made in this matter, dated May 29, 2014, which should be read in conjunction with this decision. The Interim Decision and Orders made findings about the tenancy agreement and had ordered the Landlord to make certain repairs, which are discussed below.

The Landlord had issued an invalid Notice to End Tenancy; however, the Tenants agreed there was outstanding rent due. At the outset of the second hearing the Tenants and the Agent for the Landlord agreed that the Tenants had paid all outstanding rent due to the Landlord. Therefore, I find that the tenancy will continue until ended in accordance with the Act.

There was a hearing in 2006 regarding the property and these Tenants although it involved the former owner and not this Landlord. The file number for this earlier matter is reproduced on the cover of this decision.

I note that the Tenants had to be cautioned twice regarding interrupting the Agent for the Landlord when he was testifying. After the third warning and during the Agent for the Landlord's testimony, the Tenants phone line had to be muted to prevent them speaking over top of the Agent. The Tenants' phone was un-muted following the Agent's testimony and they were allowed to reply in full to the Agent's testimony.

Issue(s) to be Decided

Are the Tenants entitled to change the locks?

What other remedies are the Tenants entitled to?

Are the Tenants entitled to financial compensation and a rent reduction?

Background and Evidence

The background and evidence are extensively covered in the Interim Decision and Orders and should be referred to in addition to this Decision.

As to the orders made in the Interim Decision the parties testified as follows:

1. The Tenants testified that they were unable to change the locks since the last hearing, as they spent all of their money paying the Landlord all rent that was due. Therefore, I have ordered the Landlord to change the locks below.
2. The Agent for the Landlord provided bills spent on repairing the roof and had a professional roofer provide a report as to the condition of the roof and the repairs still needed to be done. The roofer wanted the Tenant or the Agent for the Landlord to show him where the leaks are when the rainy season starts as he was unable to locate these in dry weather. The Landlord is required to have the roofer repair the leaks and I have ordered this below.

As to the claims made in the second hearing by the Tenants, I heard the following testimony.

The Tenants claim for the cost of their riding lawn mower, which they allege was damaged by rain and snow entering in from the roof of the barn. They claim they told the Landlord about this several times, but the Landlord failed to repair the roof. The Tenants testified they cannot recall how much they paid for the riding tractor in 2008, but agree it was used when they purchased it. They testified that it needed work when they bought it.

They testified that they purchased a replacement one for around \$1,850.00 and that brand new the tractor was worth \$2,015.00

They testified that after the snow leaked onto the tractor it would not start. They claimed they would settle for half of the cost of the tractor in the amount of \$900.00 or \$1,000.00, plus \$400.00 for parts.

The Tenants testified they have had saddles and other equipment harmed from the rain coming in due to the leaking roof. They testified that the saddles needed to be cleaned. They testified they had no idea as to what it would cost to clean the saddles, but estimated \$40.00 each for five saddles. They testified they could not get in touch with the lady who cleans the saddles for them, so they do not have an accurate estimate.

The Tenants further claimed they had spent more than they should have for heat as the furnace in the rental unit runs all the time and still the rooms in the upstairs of the house are quite cold. They claim the Landlord replaced the furnace but no one came to re-do the duct work. They testified that they pay extremely high gas and electrical bills, but testified they have no idea what it would normally be if the duct work had been completed properly.

The Tenants were also upset because it appears the utilities were being billed at commercial rates instead of residential, and they allege they were paying more than they should have. They also said they did not know what amounts they paid more than they should have.

Lastly, the Tenants were upset that the Landlord has been threatening the Tenants with selling the property. They feel this is an intimidation tactic.

In reply to the last claim, the Agent for the Landlord testified that the Tenants have not been co-operating with the Agent showing the property to prospective purchasers, and have been telling the potential purchasers about all the problems they have had with the buildings at the rental unit.

I explained to the parties that the Landlord has a right to sell the property and must use the notification provisions of the Act to notify the Tenants when the property would be viewed.

I cautioned the Tenants they could not interfere with the sale of the property and should not be discussing the property with potential purchasers, as it was not their position to do so.

I explained to the agent that he could not just give the Tenants a blanket notice covering many dates and that he should contact an information officer at the branch to discuss giving proper notices to attend at the property and to show the property to prospective purchasers.

I also caution the Landlord to not use the proposed sale of the property as an intimidation tactic against the Tenants.

The Agent for the Landlord then replied regarding the claims stemming from the leaking roof. In evidence the Landlord provided copies of receipts for repairs to the roof done in February and

April of 2013, and in February of 2014. The Agent testified that while the Landlord has had several repairs made to the roof, the Tenants are unable to show the roof repair person where it is still leaking. The roofer has provided a letter verifying the repair dates and that the Agent last contacted him in June of 2014, and explained the roof is still leaking according to the Tenants. The roofer explains he will still repair it once it starts to rain again and the Tenants show him where it leaks.

The Agent further testified that the roofer told him the Tenants suggested that the entire roof had to be replaced. The Agent testified he thought the leaks could be fixed and would be done soon.

The Agent alleges that the Tenants are using more space than they are paying for and that some of the spaces where the roof is leaking should not have been used by the Tenants in the first place. He also alleges they should not have parked the riding tractor under the leak which they were aware of.

The Agent testified that the Landlord agreed to them changing the locks, however, I have ordered the Landlord to do this now, as the Tenants were unable to.

As to the heating issues, the Agent for the Landlord testified they had sent workers to fix the heat and they had done a lot of work.

The Agent confirmed the Landlord had changed the hydro into his name.

The Agent testified he will ask the Landlord to install a separate meter so the Tenants are not sharing the same meter with a person who has four other buildings on the property. He testified that he would also check if the hydro was being charged at a commercial rate.

The Tenants replied that the roofer had knocked the bathroom exhaust chimney off the roof when they were doing work up there and then they put a duct through the bathroom, and this is what the Agent had been referring to.

The Tenants testified that nothing had been done to the heat ducting from the furnace though, as they requested in November of 2011.

The Tenants further testified that the barn roof had many areas of rotten wood. They explained there had been no leak before in the area where they parked the tractor. They explained they had parked other vehicles there before and these were not damaged by the leaking roof.

Analysis

The Tenants have applied for a combination of orders in this matter; some orders are for the Landlord to make certain repairs and to have a rent reduction, and some orders are for monetary compensation for losses.

I will first deal with the orders for the Landlord to make certain repairs and for compensation by reducing the rent. Under section 32 of the Act the Landlord is required to provide and maintain the rental unit property in a state of repair that complies with health, housing and safety standards as required by law, and makes it suitable for occupation by a tenant.

In this instance the Tenants provided the Landlord with a list of repairs in writing in November of 2011, which included requested repairs to the leaks in the barn roof which was leaking into the tack room where the saddles were presumably stored and to the furnace ducting as they were not getting sufficient heat from the furnace installed by the Landlord. There were other repairs noted in this list such as trimming trees; however, these issues were not raised by the Tenants during the hearing.

The evidence of the Landlord is that repairs to the roof were not performed until February of 2013, some 15 months later. There is no evidence the Landlord has addressed the requested repairs to the duct work of the furnace.

This leads me to find the Landlord has failed to address the requested repairs in a timely manner.

Therefore, I find and order as follows:

- 1 If the Tenants have not already done so, I order the Landlord to change the locks in the rental unit and the barn no later than September 30, 2014, and give copies of the keys to gain access to these buildings to the Tenants at no cost to the Tenants. If the Tenants have changed the locks or do change the locks themselves, they may deduct this amount from rent as per the Interim Decision made earlier in this matter.
- 2 I order the Landlord to continue to have repairs made sufficient to stop all leaking into the interior of the barn from the entire roof of the barn and these should be completed before October 15, 2014. It is clear these repairs were requested by the Tenants in November of 2011, and I find the Landlord failed to have these repairs made in a timely fashion until February of 2013, and I accept the evidence before me that the roof is still leaking and still requires repairs.
- 3 I order the Landlord to have a professional furnace and ducting company investigate the furnace and the ducting for the furnace inside the rental unit house, and make all necessary repairs for the furnace and ducting to provide adequate heat and function as required to meet the applicable building codes and that makes it suitable for occupation, and these repairs must be completed before October 15, 2014.

Having found the Landlord failed to make timely repairs as described above, I find the rent should be reduced in order to compensate the Tenants for this period of time for their loss of

heat, extra expense in heating, for loss of use of some of the rental unit property and the reduction in value of the tenancy agreement. Pursuant to sections 7, 65 and 67 of the Act I allow a rent reduction of \$150.00 for each of the 15 months between November 2011 and February 2013, for a total rent reduction of **\$2,250.00** retroactively.

I also order that until the Landlord completes these repairs the Tenants may reduce the monthly rent beginning October 22, 2014, by **\$150.00** per month, and continue at the reduced rent until the Landlord has made the above repairs to the roof of the barn and has repaired the ducting and furnace as required to meet the applicable building codes and that makes it suitable for occupation.

As to their claim for monetary compensation for losses due to damages caused by the leaking roof, 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 acted reasonably 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. Finally it must be proven that the Tenants acted reasonably to minimize the damage or losses that were incurred.

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

As found above, the Landlord failed to address the leaking roof in a timely manner and this has been found to be a breach of section 32 of the Act.

I also accept that the Tenants have proven they suffered some loss due to this breach. I accept that the saddles may require cleaning, although I find the Tenants evidence on the cost of cleaning these to be insufficient. Therefore, I award them a nominal amount of **\$50.00** to clean the saddles.

Likewise, I find the Tenants' evidence in regard to the value of their loss of use of the riding tractor to be vague at best.

Furthermore, the Tenants were unclear as to what amount they paid for the tractor and did not fully prove how the snow on the tractor caused it to cease functioning entirely. There are many reasons the tractor may not have started or functioned; however, the Tenants have failed to prove how the Landlord's breach of the Act caused them to suffer a loss due to the tractor. Therefore, I find the Tenants had insufficient evidence to prove their alleged losses for the tractor.

As described above, I grant the Tenants a monetary order in the amount of **\$2,350.00** comprised of the reduced rent for 15 months, a nominal amount for cleaning the saddles and the **\$50.00** filing fee for the Application. The Tenants have a monetary order in this amount and must serve the Landlord with this order, and may reduce the rent to recover this or have the Landlord pay the amount of the order directly to them.

Conclusion

I find that the Tenants paid all outstanding rent due to the Landlord prior to the last hearing and that the tenancy will continue until ended in accordance with the Act.

I find the Landlord failed to provide and maintain the rental unit as required under section 32 of the Act, and the Tenants are entitled to compensation of \$2,250.00 for the losses during the months that the Landlord failed to address the repair issues. I also allow the Tenants \$50.00 as a nominal amount for cleaning the saddles due to the roof leaking. I find the Tenants failed to provide sufficient evidence to prove their claims on the riding lawn mower/tractor.

Orders for the Landlord to make certain repairs have been made in this matter and are described above. The Tenants may reduce the rent starting October 22, 2014, if the Landlord fails to make the repairs as ordered and the rent will continue to be reduced until these repairs are completed as ordered above.

The Tenants are granted a monetary order in the amount of \$2,350.00 and must serve the Landlord a copy of this order, and may deduct this amount from rent or have the Landlord pay this amount directly to them.

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: September 9, 2014

