



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP, RP, RR, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order to the landlords to make repairs to the rental unit pursuant to section 32;
- an order to the landlords to make emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord DP (the landlord) provided testimony on behalf of the landlords. The tenant JU (the tenant) provided testimony on behalf of the tenants.

The tenant testified that she personally served the landlord DP with the dispute resolution package on 8 November 2014. The landlord confirmed that he had received the dispute resolution package. On the basis of this evidence, I am satisfied that the landlords were served with notice of the tenants' application pursuant to section 89 of the Act.

The tenant testified that a friend, SR, personally served the tenants' evidence to the landlord DP on 15 November 2014. The landlord confirmed that he received the tenants' evidence. On the basis of this evidence, I am satisfied that the landlords were served with the evidence pursuant to section 88 of the Act.

The landlord testified that a friend, PR, personally served the landlords' evidence to the tenants on 17 November 2014. The tenant confirmed that she had received the

landlords' evidence. On the basis of this evidence, I am satisfied that the tenants were served with the evidence pursuant to section 88 of the Act.

Issue(s) to be Decided

Are the tenants entitled to an order that the landlords make repairs to the rental unit? Are the tenants entitled to an order that the landlords make emergency repairs to the rental unit? Are the tenants entitled to a reduction in rent for a reduction in the value of the tenancy agreement? Are the tenants entitled to a monetary award for compensation for damage or loss? Are the tenants entitled to recover their filing fee from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and invoices, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

This tenancy began 1 September 2010. Monthly rent of \$1,200.00 was due on the first. At some point after the tenancy began, rent was raised to approximately \$1,229.00 per month.

The rental unit is a rancher-style home attached to commercial rental units. The tenants only rent the residential portion of the property. Underneath the rental unit is a crawlspace. The crawlspace is accessible through a hatch-like door in the ground on the commercial side. The tenant testified that the ducts were cleaned in early 2011 and October 2013.

The tenant testified that since winter of 2011, animals (i.e. raccoons, mice, and rats) have been entering the crawlspace and into the rental unit. The tenant testified that in January 2012 a rat leaped from her spice cupboard and hit her in the face. The tenant testified that a pest control person attended at the rental unit at that time and removed seven or eight rats. The landlord testified that he hired a pest control company to attend at the rental unit at the end of 2012 in response to additional complaints from the tenants. The landlords provided written submissions that stated that this company only found one mouse.

The landlord provided a receipt from a duct cleaning company dated 10 October 2013. This invoice included a charge to seal other rodent entry points.

The landlord testified that he was notified of this current rat problem by the tenant in early November. The landlord testified that the commercial properties do not have problems with rats and that it is only the tenant that has any complaints.

The tenant testified that she believes that the vermin are entering the rental unit through the crawlspace door and various improperly sealed areas of the rental unit. The tenant testified that she has killed five rats in the last three to four weeks. The tenant testified that she has asked the landlord to remediate the pest problem, but that he has told her that it is not his problem and that she should leave.

The tenant provided me with various photographs showing improperly sealed areas around vents, ducts, doorways and windows. I was also provided with photographs that showed rat droppings and nest debris in the air returns and vents. This represents accumulation since October 2013 when the vents were last cleaned. These pictures were taken on 8 November 2014 in the course of the tenant's inspection with the pest control person.

The tenant provided me with an estimate and report from a commercial pest company. The tenant testified that the pest control person went through the rental unit to assess the rat problem. The report from the pest company stated the following:

It is clear to me that a number of rats are currently sharing your living space. It is obvious that they are not only in your ceiling and crawl space but in your heating ventilation system as well as your kitchen and food preparation area. ...

...in the case of your home there are numerous entry points that were created when modifications were done that did not consider rats. Your furnace room is missing a window that needs repair as well as numerous areas where (sic) pipes and wiring have left holes big enough for rats to gain entry. As well There (sic) is absolutely no barrier to the crawl space whatsoever and screens are missing from your soffit vents. Rats have free run of your house at this time and even though you can eliminate the existing population, until (sic) the entry points are sealed the problem will return.

The tenant has claimed for a monetary order in the amount of \$3,600.00. The tenant calculated this as a monthly rent abatement of \$75.00 over four years of the tenancy.

The landlord testified that in response to the tenants' numerous complaints he has hired a pest control company. The landlord testified that he believes that the condition of the property is attracting rats and that this is why the tenant is experiencing the infestation. The landlords provided me with photographs from the exterior of the property. The photographs show various items around the home including boxes, door frames, lawnmowers and garbage containers. The landlords provided letters from neighbors

regarding the condition of the property. The letters all state that the property is cluttered.

The tenant testified that the items that she keeps outside are normal. The tenant testified that she keeps her garbage, recycling, and scrap food pickup outside. The tenant also testified that the items currently kept in the shed are stored there pending her move. The tenant testified that it is the improperly sealed rental unit that is allowing vermin to enter the house that is causing the infestation issue.

Analysis

The tenants have applied for an order that the landlord complete emergency repairs. Section 33 of the Act describes “emergency repairs” as those repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purposes of:

- repairing major leaks in pipes or the roof,
- damage or blocked water or sewer pipes or plumbing fixtures,
- the primary heating system,
- damaged or defective locks that give access to the rental unit,
- the electrical systems, and
- in prescribed circumstances, a rental unit or residential property.

This dispute relates to repairs to block rodent entry to the property. I find that this is not one of the enumerated repairs in section 33 of the Act. The tenants’ application for an order that the landlords conduct emergency repairs is dismissed.

Subsection 32(1) of the Act requires a landlord to 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, make it suitable for occupation by the tenant. The tenant and the pest control person have identified that the home has an existing rat problem. The landlord has removed pests but never corrected the issue of entry into the rental unit. The tenant testified that the rat problem has been a recurrent issue. A home infested by rats does not meet the standard prescribed by subsection 32(1) of the Act. I order that the landlord repair the rental unit to prevent the entry of vermin into the rental unit and to eliminate any pests that are in the rental unit by 26 December 2014.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the

damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

Paragraph 65(1)(f) of the Act allows me to issue an order to reduce past or future rent by an amount equivalent to a reduction in the value of a tenancy agreement.

Residential Tenancy Policy Guideline, "6. *Right to Quite Enjoyment*" provides me with assistance in determining the amount of the reduction in value. The policy establishes that I should take into consideration the seriousness of the situation and the length of time over which the situation has persisted.

The tenants have claimed for both damages and a rent abatement. Based on the tenant's testimony, I have determined that the tenants' claim is an application for a rent abatement for the loss in value of their tenancy agreement and is not best characterized as damages. Accordingly, I dismiss the tenants' claim for damages on the basis that their claim is for an abatement for the loss in value of their tenancy.

The tenants have claimed for a monthly rent abatement of \$75.00 for 48 months of past rent. The tenants arrived at the amount by calculating their increased hydro costs and the cost of her allergy medication. The tenant testified that the amount was to compensate her for her lost enjoyment of the premises. I accept that the tenant's calculation is a proxy for the lost value of the tenancy. The tenants have mitigated their damages by attempting to block the entry way into her kitchen with duct tape. I reject the landlords' submission that the rats inside the house are the result of clutter in the yard.

However, based on the tenants' delay in filing an application, I do not accept that the decrease in value of the tenancy was as high as they claim. I find that the monthly value of the tenants' tenancy was reduced by \$50.00. The landlords have taken steps to clear the pests from the house, but they have never solved the problem by sealing the entry ways to the house. I find that the landlords should have taken steps to seal the rodent entry points. These repairs should have taken place shortly after January 2012 when the original rat infestation was noted.

The pertinent limitation period is found in section 60 of the Act. Pursuant to subsection 3(2) of the *Limitation Act* and Residential Tenancy Policy Guideline "16. *Claims in Damages*", that act does not apply to this dispute. Accordingly, the relevant limitation

period is two years from the end of this tenancy. As this tenancy has not yet concluded, I am not bound by any limitation period.

On this basis I order that past rent is abated in the amount of \$50.00 monthly from February 2012. At the time of this decision, monthly rent is abated for 34 months. I award the tenants a monetary order in the amount of \$1,700.00 for their past rent abatement. Until the repairs to the rental unit and extermination are complete, future rent, if any, is reduced by \$50.00—although I understand the tenants intend to move from the rental unit at the end of this month.

As the tenants have been successful in their application they are entitled to recover their filing fee of \$50.00.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$1,750.00.

The tenants are provided with this order in the above terms and the landlords must be served with this order as soon as possible. Should the landlords fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

I order that the landlords repair the rental unit so as to prevent the entry of rodents into the rental unit by 26 December 2014. I order that, until such time as the repairs are complete, future monthly rent, if any, is reduced by \$50.00.

The remainder of the tenants' application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: November 26, 2014

Residential Tenancy Branch