



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order cancelling a notice to end tenancy for landlord's use of property and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

Both tenants and the landlord attended the hearing, and one of the tenants and the landlord gave affirmed testimony. The parties also provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing, the tenants advised that they will be moving out of the rental unit by January 10, 2015 and the application for an order cancelling the notice to end tenancy for landlord's use of property is withdrawn.

Issue(s) to be Decided

The issue remaining to be decided is:

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of use of facilities?

Background and Evidence

The tenant testified that this fixed term tenancy began on November 15, 2013 and expired after 6 months, following which it became a month-to-month tenancy. The

tenants still live in the rental unit but are moving out on January 10, 2015. Rent in the amount of \$850.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$425.00 as well as a pet damage deposit in the amount of \$200.00, both of which are still held in trust by the landlord.

The tenant further testified that the rental unit is a basement suite in a house and the landlord and his family reside in the upper unit. The tenants have been dealing with health issues which he believes are as a result of the landlord's failure to provide sufficient garbage and recycling bins and the landlord's solution was for the tenants to keep all garbage inside the rental unit. The tenant's wife is pregnant and the tenants have another child as well as a baby and the tenant's wife has asthma. The landlord had provided 1 garbage bin and 1 recycling bin at the outset of the tenancy but they were not large enough for both families. The parties had attended a dispute resolution hearing in November, 2014 and the Arbitrator told the landlord to provide 1 large recycling bin and 1 large garbage bin within 2 weeks of the hearing date but the landlord didn't do so. Also, the tenant spoke to the recycling station employees and was told that the bins were free. The tenant had no room in his vehicle to get one. The tenants claim \$850.00, or the equivalent of 1 month's rent for the landlord's failure to comply and stated that the previous hearing dealt with the bins as well as monetary compensation for loss of food as a result of the landlord's failure to have the refrigerator repaired.

The tenant further testified that the landlord was notified that the back stove burner wasn't working, and the landlord fixed it, but the plug kept falling out. The bracket that holds the socket came loose. An electrician was called in August who said that the wires had frayed and the tenants were without that burner for about 6 months of the tenancy. The landlord promised to have someone look at it, but the burner exploded while the tenant's wife was cooking, like an electrical jolt followed by smoke, and then nothing would work after that. The tenants claim \$100.00 per month for 6 months of the disrepair.

The tenant also testified that for 6 months of the tenancy a kitchen tap dripped all night keeping the tenants awake and due to lack of sleep, the tenant has been ill. The landlord was advised around April of May, 2014 and the tenants have provided copies of emails exchanged. The tenants claim \$100.00 per month for 6 months of lack of repair.

The tenant also testified that his clothing got caught in the steel of the washing machine and bent it and the washing machine leaked all over the house. It took the landlord 1 ½ months to get it fixed after being informed. The landlord finally allowed the tenants to

use his washer in the landlord's upper unit after the first month. The tenants do laundry every day and couldn't afford to go to a laundromat. A part was needed and had to be ordered. The tenant asked the landlord a few times about it, and the tenants claim \$850.00 for the loss of use of the appliance.

The landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property on November 27, 2014 by personally handing it to one of the tenants. The notice is dated November 27, 2014 and contains an expected date of vacancy of January 29, 2015.

The tenants have not yet provided the landlord with a forwarding address.

The landlord testified that usually he and his wife are not at the residence, and most of the time there were no other people living in the landlord's unit. Most of the garbage and recycling belong to the tenants. Further, they mix waste without putting recycling in the recycling bin. Photographs have been provided, and the landlord testified that the tenants were given notice to do it right. The landlord agrees that on one occasion he told the tenants to put the garbage in the house until garbage day rather than keeping it in the garage. The conversation took place on Wednesday and garbage day was Friday.

The landlord further testified that in the previous hearing, the tenants had asked for a monetary order of about \$300.00 for more than just spoiled food. The Arbitrator has already made a Decision, but the landlord has not yet received a copy. At the hearing, the Arbitrator asked if it was possible for the landlord to provide garbage and recycling bins. The landlord talked to the City staff and they said that the landlord would have to pay more to upgrade the service. The landlord left the bins in place for the exclusive use of the tenants and the landlord puts his garbage and recycling at his place of business.

The landlord further testified that the washing machine was new in late 2012 and in March, 2013 the previous tenants moved out, and the rental unit wasn't rented to these tenants until November, 2013. The tenant told the landlord it was leaking, the landlord looked at it and there was a lot of stuff in it and the landlord told the tenant to be careful. The landlord called a technician who reported that there is a torn rubber seal and lots of debris. The landlord paid about \$200.00 for that call-out. After a couple of months the tenants said it was leaking again and the landlord called another technician who said that the seal needed replacing and to make an appointment with the tenants. The tenants weren't available and the landlord had difficulty arranging a schedule between them. The landlord paid about another \$300.00. The landlord asked the tenant if there were any problems and she responded that it wasn't leaking anymore. The tenants

used the landlord's laundry, so the landlord disagrees that they are entitled to money. They had a new machine which should have worked for 10 years without any problems.

With respect to the stove, when the tenants told the landlord of a problem, the landlord looked at it and fixed the loose wire. The next time there was a problem with the oven and a technician fixed it in a timely manner.

The faucet is not a major problem. There was some leaking and the landlord tried to fix it but was not able to. A technician fixed it on October 23, 2014 and the tenants complained about 2 days prior.

Analysis

Firstly, with respect to the end of the tenancy, the parties asked that I provide information with respect to their rights and obligations, and I offer the following. The *Residential Tenancy Act* states that where a landlord ends a tenancy for the landlord's use of the property, the landlord is required to pay the tenant compensation of the equivalent of 1 month's rent. That is often accomplished by the tenants not paying rent for the last month of the tenancy, however, the *Act* also states that after a landlord issues such a notice, the tenant may move out earlier than stated in the notice but must give the landlord 10 days written notice of that intention, and must pay rent on a daily basis if applicable to the effective date of the tenant's notice. The landlord is still required to pay to the tenants the equivalent of one month's rent. In this case, the tenants have not yet given the landlord written notice of their intention to vacate earlier than the effective date of the landlord's notice, so I make no further findings or orders with respect to what rent may be payable to the landlord or what compensation the tenants are entitled to receive or when.

The parties also asked that I provide information respecting the security deposit and pet damage deposit, and I offer the following. A landlord must return a security deposit and pet damage deposit in full to a tenant, or make an application for dispute resolution claiming against the deposits, within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, whichever is later. If the landlord refuses to do either, the tenant may make an application for dispute resolution claiming double the amounts.

With respect to the tenants' application for monetary compensation, I have reviewed the Decision of the previous arbitration, and it's clear that the hearing dealt with more than spoiled food due to a faulty refrigerator. The tenants had also raised a claim for loss of use of the washing machine and loss of use of the stove, and those applications were dismissed. The tenants cannot re-claim for a matter that has already been adjudicated

upon. Further, the tenants have already received an order for monetary compensation for 6 months of the leaking faucet and for the garbage and recycling containers.

In the circumstances, I find that the tenants' application has already been adjudicated upon and is hereby dismissed without leave to reapply.

Since the tenants have not been successful with the application, the tenants are not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the tenants' application for an order cancelling a notice to end tenancy for landlord's use of property is hereby dismissed as withdrawn.

The tenants' application for monetary compensation is hereby dismissed without leave to reapply.

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 08, 2015

Residential Tenancy Branch

