Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding David Burr Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, RR, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order, an order authorizing them to reduce their rent and an order compelling the landlord to comply with the Act. Both parties participated in the conference call hearing.

Issue to be Decided

Are the tenants entitled to a monetary order as claimed?
Should the tenants be permitted to reduce their rent?
Should the landlord be ordered to comply with the Act?

Background and Evidence

The facts are not in dispute. The rental unit is a condominium in a building with 24 units. The tenancy began on March 1, 2014 and the tenants are the first occupants of the new property.

The rental unit contains a washer and dryer. On September 3, the tenants reported to the landlord that the washing machine was making strange noises, although it continued to function. The landlord arranged for a technician to attend the unit and upon inspection of the machine, he advised that the shock was broken and advised the tenants to place only small loads in the machine. The technician ordered a new part but it had to be back ordered and took considerably longer to arrive than the 10 days originally estimated by the technician. The machine continued to work until approximately September 24 and in an email of that date, the tenants advised the landlord that the machine had stopped functioning. On October 23, the landlord replaced the machine with a new machine from another suite that had not been sold.

The tenants testified that beginning September 3, they had to bring their laundry to a local laundromat. When asked why they did not simply wash their clothes in smaller

loads and use the machine from September 3 – 24, the date on which it stopped working altogether, they replied that it was inconvenient to do small loads. They estimated that they did 6 loads of laundry per week for 7 weeks at a rate of $5.00 per load for a total of $210.00. They also claim for 9 hours of time spent each week for 7 weeks at a rate of $5.00 per hour for a total of $315.00as they had to spend time waiting for their clothes to wash and dry. They also seek the return of 15% of their rent paid for 7 weeks as they claim to have lost pride and enjoyment of their home. When queried about this part of their claim, they explained that they entertain in their home and they had to hide their dirty laundry when guests were in the unit.

The landlord testified that they acted reasonably and could not control that the part was backordered. When asked why they did not substitute the broken machine for a working machine for another suite much earlier, the landlord explained that the suite from which the new machine was taken now has a used machine and it was not their practice to sell units with used machines.

The parties agreed that the tenants were provided with one parking space which was included in their rent and that they requested a second parking space and agreed to a rate of $75.00 per month. The tenants testified that the second parking space is shorter than other spaces as it has storage lockers at the back, is closed in by a cement wall and is in front of a door. They testified that in order to park in the space, they had to back in and on occasion, they were unable to access the space at all because larger cars were blocking access. The tenants claimed that they began complaining about the parking space early in their tenancy and provided an email sent to the landlord dated March 24 in which they stated “The place is awesome!!! (parking isn’t!)”. They provided an email dated May 23 which reads in part as follows:

> I have reached a boiling point with the parking situation here … It is bad enough I am paying an extra $75 a month for a tiny spot next to a cement wall for my BMW. Now there are new people moving in and using the spots across from me. I just got home and found it short of impossible to park my car now that the other spots are filling up. There is truly not enough room without risking hitting another car or the cement wall – neither of which are an option for me.

The tenants testified that they discovered that other tenants paid just $50.00 per month for an extra parking space. They asked that they be permitted to reduce the parking payment to $50.00 per month retroactive to March 1.

The landlord testified that parking spaces are assigned by the strata and although another parking space was requested, the strata would not permit the tenants to switch

spaces. The landlord testified that the tenants rented the unit during a transition period when units were not selling and the owner made rents for additional parking spaces higher in order to supress demand for spaces. The rate was later changed for subsequent tenants.

The tenants also seek to recover the $50.00 filing fee paid to bring their application.

Analysis

The *Residential Tenancy Act* (the "Act") establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent's action or inaction;
3. Proof of the value of that loss; and
4. Proof that the applicant took reasonable steps to minimize the loss.

In applying this test to the claim for the washing machine, I find that the landlord had the obligation to provide a functioning machine. Although the landlord could not have anticipated that the machine would break down or that the required part would be back ordered, this does not relieve them of their obligation to provide a machine pursuant to the terms of their tenancy agreement. I find that from September 24 – October 23 the tenants had to do their laundry in the laundromat. I accept that 6 loads of laundry per week is reasonable and that a rate of $5.00 per load is reasonable. I find that the tenants have proven that they suffered a loss and that they have proven the value of that loss. However, I find that the tenants failed to minimize their loss during the period from September 3 – 24. During that period, the tenants could have used the machine but chose not to endure that minor inconvenience in favour of the greater inconvenience of attending the laundromat. I find that they are not entitled to compensation for that period due to that failure to mitigate and also because the inconvenience at that point was fairly minor and in my opinion falls below a level which attracts compensation. I do not accept that the tenants should be compensated for both the time involved with washing their clothes and for what they characterized as "loss of pride and enjoyment". The tenants could easily have placed soiled clothing out of sight when they were entertaining. However, I find that because the tenants were paying the full amount of rent for the approximately 4 week period from September 24-October 23, they should be entitled to a rebate of rent equivalent to the value of having an in-suite washing machine. I fix that value at 5% of the total rent paid. I therefore award the tenants

$120.00 for the cost of doing laundry and $75.00 which is 5% of the $1,500.00 in monthly rent which they pay for a total of $195.00.

The tenants requested a second parking space from the landlord and were provided a space for an additional monthly fee. The tenants did not appear to have specified the problem with the parking space until 2 ½ months into their tenancy. While they claimed that the space is impossible to park in, their emails show that it is not impossible but merely inconvenient and requires a high level of care and attention to navigate into the space. While they may prefer a different space, I find that the space assigned is suitable for use as a parking space, primarily because the tenants have been using it for almost a year. The tenants were quoted $75.00 as the cost of the parking space and the landlord was not obligated to provide every tenant with the same rate. The tenants freely chose to pay $75.00 and cannot now demand a refund because they discovered that other tenants are paying less any more than they could demand a rent reduction if they were to discover that other tenants were paying less for the same square footage. The tenants are bound by the terms of the contract that they freely entered into and there is no indication that they were forced by duress to sign the agreement or that the term is unconscionable. I therefore find that this term of the tenancy agreement is enforceable and the landlord is not obligated to either provide them with a different space or to give them the same rate as is offered to other tenants. If the parties agree, the tenancy agreement may be amended to eliminate the provision of the additional space, but the landlord is not obligated to agree to that amendment. For these reasons, I dismiss the claim for a refund of payments made for the second parking space and the claim for authorization to reduce future parking space payments.

As the tenants have been only partially successful in their claim, I find they should recover one half of their filing fee and I award them $25.00.

Conclusion

The tenants have been awarded a total of $220.00 and may deduct this amount from a future rental payment.

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: March 12, 2015

Residential Tenancy Branch