Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC RR

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on August 28, 2014, to obtain a Monetary Order for: for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to allow the Tenants to reduce the rent for repairs, services or facilities agreed upon but not provided.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenants. Each party gave affirmed testimony and confirmed receipt of evidence served by each other.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have the Tenants met the burden of proof to be awarded monetary compensation?
2. Are the Tenants entitled to reduce their future rent or has this tenancy ended?

Background and Evidence

It was undisputed that the parties entered into a written tenancy agreement that began on April 1, 2013. Rent was to be $1,350.00, as listed on the tenancy agreement; however shortly after the start of the tenancy the rent was reduced to $1,200.00 per

month. On March 21, 2013 the Tenants paid $675.00 as the security deposit. The tenancy ended September 28, 2014 when the Tenants vacated the rental property.

The Tenants submitted a claim for $3,754.00 which was comprised of $2,550.00 for loss of use of one of the 5 bedrooms, $244.00 for paint for the upstairs; $510.00 for the cost of hydro to run the well pump; and $450.00 for the cost of bottled water. In support of their claim the Tenants submitted copies of: a 6 page written submission; the advertisement for the rental unit; 14 photographs; 7 pages of sections of emails; four pages of the tenancy agreement; and the one page tenancy addendum.

The Tenants testified that they had rented a 5 bedroom farm with 18 acres and 3 outbuildings. They argued that they only had access to 4 bedrooms in the house and did not have the use of the 18 acres or the 3 out buildings. They stated that the Landlord refused to remove his possessions from the 5th bedroom; therefore, they were seeking reduced rent for the loss of use of the one bedroom of $2,550.00 which is calculated at $150.00 per month for 17 months.

The Landlord testified that the Tenants had known that they would not be getting access to the 5th bedroom from the onset of their tenancy. He pointed to the Tenants' email submissions dated November 22, 2013 where he wrote as follows:

> *The farm house was my inheritance and it took me over a year to find someone suitable to rent it and then agree to the condition of leaving my room intact as it was.*

The Landlord then pointed to the tenancy addendum, provided in the Tenants' evidence that clearly indicates that rent was to be $1,350.00. He submitted that he had agreed to reduce the rent by $150.00 per month down to $1,200.00 because the Tenants would not be getting access to the 5th bedroom. He argued that this proves the Tenants have already been compensated for the loss of use of the 5th bedroom.

The Tenants seek $244.00 for the cost of paint for the upstairs. They argued that the Landlord had verbally agreed that they could paint the upstairs and that he would reimburse them for the cost of the paint. The Tenants submitted that the Landlord has failed to pay them for those costs.

The Landlord disputed the claim and argued that he has never seen a receipt for the paint that was allegedly purchased. He argued that he would not pay for paint without seeing the actual costs.

Upon review of the Tenants' claim of $510.00 for hydro costs for the well pump; they asserted that they had found out there was only one well supplying 3 houses on the property and that their utility bill was being billed for the cost of the pump. The Tenants submitted that the well pump began to pop the breakers on approximately July 25, 2014; then they stated it was June 2014; then it was May 2014; and finally they stated it occurred in December 2014. Upon my questions to clarify when this event occurred that

led the Tenants to believe they were paying hydro costs for use of the well by other homes, the Tenants became frustrated and stated that they were withdrawing their claim for hydro costs.

The Landlord disputed that there was only one well and submitted that there were 3 separate wells on the property.

The Tenants testified that the last item they were seeking was for the cost of bottled water for 90 days while they were under a "boil water" advisory. They argued that everyone on the property became ill so they contacted the health authority who had to test the well water and who ordered them to boil the water. Their claim is calculated at $5.00 per day for 90 days.

The Landlord stated that the health authority did contact him sometime in August 2014 and told him that they were conducting tests on the well water. He submitted that the lab tests took about two weeks and that the test results were that the water was okay to drink. He argued that the Tenants only called the health authority in response to him issuing them a 1 Month Notice for cause in July 2014 and a 10 Day Notice. He noted that there was no evidence to prove the Tenants had purchased bottled water and there was no evidence to support that there was anything wrong with the well water.

In closing the Tenants argued that they did not obtain receipts for the bottled water because they got the water from a machine where they deposited the money and it filled their bottle of water. The reduction in their rent to $1,200.00 was a benefit offered to them for being good tenants and not because they did not have use of the 5th bedroom. When asked why they did not bring their concerns forward at the beginning the tenancy the Tenants submitted that they had attempted to resolve the issue with their Landlord.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

This tenancy ended September 28, 2014; therefore, the Tenants' claim for future reduced rent is moot. Accordingly, the claim for reduced rent is dismissed, without leave to reapply.

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The party making the claim for damages must satisfy all four components of the test below:

1. Proof the loss exists,
2. Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act and did whatever was reasonable to minimize the damage or loss.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

When the Tenants were unable to provide accurate details with respect to the well pump, they withdrew their request for compensation for hydro costs.

With respect to the Tenants' claim for compensation for loss of use of the 5th bedroom, they relied upon emails that were created seven months after their tenancy began (November 2013), where they requested to use the 5th bedroom. The Landlord responded by email reminding the Tenants that they had agreed to the condition of leaving the Landlord's room intact and without its use. The evidence further confirms that the Tenants' rent was reduced by $150.00 per month. The Tenants took no further action with respect to the loss of use of the 5th bedroom until they were evicted 10 months later.

Based on the foregoing, I find the Tenants provided insufficient evidence to meet the test for damage or loss, as listed above. I made this finding in part, because there was no evidence to prove the Landlord breached the Act, regulation, or tenancy agreement, and if the Tenants felt they were entitled to further compensation for the loss of use of the 5th bedroom, they ought to have brought their concerns to dispute resolution at the outset of their tenancy and not wait until they were being evicted. Accordingly, the claim for the loss of use of the 5th bedroom is dismissed, without leave to reapply.

In response to the claims for paint and bottled water, the Tenants relied solely upon their written submissions and oral testimony which were disputed by the Landlord. No evidence was submitted to confirm the Tenants had been issued a "boil water" advisory

or that there had been a problem with the water. Nor were there any receipts submitted to prove the actual cost of the paint or water that were allegedly purchased. Accordingly, I find there to be insufficient evidence to prove the Tenants' claim for paint and bottled water, and those claims are dismissed without leave to reapply.

Conclusion

I HEREBY DISMISS The Tenants' claim in its entirety, 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: March 09, 2015

Residential Tenancy Branch