



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OLC, MNDC, RP, RR, FF

Introduction

This hearing concerns an application by the tenants for an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to make repairs to the unit, site or property / permission to reduce rent for repairs, services or facilities agreed upon but not provided / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

It is understood that the unit which is the subject of this dispute is a house that is approximately 27 years old.

There are 2 separate tenancy agreements in evidence, each of which identifies the same landlord and the same rental unit. However, 1 tenancy agreement identifies tenant "ES," while the other tenancy agreement identifies tenant "RS." The terms set out in the respective agreements vary, as follows:

Tenant "ES:"

Pursuant to a written tenancy agreement the term of tenancy is from June 01, 2014 to May 31, 2015. Monthly rent of \$1,850.00 is due and payable in advance on the first day of each month, and a security deposit of \$900.00 was collected. There is no evidence of a move-in condition inspection report.

Tenant "RS:"

Pursuant to a written tenancy agreement the term of tenancy is from July 01, 2014 to June 30, 2015. Monthly rent of \$1,800.00 is due and payable in advance on the first

day of each month, and a security deposit of \$900.00 was collected. There is no evidence of a move-in condition inspection report.

It appears that the landlord entered into the tenancy agreement with tenant "RS" after determining that tenant "ES" had failed to pay rent for June 2014 on the first day of that month. Evidence includes a copy of the 10 day notice to end tenancy for unpaid rent which was issued by date of June 20, 2014, and which names tenant "ES." The amount and timing of any subsequent payment(s) is unclear. However, all appear to presently agree that both "ES" and "RS" currently still reside in the unit, that rent of \$1,800.00 is due and payable in advance on the first day of each month, and that only 1 security deposit in the amount of \$900.00 was collected.

The tenants claim that 2 windows in the unit are cracked and need to be replaced: 1 window in the upstairs bathroom and another in the downstairs living room. The tenants claim that leakage of water occurs at these cracks. Further, the tenants claim that there have been problems with leaking pipes throughout the term of the tenancy, and that damage to the unit as a result of these leaks has not been repaired. In the result, in their application the tenants seek compensation by way of a reimbursement of rent from the time when tenancy began to the point at which the application for dispute resolution was made, in addition to an ongoing reduction in rent until such time as all necessary repairs have been completed.

The landlord takes the position that all emergency repairs were undertaken in a timely manner. The landlord further claims that the unit would be required to be vacant on the occasion of any major renovations, but that in any event, no further repairs are required in order to make the unit habitable. The landlord also claims that no concerns about the condition of the unit were ever formally brought to her attention by the tenants until they served her with their application for dispute resolution.

An exploration around whether the dispute might be resolved between the parties during the hearing did not lead to any mutual agreements, and it is understood that the landlord is now advertising the unit for sale.

Analysis

The attention of the parties is drawn to the following particular sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 28: **Protection of tenant's right to quiet enjoyment**

Section 29: **Landlord's right to enter rental unit restricted**

Section 32: **Landlord and tenant obligations to repair and maintain**

Section 33: **Emergency repairs**

Based on the testimony of the parties, in addition to the documentary evidence which includes, but is not limited to, several photographs taken in and around the unit, my findings are set out below.

As earlier noted, there is no evidence before me of a move-in condition inspection report having been completed. Further, there is no evidence before me of email exchanges between the parties in relation to tenants' concerns about the condition of the unit. Neither is there any evidence before me of the tenants having forwarded documented concerns about the condition of the unit to the landlord's attention, until they filed their application for dispute resolution on February 02, 2015. I note that both tenancy agreements in evidence include an "address for service" for the landlord, and I note that this is the same address used by the tenants to successfully serve the landlord with their application for dispute resolution.

A chronological summary of events was submitted into evidence by the landlord. The summary begins with reference to a call from tenant "RS" on July 27, 2014. From that point to the present, the chronology refers to the landlord's contacts principally with tenant "RS" in relation to various problems including leaking pipes, leaks in the unit roof, leaks in the garage roof, and inadequate calking in various places. While it appears that the landlord intends to continue with repairs and / or remedial work, I find there is insufficient evidence before me to conclude that the unit currently fails to comply with "the health, safety and housing standards required by law," or that it is unsuitable for occupation. However, I am persuaded that water related problems and miscellaneous repairs which are documented from late July 2014 until the present, have diminished the value of the tenancy, and will continue to do so in the immediate future. I also find that related upsets and inconveniences have breached the tenants' right to quiet enjoyment, and will continue to do so in the immediate future. In the result, I find that the tenants have established entitlement to compensation of **\$2,550.00**, as follows:

\$2,000.00: *\$250.00 per month x 8 months from August 01, 2014 to March 31, 2015*

\$500.00: *\$250.00 per month x 2 months from April 01 to May 31, 2015*

\$50.00: *filing fee*

I hereby **ORDER** that this entitlement be realized by the tenants as follows:

\$1,275.00 to be withheld from the regular payment of rent due on April 01, 2015
[leaving a balance due of \$525.00 (\$1,800.00 - \$1,275.00)]

\$1,275.00 to be withheld from the regular payment of rent due on May 01, 2015
[leaving a balance due of \$525.00 (\$1,800.00 - \$1,275.00)]

Conclusion

The tenants have established entitlement to compensation in the total amount of **\$2,550.00**, the details related to which are set out above.

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 24, 2015

Residential Tenancy Branch

