Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order. Both parties participated in the conference call hearing.

Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy ended on April 15, 2014 and ended when the tenants vacated the rental unit on July 6, 2014. They further agreed that monthly rent was set at $2,100.00.

The parties agreed that 5 days after the tenancy began, the sewer backed up into a basement bathroom rendering that bathroom unusable. A plumber was immediately called who resolved the plumbing issue and the following day, the landlord sent a cleaning service. However, when the cleaning service arrived at the rental unit and learned that the cleaning was related to a sewage backup, the representative refused the work. 2 weeks after the incident, a restoration company began working to clean the area.

The tenants testified that shortly after the restoration company began remediating the bathroom, they discovered mold in the bathroom, laundry room and mudroom. The tenants testified that the restoration company brought in what were described as “air scrubbers” and advised the tenants not to go into the basement area. While the renovation company was remediating, they discovered a leak behind the washing machine and described the resulting damage as “Severe rot … to existing framing and demising wall.” The parties agreed that the restoration company cut out the rotted material in the affected area.

The tenants stated that they asked the landlord for a guarantee that the unit would be restored “properly and safely” but that the landlord would offer no such guarantee. Because they believed their health was in jeopardy as one of the tenants is asthmatic, at the end of April the tenants gave the landlord notice that they would be ending their tenancy on June 30, 2015. The

tenants testified that they believed the law allowed them to end a tenancy on 2 months' notice if the landlord failed to perform repairs.

The tenants testified that neighbours told them the whole house was leaking. They stated that because of the mold in the laundry room, they did not use the washer and dryer from April 20 to the end of the tenancy. They claim that by May 6 the drywall in the affected bathroom was removed but there was still no toilet. They testified that at the end of the tenancy when they inspected the unit together with the landlord's agent M.L., there was still plastic separating the bathroom, laundry room and mudroom from the rest of the basement. The tenants provided a copy of an email dated May 8 and authored by V.E., an agent of the landlord, in which V.E. stated:

> We are in the process of advising the owner of the nature of work to be done and waiting for his approval on contractor. [reproduced as written]

The tenants replied to this email 11 minutes after it was sent which stated in part as follows:

> We are pleased to hear [renovation company] has performed an antimicrobial treatment we would like to see their report that the area is safe as we have a lot of items stored in the room to the left of the laundry and it is sealed off and we can't access it. [reproduced as written]

The tenants testified that they had rented the unit because it had a separate suite in the basement into which they intended their son to move and pay them rent of $700.00 per month. They stated that because of the plumbing incident, their son did not move into the basement and they lost that income.

The tenants testified that there were 2 wall ovens in the kitchen upstairs in the unit and that throughout the tenancy, neither of the ovens was operational. The tenants provided an email they sent to the landlord's representative on April 28 advising that they did not have a working oven in the main kitchen.

The tenants acknowledged that they received a $700.00 rent reduction from the landlord for the month of June and claimed that the reduction was designed to compensate them for the income lost because their son could not move into the lower unit as planned. The tenants provided a copy of an email from M.L. dated May 14 which provided as follows:

> We have discussed with the owner today, and he has agreed to reduce $700 from next month's rent. So June's rent will be $1400, other than $2100. In the meantime, we will try to see what else we can do to improve your living condition. [reproduced as written]

The landlords testified that they immediately responded to the situation in the lower bathroom as soon as they became aware. They testified that the restoration work was complete by May 7 and provided a copy of a document issued by the restoration company on that date entitled: "Flood Restoration and Demolition, Work already undertaken". It outlines remediation to the

affected area including cleaning and antimicrobial treatment. The tenant provided a copy of another of the restoration company's documents with the same date entitled "Estimate, pertaining to work already preformed [*sic*]". The estimate document describes the same work.

The landlords argued that the tenants had full use of the basement after May 7. M.L. testified at the hearing and initially denied that there was plastic in the basement when she inspected the unit with the tenants. However, when pressed on the issue, she eventually acknowledged that the plastic was still in place but insisted that the renovations had been completed and the plastic had remained up solely because of the tenants' health concerns.

The landlords took the position that the tenants had been fully compensated for losses associated with the plumbing incident in their acceptance of the $700.00 rent reduction for the month of May.

The landlords claimed that there were 2 ovens in the kitchen and one of the ovens worked throughout the tenancy.

The tenants claimed that the landlords' failure to provide the rental unit in good condition forced them to incur expense in moving. They seek to recover $933.33 which represents the income they would have received from their son from April 20 – May 31, compensation of $125.00 for not having a working oven during the tenancy, compensation for not having a washer or dryer from April 20 – July 7 and costs associated with moving including mail forwarding, storage, movers and utility connection fees.

Analysis

The tenants bear the burden of proving their claim on the balance of probabilities. 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. (if applicable) Proof that the applicant took reasonable steps to minimize the loss.

In any living accommodation, repairs will occasionally be required and some inconvenience will be experienced. If landlords who are made aware of repair issues act within a reasonable period to perform repairs, they cannot be said to have failed to comply with the Act.

The landlords responded immediately when they were made aware of the plumbing incident and I find that arranging for a restoration company to commence work within 2 weeks of the event was a reasonable timeframe in which to address the repair. It was within this timeframe that the tenants gave their notice that they would be vacating the rental unit. Although the tenants were operating on a mistaken belief that the law required them to give 2 months' notice, I find that they did not give the landlord a reasonable period in which to address the repairs. For this reason, I find that with respect to the claim for expenses relating to moving, the tenants have not met step 1 of the test outlined above and accordingly I find that the claim for moving related expenses must be dismissed.

In the month of May, the tenants accepted the landlords' offer to allow them to reduce their rent by $700.00. The tenants had previously demanded that their rent be reduced by $700.00 per month to account for the income their son would have provided had he been able to move into the lower suite and I find it more likely than not that they compromised and settled that part of their claim with the landlord for $700.00 which was intended to cover the entire period. I have arrived at this conclusion because by the time the tenants agreed to the landlords' offer, April and May's rent had already been paid. Had they expected to be compensated $700.00 for each month in which their son could not reside in the unit, they would have demanded that their rent be reduced by an additional $933.33 to reflect losses for the partial month of April and anticipated losses for the full month of June. I therefore find that the tenants' claim for loss of income has already been fully satisfied by the $700.00 rent reduction. The income loss claim is dismissed.

I find that the landlords were obligated to provide working ovens as a condition of the tenancy agreement. one of the ovens was operational throughout the tenancy, the tenants wrote to them on April 28 advising that neither oven was working and M.L. responded to that email but did not challenge the complaint. I find it more likely than not that both of the ovens in the main kitchen were not functional throughout the tenancy and I find that the landlords were in breach

of the tenancy agreement. I find that the tenants paid full rent for a service they did not receive and therefore suffered a compensable loss. I find the tenants' claim to be reasonable as it represents 2 ½ months of their tenancy at a rate of $50.00 per month. I award the tenants $125.00.

I find that the landlords were obligated to provide a washer and dryer which were operational and accessible as a condition of the tenancy agreement. The parties agreed that the machines could not be used from April 20 – May 7. The tenants' email to V.E. on May 8 made it clear that the laundry room was still sealed off at that point. Although M.L. initially claimed that the plastic had been removed on May 7, she eventually acknowledged that it was still in place at the end of the tenancy. The tenants specifically asked on May 8 for confirmation that the laundry room was safe to access, but there is no evidence whatsoever that the landlords provided that confirmation or that the plastic was removed. I find that the tenants were justified in believing it was not safe to access the laundry room as it remained sealed off throughout the tenancy. I find that the landlords were in breach of their obligations under the tenancy agreement. I find that the tenants paid full rent for a service they did not receive and therefore suffered a compensable loss. I find the tenants' claim to be reasonable as it represents 2 ½ months of their tenancy at a rate of less than $50.00 per month. I award the tenants $116.60.

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

Conclusion

The tenants have been awarded a total of $266.60 which represents $125.00 for the loss of the ovens, $116.60 for loss of access to laundry facilities and $25.00 for their filing fee. I grant the tenants a monetary order under section 67 for $266.60. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: April 29, 2015

Residential Tenancy Branch