Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an application by the tenants for a monetary order. Both parties participated in the conference call hearing. Both tenants were represented at the hearing by the tenant NH. Where I refer to tenant in the singular form, it is NH to whom I refer.

The tenancy in question ended on October 30, 2012. The tenants filed their application for dispute resolution on September 26, 2014, 23 months after the end of the tenancy and one month before the statutory limitation of October 30, 2014.

17 days prior to the hearing, the tenants submitted 126 pages of evidence. While this was submitted in time pursuant to the Residential Tenancy Rules of Procedure, because the evidence package was so voluminous and because the tenants chose to wait until the 11th hour to serve that evidence on the Branch and the respondent, I asked the respondents if they had had adequate opportunity to peruse and respond to the evidence. The respondents stated that they had sufficient opportunity to review the evidence and did not require an adjournment.

Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on November 27, 2009 and ended on October 30, 2012. They further agreed that rent was set at $750.00 per month.

The tenant testified that in October and November 2011, she noticed that the water in the rental unit was yellow when it emerged from the tap. She testified that she mentioned the issue to the landlord in late November and told him that she was having

a rough time with her glands, trouble swallowing and that she had a sore throat. She stated that the landlord said nothing was wrong with the water, but claimed that the landlord told her brother, the co-applicant who did not appear at the hearing, that he should not drink the water until the spring.

The tenant testified that in December 2011, she had the water tested at her own expense. She submitted the results of that test into evidence. The test shows that the coliform count was at 200.5. The tenant testified that she reported the rest results to the local health department, but they did not follow up on the information. She testified that she did not report the test results to the landlord because she believed “it was a good way of getting yourself evicted”. She testified that the colour of the water cleared up in January or February but testified that from the time she learned of the test results in December, she brought her drinking water in from another source.

The parties agreed that on July 7, 2012, a flood occurred in the rental unit. The tenant testified that she reported the flood to the health department and they tested the water and found that it had unacceptable coliform levels. She claimed that at no time did the landlord or the health department advise her to boil her water.

The tenant testified that as a result of the flood, for the remainder of the tenancy there was no carpet in the hallway, bathroom and bedroom entrances and suggested that this interfered with her quiet enjoyment, but testified that her claim for compensation was primarily centred around the problems with the water.

The tenants seek to recover the rent paid from December 8, 2011 to the end of the tenancy because of the disruption caused to their lives as a result of the undrinkable water.

The landlords testified that the water source for the residential property is a well which is occasionally affected by heavy rains, becoming discoloured. They testified that it has been their practice when they notice discolouration to advise their tenants to start boiling water and when the water is no longer discoloured, they tell the tenants that boiling is no longer necessary.

The landlords testified that they have the water tested once each year just to ensure that the well water is safe. They testified that when the July flood occurred, the tenant told the health department that the flood was caused by sewage water. The landlords claimed that this was untrue and that it was tap water which caused the flooding. They acknowledged that the coliform levels were high when the health authority tested the water but claimed that the boil water advisory was only in effect from July 10 – 17. They testified that they did not tell the tenants to boil the water but believed this to be the

responsibility of the health authority. The landlords testified that there were a number of preventative measures which they put into place at the recommendation of the health authority but that the water was declared to be safe long before the improvements were completed.

The landlords testified that they wanted to perform repairs to the unit right after the flood, but stated that while the tenants permitted them to repair the problematic tap, the tenants would not permit them to perform any other repairs including replacing the flooring.

The tenants acknowledged that they did not permit the landlords to enter the unit to perform repairs as the tenant had been named executrix of her parents' estate, items belonging to the estate were in the unit and they believed that if the landlords moved the items, the tenant could experience problems with the estate.

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. (if applicable) Proof that the applicant took reasonable steps to minimize the loss.

Section 32 of the Act provides as follows:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

32(1)(a) complies with the health, safety and housing standards required by law, and

32(1)(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find that the landlords had an obligation to provide potable water to the tenant throughout the tenancy. While I accept that environmental factors such as excessive rains or a run off of melting water in the spring may periodically affect water quality, in this case it is clear from the correspondence between the landlords and the health

authority that the well itself did not have certain elements in place such as a UV light and an adequate disinfection system which would ensure provision of potable water.

The landlords claimed that the water was not potable for a period of only one week, but the water testing results entered into evidence shows that there were issues with the water until at least August 1. In a letter dated August 13, 2015, the environmental health officer stated that the boil water advisory had to remain in effect until the UV unit was installed and bacteriological samples were satisfactory. At that point, the officer expected that the work would be completed within 2 weeks. In an email dated September 28, 2012, the landlord advised the officer that the UV light had been installed and in a letter dated November 16, 2012, the officer advised the landlord that he confirmed that the water was as of that date acceptable for domestic supply.

I find that the boil water advisory was in effect until November 16, 2012, which means that for 4 months, the tenants had to boil their water. This goes beyond what may be characterized as a temporary inconvenience and I find that the landlords' failure to maintain an effective water disinfection system caused the problems. I find that the landlords were in breach of their obligations under section 32 of the Act. I have not found that the landlords were in breach of their obligations prior to July because the landlords had no way of knowing that there was a problem with the water prior to that point as the tenants unreasonably refused to give them the results of their water testing. A mere complaint about water discolouration is not in my view sufficient to put the landlords on notice that a significant problem exists with the water supply.

Although there was some dispute about whose responsibility it was to advise the tenants to boil their water, it ultimately does not matter nor does it matter that the tenants did not learn of the advisory until the tenancy had ended as they took precautions on their own initiative.

I find that the tenants paid full rent but were unable to use the water for drinking. The tenants seek to recover all of the rent paid for the months they were affected, but I find that because the tenants were still able to live in the unit, they are only entitled to a reduction to reflect the amount by which the value of their tenancy was reduced.

The tenants claimed aggravated damages, but I find this is not a situation which warrants an award of aggravated damages. Aggravated damages are awarded when a deliberate or negligent act or omission of the respondent has caused significant wrong to the applicant. I find that the failure of the landlords to maintain the well with a proper disinfection system was neither deliberate nor negligent. I find it more likely that the 40+ year old well had an outdated system in place of which the landlords were unaware until testing in July 2012 revealed a problem.

I do not award the tenants anything for the loss of quiet enjoyment resulting from the flood as I find they refused the landlords access to perform repairs to the unit.

I find that a reduction of 15%, or $112.50, will adequately compensate the tenants. I award the tenants $450.00 which represents a reduction of 15% for the period from July 10, 2012 – November 16, 2012 inclusive. I grant the tenants a monetary order under section 67 for that sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenants are awarded $450.00.

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: May 04, 2015

Residential Tenancy Branch