Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, O, OPB, MND, MNR, FF

Introduction

In the first application the tenants seek a monetary award for costs relating to moving, for loss incurred in having to end a previous tenancy early, for increased utility costs and for recovery of a security deposit.

In the second application the landlords seek to recover rent for December 2014 and the cost of painting.

The tenants vacated the premises on November 30, 2014. The landlords apply for an order of possession but they now have possession back and such an order is unnecessary.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that either side is entitled to any of the relief claimed?

Background and Evidence

The rental unit is an older two bedroom manufactured home located in a rural setting. The tenancy started on November 1, 2014 on a month to month basis. The rent was $1000.00 per month. The landlords received and hold a $250.00 security deposit.

On November 18, 2014 the tenants gave the landlords a written notice that they would be vacating the premises on November 30th "due to numerous breaches of material terms …"

The written notice claims the landlords seriously misrepresented the rental unit and costs including the expected cost of propane heating, non-disclosure of the existence of

the use of space heaters in a crawl space and well pumphouse, failure to provide keys, failing to change the locks at move in, misrepresenting that the water had been tested and failure to provide potable water.

The tenants testify that at the start of the tenancy the landlord's estimated that the propane consumption in the home would be about a tank to a tank and a half over the winter. They had the tank half filled on November 5th and by November 30th they had used about 40% of that half tank even though they had set the thermostats very low in the house.

The tenants say that the water coming from the well contained sediment, was coloured and that it left an orange stain due to iron in the water. They say the landlords told them the water had been tested but refused to provide a copy of the test result.

The tenants say that to secure this tenancy they were required to negotiate an early end to their previous tenancy at a cost of $500.00. They say that had the landlords told them the true facts about this rental unit they would not have moved in and incurred that cost.

They feel they were forced to leave and wish to recover the $94.90 cost of a U-Haul trailer rented for the move as well and the extra cost of Telus hookup charges.

They say the landlords required them to operate a space heater under the home and another in the pump house to prevent water pipes from freezing.

The tenants say the front door didn't fully latch closed and the landlords never provided a key.

In response the landlord Ms. M. testifies that the tenants paid a penalty for early move-out from their prior accommodation. She says that the landlords would have been amenable to a later start of this tenancy had it been discussed.

She says the tenants were informed that the well water had minerals and a smell to it. She lived there for forty years using the same water (from a different well) and says it was not harmful. She says the water was tested when the well was dug about forty years ago.

Ms. M. testifies that the weather in November 2014 was unseasonably cold and so she could not "flush" the well at that time.

She agrees that she indicated to the tenants that propane heat consumption was usually about a tank or a tank and a half over a winter.

She testifies that on November 6, the tenant Ms. A. texted her saying “all fine.”

She says that they were expecting extreme cold November 8th and so the landlord had a space heater under the house, set at -10 degrees, in order to keep pipes from freezing. It did not run all the time.

She says that on November 8th Mr. M. attended and fixed the front door.

She says that on November 11 the tenants texted about the sediment in the water. They wanted to flush the hot water tank. At that time the tenant Mr. H. asked about whether the water had been tested and she told him she’d used the water for years.

She says that on November 15, the tenant Mr. H. requested a water filter. She got one and went to arrange its installation but it was too cold for the backhoe operator to dig a drain. She says she attempted to resolve the issue with the tenants but on November 16th they informed her by text that it was too late; that they’d be moving November 30th and that a formal notice would be forthcoming.

Since then, later in November, the water was tested and proved potable.

She testifies that the propane tank has a gauge on it and that the gauge indicted 21% full on November 28th and only 5% full on November 30th. She says that a “full” propane tank is only really 80% full and so the tank would have read 40% full after the tenants had it half filled.

She says the tenants did not give proper one month notice to vacate and that the landlords have lost the December rent as a result.

She says the tenants undertook some painting or “spackling” of interior walls while they were there but left the job incomplete. After the tenants left the landlords paid $450.00 to have the walls properly painted.

The landlord Mr. M. testifies that the space heaters under the house and in the pump house only work when it is below -10 degrees and that the temperature in November was -20 or -24 degrees. He told the tenants about the pump house heater requirement at move-in and he put it in the pump house on November 5.

He says that he was unaware of the tenant's complaints until November 16th and that the tenants only gave him one day to address them before their November 18 notice.

Mr. M. says that after the tenants' notice, the water was tested. He showed the tenant Mr. H. the result and Mr. H. told him that it was too expensive to live there anyway.

Analysis

The first question is whether or not the tenants were entitled to end the tenancy with the notice they provided.

At common law a party to any contract may end it if the other is in breach of a material or fundamental term of the agreement. That is , a term so important that the parties would have agreed at the start of the tenancy that even the most trifling breach would justify ending the contract.

The *Residential Tenancy Act* (the "*Act*") has changed the common law. Section 45(3) provides:

> (3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

In this case, the tenants' notice letter of November 18, even it if could be considered a demand to correct a failure to comply with a material term, did not allow the landlords any time to correct the complaints.

The tenants did no comply with s. 45(3) and their November 18th notice was not effective to end the tenancy earlier than that permitted by s. 45(1), which provides:

> (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (a) is not earlier than one month after the date the landlord receives the notice, and
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> (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

That date would have been December 31, 2015, the end of the following rental period.

As a result, the tenants are responsible for the December rent they should have paid during the lawful notice period.

Even had proper notice to correct the breach of a material term been given, the evidence does not show the landlords had breached any term so fundamental to the tenancy as to be considered a material term.

I find the tenants were made aware that the water to the premises was well water with a high mineral content. They resided in the premises for about two weeks without complaint. Their allegation that he water was not reasonably useable is refuted by the landlords' evidence and the undisputed test result.

The evidence does not show that the propane usage experienced by the tenants was so out of line with expectation as to warrant compensation, especially considering the undisputed fact that the weather in November 2014 was unseasonably cold for that region.

It is likely that the tenants were not fully aware that the landlord's anticipated that as part of the tenants' obligation they would pay for electricity for ensuring the water pipes under the house and in the pump house did not freeze but I find that both heaters were on thermostats; not running continuously, and operated only infrequently but for the unseasonable cold in November. I find that the use of such heaters was a normal and reasonable incident of renting a manufactured home and using a well and the tenants were responsible for the electrical usage related to their use.

As the tenants have not shown that they were forced into an untimely move, they are not entitled to recover their moving costs or Telus hookup fees. I also dismiss their claim for the penalty paid to end their prior tenancy. That is not an item the landlords were made aware of and I consider damages for such a loss to be unrelated to how long the tenants stayed at this premises. They would have incurred the same cost whether they lived in this rental unit for a month or a year.

I find that the front door was repaired by the landlords in a timely fashion. I find that the tenants did not suffer any particular loss or inconvenience during this short tenancy as a result of the door or not having a key to it.

I find that the tenants left the premises with an unfinished paint job in the living room and that the landlords were entitled to have it restored. I find the cost of $450.00 was a reasonable cost of repainting. The walls had been painted five years earlier. To award the landlords the full cost of a new paint job would be to put them in a better position than had the tenants not painted at all.

According to Residential Tenancy Policy Guideline #40 “Useful Life of Building Elements” an interior paint job has a useful life of four years. It follows that the wall paint had lived out its useful life and so the landlords are not entitled to recover any amount for the repainting.

Conclusion

The tenants’ application is dismissed.

The landlords’ application is allowed in part. They are entitled to a monetary award of $1000.00 for the December rent plus recovery of the $50.00 filing fee. I authorize them to retain the $250.00 security deposit in reduction of the amount awarded and grant them a monetary order against the tenants jointly and severally for the remainder of $800.00.

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 11, 2015

Residential Tenancy Branch