



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP, RP, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on or about May 13, 2015. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a monetary order and if so how much?
- b. Whether the tenants are entitled to an order that the landlord comply with residential tenancy agreement?
- c. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on March 1, 2015, end on February 28, 2016 and the tenants must move out of the rental unit at that time. The tenancy agreement provided

that the tenant(s) would pay rent of \$2900 per month payable in advance on the first day of each month for 4 tenants. The tenancy agreement also provided that the rent would be increased by \$150 per month for each additional tenant to a maximum of 6 tenants. The tenants paid a security deposit of \$1450 at the start of the tenancy.

The tenancy agreement also contained a provision that the tenants acknowledged the landlord would be doing renovation work in the small bathroom downstairs and there will be a one time \$200 deduction as compensation for the inconvenience and for using the den and room next door for storing construction supplies and materials.

The tenants took the one time \$200 deduction as compensation for the reduced value of the tenancy for March. The tenants testified and it was represented to them from the landlord that the work would be completed in one month. However, the work extended into April. The landlord offered and the tenants agreed to a \$200 deduction of the rent for April. The tenants subsequently advised they returned the \$200 deduction to the landlord. This sum should be added to any monetary award. The tenants seek compensation for the reduced value of the tenancy for all of May and the first 10 days in June. The repairs were completed on June 10, 2015.

Policy Guideline 16 includes the following statement:

“Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. **If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord.** (my emphasis) Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.”

The tenants seek compensation based on the following:

- At all material times it was expected that the bathroom renovation work would be completed in one month time.
- The work extended much longer than expected.
- The tenants were denied the use of the downstairs bathroom and the den (which was to be used for storage) until June 10, 2015.
- Throughout that time with the exception of a 2 week period in May they were subjected to construction noises interfering with their use and enjoyment of the property. The construction noises occurred on a regular basis throughout the day.
- One of the tenant testified she works from home.
- Also, the landlord and his contractor would show up unannounced and gain access without knocking of the door.

The landlord disputes the tenants' claim on the following basis:

- The tenants were aware of the renovation and agreed in the tenancy agreement to a one time reduction of rent of \$200. There is a second provision in the tenancy agreement where the tenants acknowledged that work would be done on the outside of the rental property and the tenants agreed they are not entitled to compensation for this.
- The rent is lower than market value. The tenants were aware they were getting a good deal with the rent of \$2900 as it was \$300 less than originally advertised and this was part of the compensation for the reduced value of the tenancy caused by the renovation.
- There was nothing in writing including the Pre tenancy inspection report as to how long the renovation would take.
- The downstairs bathroom and den area take up about 2% of the total area of the rental property.

Analysis

After carefully considering all of the evidence I determined the tenants are entitled to compensation for the reduced value of the tenancy for the period May 1, 2015 to June 10, 2015 in the sum of \$400 for the following reasons:

- I determined the \$200 reduction for March was given and accepted on the representation of the landlord that the renovation would be completed in one month. Support for this conclusion is found from the conduct of the landlord who offered the tenant a further \$200 reduction for April. I do not accept the submission of the landlord that the tenants' compensation is limited to the one time \$200 reduction of rent for March as set out in the contract. This term is ambiguous and both parties were operating on the mistaken understanding that the work would be completed in one month.
- I determined the tenants are bound by their agreement with the landlord of \$200 compensation for April.
- I determined the lack of a functioning bathroom and the use of a den amounted to a significant reduction in the value of the tenancy. There are two other bathrooms in the rental property and five tenants living in the rental property. However, the tenant living in the downstairs bedroom would have to use the upstairs property.
- I determined the construction noise and the goings and comings of the contractor often without proper notice amounted to a significant disturbance.
- I have considered there was a two week period in May when the tenants were not disturbed by construction noise as the contractor was working on another job.
- I determined the reduced value of the tenancy per month was greater than the \$200 agreed upon by the tenants for March and April.

The tenants also sought an order that the landlord comply with the tenancy agreement which provided that additional tenants could be added to a maximum of 6 provided they paid an additional \$150 per tenant. The landlord initially objected on the basis that he could not understand why the tenants were seeking to add tenants when they were

claiming compensation for the lack of a bathroom. At any rate the landlord does not object to additional tenants provided the tenancy agreement is follows. As a result it is not necessary to make such an order.

Monetary Order:

I ordered the landlord(s) to pay to the tenant the sum of \$600 (\$200 for April 2015 and \$400 for the period May 1, 2015 to June 10, 2015) plus the sum of \$50 in respect of the filing fee for a total of \$650.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the 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: June 24, 2015

Residential Tenancy Branch

